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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-NINTH LEGISLATURE

## **Bill 59**

(2009, chapter 47)

### **An Act to amend the Tobacco Tax Act and other legislative provisions primarily to counter tobacco smuggling**

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**Introduced 28 October 2009  
Passed in principle 4 November 2009  
Passed 18 November 2009  
Assented to 19 November 2009**

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## EXPLANATORY NOTES

*This Act amends the Tobacco Tax Act and the Act respecting the Ministère du Revenu primarily to provide for various measures to counter tobacco smuggling.*

*The Tobacco Tax Act is amended, in particular to impose a moratorium on the issue of manufacturer's permits, set new conditions for their issue and maintenance in force, and provide for shorter validity periods.*

*The Tobacco Tax Act is further amended to increase the amount of certain fines, impose new fiscal penalties, introduce control measures for tobacco manufacturing equipment, give new intervention powers to police forces and allow the court, in certain circumstances, to order the suspension of the driver's permit of a person convicted of an offence under this Act. Moreover, local municipalities are empowered to institute penal proceedings before municipal courts for offences committed in their territory by consumers of contraband tobacco products.*

*The Act respecting the Ministère du Revenu is amended, in particular to set special rules for the confiscation of seized contraband tobacco.*

*Lastly, amendments similar to those made to the Tobacco Tax Act are made to the Fuel Tax Act, including the introduction of new conditions for the issue and maintenance in force of permits and the reduction of their validity period.*

## LEGISLATION AMENDED BY THIS ACT:

- Tobacco Tax Act (R.S.Q., chapter I-2);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Fuel Tax Act (R.S.Q., chapter T-1).

## Bill 59

### AN ACT TO AMEND THE TOBACCO TAX ACT AND OTHER LEGISLATIVE PROVISIONS PRIMARILY TO COUNTER TOBACCO SMUGGLING

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

#### TOBACCO TAX ACT

**1.** Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2), amended by section 8 of chapter 15 of the statutes of 2009, is again amended by inserting the following definition in alphabetical order:

““tobacco manufacturing equipment” means any machinery or equipment designed or modified specifically for the manufacture, production, mixing, preparation or packaging of tobacco intended for sale;”.

**2.** The Act is amended by inserting the following sections after section 6:

**“6.0.1.** Every person who is in possession of tobacco manufacturing equipment in Québec or brings such equipment or causes such equipment to be brought into Québec shall hold a manufacturer’s permit provided for in section 6.

If the person is not a manufacturer, the permit issued to the person shall be used only for the activities described in the first paragraph.

**“6.0.2.** No manufacturer’s permit may be issued after 27 October 2009.

However, the Government may, by order, suspend the application of the first paragraph or, if it considers it expedient, authorize the issue of a manufacturer’s permit.

The first paragraph does not apply to a permit applied for solely to engage in an activity described in section 6.0.1.”

**3.** Section 6.1 of the Act is amended

(1) by replacing “or by regulation.” in paragraph *h* by “, by regulation or by the Minister;”;

(2) by adding the following paragraph after paragraph *h*:

“(i) at the Minister’s request, enter into an agreement under section 17.”

**4.** Section 6.1.1 of the Act, enacted by section 9 of chapter 15 of the statutes of 2009, is replaced by the following section:

“**6.1.1.** The Minister may require, as a condition for the issue or maintenance in force of a permit, security of a value, in a form and under terms determined by the Minister.”

**5.** Section 6.3 of the Act is amended

(1) by striking out “other” after “the Minister or any”;

(2) by adding the following paragraph:

“Despite the first paragraph, a permit may be issued or renewed for a period of less than two years.”

**6.** Section 6.4 of the Act is repealed.

**7.** The Act is amended by inserting the following section after section 7.10:

“**7.10.1.** The holder of a manufacturer’s permit shall keep, in the manner prescribed by regulation, a register setting out the inventory of the tobacco manufacturing equipment in the permit holder’s possession, its origin and the manner in which it was disposed of, if such is the case, as well as any other information prescribed by regulation.”

**8.** Section 13.1.1 of the Act is amended by replacing “a valid manufacturer’s or importer’s permit” in subparagraph *b* of the second paragraph by “a manufacturer’s permit, other than a permit issued for the activities described in section 6.0.1, or by a person holding an importer’s permit”.

**9.** The Act is amended by inserting the following section after the heading of Division III.1:

“**13.2.0.1.** A member of the Sûreté du Québec or of a municipal police force may enforce sections 9.2 and 9.2.1 throughout the territory in which that member provides police services.

