

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 6

Real Estate Tax Refund Act

First reading

Second reading

Third reading



M. JACQUES PARIZEAU
Ministre du revenu

L'ÉDITEUR OFFICIEL DU QUÉBEC

EXPLANATORY NOTES

The object of this bill is to provide for a yearly real estate tax refund to persons who, as owners or lessees, live in a dwelling in Québec on the last day of the year and fulfil certain conditions.

It provides in particular that the real estate tax refund to which a person is entitled for a year is an amount equal to 40 per cent of the municipal and school taxes (without exceeding \$1 000) levied for the year in respect of the dwelling concerned. However, that refund must be reduced by an amount equal to 2% of the amount by which 90% of the total income of the person concerned and that of his spouse, where such is the case, exceeds certain deductions.

In addition, it provides that that refund cannot be lower than the amount received by that person or his spouse as a school real state tax refund under the Social Affairs Department Act (1970, chapter 42) for the school fiscal period 1978/1979.

The bill fixes the mechanisms of application for the real estate tax refund and for its determination and payment. Rules are provided to enable persons entitled to that refund to object to the decisions rendered by the Ministre du revenu, who will be entrusted with the administration of the act.

That act will be a fiscal law and, consequently, the Ministre du revenu will have for its administration all the powers conferred on him by the Revenue Department Act with respect to such a law.

That act will apply from 1 January 1979.

Bill 6

Real Estate Tax Refund Act

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

DIVISION I

DEFINITIONS

Interpre-
tation:

1. In this act and the regulations, unless the context indicates otherwise,

“spouse”;

(a) “spouse” means a person who is living with the person to whom he is married or who has been living as husband and wife with another person for at least one year;

“real
estate
tax”;

(b) “real estate tax” for a year means the aggregate of the annual taxes levied by a municipal corporation and a school corporation for their fiscal period beginning in the year, with respect to an immovable used for residential purposes, including a lessee’s tax;

“dwell-
ing”;

(c) “dwelling” means a dwelling situated in Québec in which a person ordinarily lives and which he designates as his principal place of residence, except a dwelling administered by a municipal housing bureau established under the Québec Housing Corporation Act (1966/1967, chapter 55), a dwelling situated in a hospital centre or reception centre contemplated in the Act respecting health services and social services (1971, chapter 48) and a room not situated in an establishment specialized in leasing rooms;

“Minister”;

(d) “Minister” means the Ministre du revenu;

“regula-
tion”.

(e) “regulation” means a regulation made by the Govern-
ment under this act.

DIVISION II

ENTITLEMENT TO A REAL ESTATE TAX REFUND

Eligibility.

2. A person is entitled to a real estate tax refund for a year if, on 31 December of that year,

(a) he lives with his spouse in a dwelling which he himself or that spouse owns or leases, alone or jointly with the other alone;

(b) he has no spouse and lives in a dwelling in which he supports another person with whom he lives and in whose respect he deducts, for the year, an amount under paragraph *b* of section 525 of the Taxation Act (1972, chapter 23), and of which he himself or that other person is the owner or lessee, alone or jointly with him alone; or

(c) he is not contemplated in paragraphs *a* and *b* and lives in a dwelling of which he is the sole owner or lessee.

Additional requirement.

On that date, that person and the spouse contemplated in subparagraph *a* of the first paragraph must in addition be resident in Québec and that same person or his spouse, where such is the case, must have been resident in Canada for at least one year.

Exception.

3. A person contemplated in section 2 is not, however, entitled to a real estate tax refund for a year if he himself or his spouse, where such is the case, is exempt from tax for that year under section 714 or 715 of the Taxation Act.

Only one spouse entitled.

4. Only one of the spouses contemplated in subparagraph *a* of the first paragraph of section 2 is entitled to a real estate tax refund for a year in respect of the dwelling in which they live.

Application by each spouse.

Where each spouse files an application for a real estate tax refund, the Minister shall pay the refund to that spouse who for that year had the lower total income.

Owners and lessees.

5. The persons contemplated in section 2 are deemed to be the sole owners or the sole lessees of the dwelling where they live when they are the owners thereof registered at the registry office or the lessees thereof responsible for payment of the rent.

Applicability.

The first paragraph applies even if persons other than those contemplated therein are also owners or lessees of the dwelling, provided they do not live in it.

Person responsible for payment of rent.

