



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 5

(2006, chapter 7)

An Act to amend various legislative provisions of a fiscal nature

Introduced 28 March 2006
Passage in principle 6 April 2006
Passage 2 June 2006
Assented to 8 June 2006

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EXPLANATORY NOTES

This bill amends the Act respecting parental insurance to adjust the premiums paid by an employer under the parental insurance plan in respect of the wages earned by an employee outside Québec.

The bill amends the Act respecting the Ministère du Revenu to allow the Minister to suspend, revoke or refuse to issue or renew a permit when the public interest so requires, to send a taxpayer a formal demand concerning documents relating to unnamed persons after obtaining judicial authorization, and to impose a penalty equal to 50% of the amounts omitted on persons who, wilfully or in circumstances equivalent to gross negligence, fail to pay duties for which they are liable and fail to file a return or report concerning those duties. The bill also amends that Act so as to make it easier to prove that certain orders were sent.

The bill amends the Act respecting the Québec sales tax to, among other things, increase the fines relating to the identification of beer containers.

As well, the bill amends the Tobacco Tax Act to remove a section that no longer has application.

Lastly, the bill amends the Fuel Tax Act to make certain changes concerning the use and sale of coloured fuel oil.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting parental insurance (R.S.Q., chapter A-29.011);
- Tobacco Tax Act (R.S.Q., chapter I-2);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Act respecting the Québec sales tax (R.S.Q., chapter T-0.1);
- Fuel Tax Act (R.S.Q., chapter T-1).

Bill 5

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS OF A FISCAL NATURE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING PARENTAL INSURANCE

1. (1) Section 55 of the Act respecting parental insurance (R.S.Q., chapter A-29.011), replaced by section 34 of chapter 13 of the statutes of 2005, is amended by replacing “in respect of a person” by “in respect of an employee, a person referred to in section 51 or a self-employed worker”, and by replacing “exonérée” in the French text by “exonéré”.

(2) Subsection 1 has effect from 1 January 2006.

2. (1) Section 59 of the Act, replaced by section 35 of chapter 13 of the statutes of 2005, is amended by adding the following paragraphs:

“However, for the purpose of computing, in accordance with the first paragraph, the premium of an employer in respect of an employee who, in relation to the employment, also reports for work at an establishment of the employer situated outside Québec or, if the employee is not required to report for work at an establishment of the employer, part of whose wages are paid from such an establishment situated outside Québec, the amount referred to in subparagraph 2 of the first paragraph is reduced, subject to the third paragraph, by the aggregate of the amounts each of which is the quotient obtained by dividing the amount paid by the employer for the year in respect of that employee, under a statute of another province establishing a plan similar to the plan established by this Act or under the Employment Insurance Act, as a premium attributable to benefits similar to those provided for in this Act, by the rate referred to in subparagraph 2 of the first paragraph of section 6.

In addition, an amount paid by an employer in respect of an employee, under a statute of another province establishing a plan similar to the plan established by this Act or under the Employment Insurance Act, as a premium attributable to benefits similar to those provided for in this Act, is taken into account in computing the aggregate described in the second paragraph only if the Minister is authorized, in accordance with section 74, to make adjustment payments referred to in section 74.2 to the government of that other province or the Government of Canada.”

(2) Subsection 1 has effect from 1 January 2006.

3. (1) Section 74.2 of the Act, enacted by section 43 of chapter 13 of the statutes of 2005, is amended

(1) by replacing the portion of paragraph 2 before subparagraph *a* by the following:

“(2) the amount by which the amount described in the second paragraph is exceeded by the amount the employer would have paid for the year in respect of the employee, as a premium attributable to benefits similar to those provided for in this Act had the employer been subject, in relation to all of the employee’s eligible wages for the year, in respect of the employee’s employment with the employer;”;

(2) by adding the following paragraph:

“The amount to which subparagraph 2 of the first paragraph refers is the amount paid by the employer for the year in respect of the employee, under a statute of the other province referred to in subparagraph *a* of that subparagraph 2, or under the Employment Insurance Act, as a premium attributable to benefits similar to those provided for in this Act.”

(2) Subsection 1 has effect from 1 January 2006.

TOBACCO TAX ACT

4. Section 13 of the Tobacco Tax Act (R.S.Q., chapter I-2) is repealed.

ACT RESPECTING THE MINISTÈRE DU REVENU

5. The Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by inserting the following section after section 17.4:

“**17.4.1.** The Minister may, when the public interest so requires, in particular to preserve tax revenues in their entirety, suspend, revoke or refuse to issue or renew a permit that a person must hold under a fiscal law.”

6. Section 39 of the Act is amended by inserting the following paragraphs after the second paragraph:

“The Minister may also apply *ex parte* to a judge of the Court of Québec, acting in chambers, for authorization to send a person such a formal demand relating to one or more unnamed persons, on the conditions that the judge considers reasonable in the circumstances.

The judge may grant the authorization if satisfied that the filing of the information or document is required to ascertain whether the person or persons concerned carried out an obligation or a duty prescribed by a fiscal law and that the person or persons are identifiable.”

7. The Act is amended by inserting the following section after section 39:

“39.0.1. The authorization granted under the fourth paragraph of section 39 must be attached to the formal demand.