That member may, despite the second paragraph of section 72.4 of the Act respecting the Ministère du Revenu (chapter M-31), sign and issue a statement of offence for any offence under those sections committed in that territory.”

**10.** Section 13.3 of the Act, amended by section 18 of chapter 15 of the statutes of 2009, is again amended

(1) by replacing “section 6.2, and examine the identification of the packages of tobacco being transported” in the first paragraph by “section 6.2, examine the identification of the packages of tobacco being transported and, for that purpose, inspect the vehicle, enter it and open, or order the opening of, any passenger compartment, shipping container, compartment, container or vessel”;

(2) by replacing the second paragraph by the following paragraph:

“The person may also order that the vehicle not be moved where the owner, driver or person in charge of it or a passenger refuses to submit to any inspection or examination provided for in the first paragraph, does not hold the documents referred to in that paragraph or produces a manifest or way-bill containing inaccurate or incomplete information or where the person has reasonable grounds to believe that an offence is being or has been committed under paragraph *a* of section 14.1 where it refers to sections 6.2 and 17.10, under subparagraph *a* of the first paragraph of section 14.2 where it refers to sections 6 and 6.0.1, or under section 14.3 where it refers to section 9.2. In any such case, the owner, driver or person in charge of the vehicle or the passenger shall produce identification and surrender for examination the vehicle registration certificate.”

**11.** Section 13.3.1 of the Act, amended by section 19 of chapter 15 of the statutes of 2009, is again amended by inserting “, or under subparagraph *a* of the first paragraph of section 14.2 where it refers to section 6.0.1,” after “17.10” in the first paragraph.

**12.** The Act is amended by inserting the following section after section 13.3.1:

**“13.3.2.** In the cases covered by section 13.3 or 13.3.1, a member of the Sûreté du Québec, a member of a municipal police force or a person authorized by the Minister for such purposes may cause a road vehicle stopped in contravention of Division II of Chapter II of Title VIII of the Highway Safety Code (chapter C-24.2) to be removed and impounded in the nearest suitable place.”

**13.** The heading of Division IV of the Act is replaced by the following heading:

“PENALTIES AND PENAL PROVISIONS”.

**14.** The Act is amended by inserting the following sections after the heading of Division IV:

**“13.9.** Any person who contravenes section 3 incurs a penalty equal to the greater of \$1,000 and three times the amount of tax payable under this Act in respect of the tobacco sold contrary to that section.

**“13.10.** Any person who contravenes section 6 incurs a penalty which,

(a) if the activity that is contrary to section 6 involved tobacco, is equal to the greater of \$1,000 and three times the amount of tax that would have been payable under this Act if the tobacco had been sold by retail sale in Québec; and

(b) if the activity that is contrary to section 6 involved raw tobacco, is equal to the greater of \$1,000 and five times the amount of tax that would have been payable under this Act if each gram of the raw tobacco had been a cigarette sold by retail sale in Québec.

**“13.11.** Any person who contravenes section 7 incurs a penalty equal to the greater of \$1,000 and three times the amount of tax that would have been payable under this Act if the tobacco sold or delivered contrary to that section had been sold by retail sale in Québec.

**“13.12.** Any person who contravenes section 7.0.1 incurs a penalty equal to the greater of \$1,000 and five times the amount of tax that would have been payable under this Act if each gram of raw tobacco sold or delivered contrary to that section had been a cigarette sold by retail sale in Québec.

**“13.13.** Any person who contravenes section 7.0.2 incurs a penalty equal to the greater of \$1,000 and five times the amount of tax that would have been payable under this Act if each gram of raw tobacco sold or delivered contrary to that section had been a cigarette sold by retail sale in Québec.

**“13.14.** Any person who contravenes section 7.1 incurs a penalty equal to the greater of \$1,000 and three times the amount of tax that would have been payable under this Act if the tobacco sold or delivered contrary to that section had been sold by retail sale in Québec.

**“13.15.** Any manufacturer who contravenes section 7.1.2 incurs a penalty equal to the greater of \$1,000 and three times the amount of tax that would have been payable under this Act if the tobacco involved in the activity that is contrary to that section had been sold by retail sale in Québec.

**“13.16.** Any person who sells, delivers or is in possession of tobacco intended for retail sale in Québec and contained in a package not identified in accordance with section 13.1 incurs a penalty equal to the greater of \$1,000 and three times the amount of tax that would have been payable under this Act if the tobacco had been sold by retail sale in Québec.

**“13.17.** For the purposes of section 13.9, paragraph *a* of section 13.10, section 13.11 and sections 13.14 to 13.16, the following rules apply:

(a) the penalty incurred is equal to the greater of \$2,000 and five times the amount of any tax that, under this Act, is payable in respect of tobacco sold by retail sale in Québec or would have been payable if the tobacco had been sold by retail sale in Québec, if the quantity of tobacco involved in the activity that is contrary to one of those sections is greater than

i. 10,000 cigarettes, tobacco sticks, rolls of tobacco or other pre-rolled tobacco products designed for smoking; or

ii. 10 kilograms of loose tobacco, leaf tobacco or tobacco products other than cigars or tobacco products referred to in subparagraph *i*; and

(b) the penalty incurred is equal to the greater of \$1,000 and 300% of the purchase price determined by the Minister in accordance with section 8.1, if cigars are involved in the activity that is contrary to one of those sections.

**“13.18.** A person who is found guilty of an offence under section 14.1, 14.2 or 15 does not incur, in respect of the same facts, a penalty provided for in the second paragraph of section 13.2 or in any of sections 13.9 to 13.17 unless it was imposed on the person before proceedings were instituted against the person under section 14.1, 14.2 or 15.”

**15.** Section 14.1 of the Act is amended by replacing “\$3,000” and “\$37,500” in the portion after paragraph *f* by “\$5,000” and “\$50,000”, respectively.

**16.** Section 14.2 of the Act, amended by section 21 of chapter 15 of the statutes of 2009, is again amended

(1) by replacing “\$3,000” in the portion after subparagraph *e* of the first paragraph by “\$5,000”;

(2) by replacing subparagraph *a* of the first paragraph by the following subparagraph:

“(a) contravenes section 6, 6.0.1, 7, 7.0.1, 7.0.2, 7.1.1, 7.1.2 or 7.9.”;

(3) by replacing “three times” in the second paragraph by “four times”.

**17.** Section 14.3 of the Act is amended by replacing “\$300” by “\$350”.

**18.** The Act is amended by inserting the following sections after section 15:

**“15.0.1.** Despite section 72 of the Act respecting the Ministère du Revenu (chapter M-31), penal proceedings may be instituted by a local municipality for an offence under section 14.3 committed in its territory.

Proceedings instituted by a municipality are brought before the competent municipal court.

The fine imposed belongs to the municipality if it instituted the proceedings.

The costs relating to proceedings instituted before a municipal court belong to the municipality in which the court has jurisdiction, except the costs remitted to the defendant or imposed on the prosecuting municipality under article 223 of the Code of Penal Procedure (chapter C-25.1).

**“15.0.2.** The provisions of the Act respecting the Ministère du Revenu (chapter M-31) concerning the prescription of penal proceedings, the seizure of a thing and the custody, retention, return, confiscation, sale or destruction of the thing apply, with the necessary modifications, to a member of the Sûreté du Québec, a member of a municipal police force and the municipality empowered to act under this Act.

**“15.0.3.** If a person uses a vehicle to transport or deliver tobacco or raw tobacco and is convicted of an offence under section 14.2 for doing so, the court, in addition to any other penalty that may be imposed, may, when pronouncing the sentence, order the Société de l'assurance automobile du Québec to suspend the driver's licence of the person for a period of

(a) not more than six months, for a first conviction; and

(b) at least six months, for a second or subsequent conviction.

If an order is issued under the first paragraph, the Société de l'assurance automobile du Québec shall suspend the driver's licence of the person in accordance with the order.”

#### ACT RESPECTING THE MINISTÈRE DU REVENU

**19.** Section 40.3 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), enacted by section 471 of chapter 15 of the statutes of 2009, is amended by adding the following paragraph after the second paragraph:

“Despite the first paragraph, if the name and address in Québec of the person at whose residence or in whose possession a thing has been seized in relation to an offence against the Tobacco Tax Act (chapter I-2) or a regulation made by the Government under it are unknown to the Minister or cannot be traced, the thing seized is deemed to be confiscated at the expiry of 90 days from the date of seizure. The sixth paragraph of section 68.0.2 applies to such a confiscated thing.”