Within 15 days after receiving the formal demand, the person may, by motion, apply to a judge of the Court of Québec for a review of the authorization.

At least five days’ notice must be given to the Minister before the date on which the motion is presented.

The court may extend the time limit provided for in the second paragraph if the person demonstrates that it was impossible in fact for the person to act and that the motion was presented as soon as circumstances permitted.

The judge may confirm, vacate or vary the authorization under review and make any order the judge considers expedient. The judgment is without appeal.”

8. Section 39.2 of the Act is amended by inserting the following paragraph after the second paragraph:

“The order is sent to the person by registered mail or personal service, unless it is made from the bench in the person’s presence.”

9. The Act is amended by inserting the following section after section 59.3:

“59.3.1. Every person who, wilfully or in circumstances equivalent to gross negligence, fails to pay, deduct, withhold, collect or remit a duty imposed under a fiscal law and who, in relation to that duty, fails to file a return or report as and when prescribed by a fiscal law, a regulation made under such a law or a ministerial order, incurs a penalty equal to 50% of the amount of the duties the person so failed to pay, deduct, withhold, collect or remit.

However, the penalty applies only if the person did not file the return or report although required to do so under section 39.”

10. Section 59.6 of the Act, replaced by section 316 of chapter 1 of the statutes of 2005, is amended by inserting the following sentence after the first sentence: “Moreover, no person shall incur, in respect of the same omission, both the penalty provided for in section 59 or 59.2 or section 1045 of the Taxation Act and the penalty provided for in section 59.3.1.”

11. Section 61.1 of the Act is amended by replacing the second paragraph by the following paragraphs:

“Prior notice of the application for an order shall be served by the prosecutor on the person who could be compelled under such an order, unless the person

is in the presence of the judge. The prior notice may be given with the statement of offence, specifying that the application for an order is to be made at the time of the judgment.

The order is sent to the person by registered mail or personal service, unless it is made from the bench in the person's presence."

12. Section 64 of the Act, amended by section 317 of chapter 1 of the statutes of 2005, is again amended by inserting "59.3.1," after "59.3,".

13. Section 79 of the Act is amended by inserting "of an order," after "by mail" and "order," after "copy of the".

ACT RESPECTING THE QUÉBEC SALES TAX

14. Section 485.1 of the Act respecting the Québec sales tax (R.S.Q., chapter T-0.1) is replaced by the following section:

"485.1. Every person who contravenes a regulatory provision made under subparagraph 22 of the first paragraph of section 677, the violation of which is an offence under a regulatory provision made under subparagraph 60 of that paragraph, is liable to a fine of not less than \$500 nor more than \$2,000 and, in the case of a second offence within five years, to a fine of not less than \$2,000 nor more than \$5,000 and, for a subsequent offence within that time, to a fine of not less than \$5,000 nor more than \$10,000."

15. Section 497 of the Act, amended by section 366 of chapter 1 of the statutes of 2005, is again amended by replacing the second paragraph by the following paragraph:

"However, the requirement provided for in the first paragraph does not apply

(1) to the sale of an alcoholic beverage that is delivered outside Québec; and

(2) to the sale of an alcoholic beverage that is delivered in Québec, if it is taken or shipped outside Québec, in the circumstances described in paragraphs 2 to 4 of section 179, for the purpose of resale and the collection officer keeps evidence satisfactory to the Minister."

FUEL TAX ACT

16. Section 10 of the Fuel Tax Act (R.S.Q., chapter T-1) is amended by adding the following paragraph after paragraph *b*:

"(c) on coloured fuel oil when that fuel oil, having been purchased in Québec by a person carrying on a business, was exported and used outside Québec to supply a railroad locomotive engine."

17. Section 21 of the Act is replaced by the following section:

“**21.** Coloured fuel oil shall not be sold in a filling station or a service station.”

18. Section 21.1 of the Act is amended by inserting “or a service station” after “filling station”.

19. Section 43.1 of the Act is amended,

(1) in the first paragraph,

(a) by replacing the portion after subparagraph *e* by the following:

“is guilty of an offence and liable, in addition to any other penalty otherwise provided for, to a fine of not less than \$500 nor more than \$2,000 and, in the case of a second offence within five years, to a fine of not less than \$2,000 nor more than \$10,000 and, for a subsequent offence within that time, to a fine of not less than \$10,000 nor more than \$25,000.”;

(b) by adding “or a service station” at the end of subparagraph *c*;

(c) by inserting “or a service station” after “filling station” in subparagraph *d*;

(2) in the second paragraph, by replacing “\$5,000 to \$10,000” by “\$10,000 to \$25,000”.

20. Section 45.4 of the Act is amended by inserting “or a service station” after “filling station”.

21. Section 50.0.4 of the Act is amended by replacing the first paragraph by the following paragraph:

“**50.0.4.** A carrier is entitled to a refund of the tax the carrier has paid in respect of fuel acquired by the carrier in Québec and used outside Québec in the propulsion of a prescribed motor vehicle, provided that the carrier holds the licence required by section 50.0.6 and the licence is in force at the time the fuel is acquired.”

TRANSITIONAL AND FINAL PROVISIONS

22. The power of the Minister under the new section 17.4.1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) applies to any application for a permit made before the coming into force of that section and to any permit issued before that date.

23. This Act comes into force on 8 June 2006.