**20.** Section 68.0.2 of the Act, enacted by section 472 of chapter 15 of the statutes of 2009, is amended by replacing the third paragraph by the following paragraphs:

“On application by the Minister within 30 days after a judgment is rendered in proceedings to impose a penal sanction for an offence against a fiscal law



or a regulation made by the Government under a fiscal law, or within 90 days after the date on which a defendant is deemed to have been convicted of such an offence, a judge may also order the confiscation of any thing seized under any of sections 40, 40.1, 40.1.0.1, 40.1.1 and 40.1.3, of the deposit referred to in the second paragraph of section 40.3 or of the sale proceeds referred to in section 40.4.

At the expiry of 30 days after a judgment is rendered in proceedings to impose a penal sanction for an offence against the Tobacco Tax Act or a regulation made by the Government under it or after the date on which a defendant is deemed to have been convicted of such an offence, a thing seized under any of sections 40, 40.1, 40.1.0.1 and 40.1.1 is confiscated by operation of law if the unlawful possession of the thing prevents it from being returned to the person from whom it was seized or to a person who claims to have a right in the thing, unless either of those persons objects within that period to the confiscation. A notice of such a confiscation by operation of law is given with the statement of offence.”

**21.** Section 72.1 of the Act is amended by adding the following paragraph:

“The same applies to the Deputy Minister in respect of a judgment rendered in relation to proceedings instituted by a local municipality under section 15.0.1 of the Tobacco Tax Act (chapter I-2).”

**22.** The Act is amended by inserting the following section after section 72.3:

**“72.3.1.** Where proceedings have been instituted by a local municipality under section 15.0.1 of the Tobacco Tax Act (chapter I-2), the Deputy Minister may

- (a) intervene in first instance to take charge of the prosecution;
- (b) intervene in appeal to take the place of the municipality who was the prosecutor in first instance;
- (c) order proceedings stayed before the rendering of judgment in first instance; or
- (d) allow the proceedings to be continued within six months of being stayed under subparagraph c.

The intervention, stay or continuation commences when the representative of the Deputy Minister notifies the clerk. The clerk shall notify the parties without delay.”

**23.** Section 72.4 of the Act is amended by adding the following paragraph after the second paragraph:

“A facsimile of the signature of a person referred to in the first or second paragraph that is affixed on the statement of offence has the same force as the person’s signature.”

#### FUEL TAX ACT

**24.** Section 27.1 of the Fuel Tax Act (R.S.Q., chapter T-1) is amended

(1) by replacing “or by regulation.” in paragraph *h* by “, by regulation or by the Minister; and”;

(2) by adding the following paragraph after paragraph *h*:

“(i) at the Minister’s request, enter into an agreement under section 51.”

**25.** The Act is amended by inserting the following section after section 27.1:

“**27.1.1.** The Minister may require, as a condition for the issue or maintenance in force of a permit, security of a value, in a form and under terms determined by the Minister.”

**26.** Section 27.3 of the Act is amended

(1) by striking out “other” after “the Minister or any”;

(2) by adding the following paragraph:

“Despite the first paragraph, a permit may be issued or renewed for a period of less than two years.”

**27.** Section 27.4 of the Act is repealed.

**28.** The Act is amended by inserting the following section after section 40:

“**40.0.1.** In the cases covered by section 39 or 40, a member of the Sûreté du Québec, a member of a municipal police force or a person authorized by the Minister for such purposes may cause any road vehicle stopped in contravention of Division II of Chapter II of Title VIII of the Highway Safety Code (chapter C-24.2) to be removed and impounded in the nearest suitable place.”

#### TRANSITIONAL AND FINAL PROVISIONS

**29.** A person to whom the second paragraph of section 6.0.1 of the Tobacco Tax Act (R.S.Q., chapter I-2), enacted by section 2, applies must, before 18 February 2010, send the Minister of Revenue an application for a manufacturer’s permit in accordance with the Tobacco Tax Act.

The person is deemed to hold the permit applied for until the date on which the Minister issues the permit or sends the decision denying the permit.

**30.** Section 6.0.2 of the Tobacco Tax Act, enacted by section 2, applies to any application for a manufacturer's permit made to the Minister of Revenue that is pending on 28 October 2009.

**31.** The new provisions enacted by sections 3, 4, 24 and 25 of this Act apply to any permit application made to the Minister of Revenue that is pending on 19 November 2009 and, in the case of sections 4 and 25, to any permit that expires after 18 November 2009.

**32.** This Act comes into force on 19 November 2009, except section 15.0.3 of the Tobacco Tax Act (R.S.Q., chapter I-2), enacted by section 18, which comes into force on 19 May 2010.