A person who pays a rent to another person who lives in the same dwelling and who is responsible for payment of the rent in respect of that dwelling cannot be considered as a lessee responsible for payment of a rent.

Amount of
rent.

6. Where the amount of the rent includes, in addition to the cost of the dwelling, that of food, the rent is deemed to be equal to one-half of the amount actually paid.

DIVISION III

COMPUTATION OF THE REAL ESTATE TAX REFUND

Computa-
tion.

7. The amount of the real estate tax refund to which a person contemplated in section 2 is entitled for a year, in respect of the dwelling in which he lives on 31 December of the year, is equal to the higher of the following amounts:

(a) the amount he has received as a refund of the school real estate tax under the Social Affairs Department Act (1970, chapter 42) for the school fiscal period 1978/1979 or that which his spouse has received as such a refund for the same fiscal year; or

(b) an amount equal to 40 per cent of the real estate tax ascribed to the dwelling for the same year, less 2 per cent of the amount by which 90 per cent of his total income for that year exceeds the amount established under section 10.

Real estate
tax max-
imum.

8. In computing the real estate tax refund to which a person is entitled for a year, the real estate tax for the year ascribed to the dwelling in which he lives on 31 December of the year cannot exceed \$1 000.

Total
income.

9. The total income used in computing the real estate tax refund in the aggregate of

(a) income from an office or employment, computed in accordance with the Taxation Act but before any deduction provided for by that act except those provided for by sections 56 to 61 and 72 of that act;

(b) income from a business or property, computed in accordance with the Taxation Act but before any deduction under sections 119 and 119a of that act, less the losses, so computed, from a business or property;

(c) any other amount included in computing income for the purposes of the Taxation Act, but before any deduction provided for by that act in that computation except those respecting allowable capital losses and the capital element of an annuity;

(d) any other amount received that is excluded in computing income for the purposes of the Taxation Act under paragraphs a, b and c of section 387, sections 389 and 391a to 391c of that act and the regulations made under section 386 of that act, except a work income supplement received under the Act respecting work

income supplement (1979, chapter *insert here the chapter number of Bill 1*); and

(e) any other amount received as a lost-wages insurance benefit or as an income insurance benefit or as a replacement for wages or income.

Spouse's total income included.

In the case of subparagraph *a* of the first paragraph of section 2, except with regard to the application of the second paragraph of section 4, the total income of a person who claims a real estate tax refund must include the total income of his spouse.

Amount of refund.

10. The amount contemplated in paragraph *b* of section 7 for a year is equal to the aggregate of \$3 600 plus,

(a) in the case of a person contemplated in subparagraph *a* or *b* of the first paragraph of section 2, \$2 700 and the aggregate of \$100 and the amounts that that person and, where such is the case, his spouse deduct for the year under paragraphs *c* to *f* and *h* of section 525 of the Taxation Act; or

(b) in the case of a person contemplated in subparagraph *c* of the first paragraph of section 2, the aggregate of \$100 and the amounts he deducts for the year under paragraphs *c* to *f* and *h* of section 525 of the Taxation Act.

Amounts revised.

For the purposes of the application of this section for the year 1980 and every subsequent year, the amounts of \$3 600 and \$2 700 mentioned in the first paragraph are revised in accordance with the same terms and conditions as those provided for in the Taxation Act, for each of those years, with respect to the corresponding amounts contemplated in section 525 of that act, as it applied for the taxation year 1979.

Basis of computation.

11. For the purposes of computing the real estate tax refund to which a person is entitled for a year, the real estate tax for the year ascribed to the dwelling in which he lives on 31 December of the year is computed in the manner provided for in sections 12 and 13, excluding from the real estate tax for the year ascribed to the immoveable in which that dwelling is situated, any portion of that tax that may be refunded in any manner whatever.

Owner of immoveable.

12. In the case of a person who, on 31 December of the year, is the sole owner of an immoveable he uses in whole or in part as his dwelling, the real estate tax ascribed to that dwelling is an amount equal to the proportion of real estate tax for the year in respect of that immoveable, represented by the proportion between the area of the immoveable used for that dwelling and the total area of that immoveable.

Lessee of
a dwelling.

13. In the case of a person who, on 31 December of the year, is the sole lessee of a dwelling, the real estate tax ascribed to that dwelling is an amount equal to the proportion of real estate tax for the year in respect of the immovable in which that dwelling is situated, reduced, where such is the case, by the amount computed in accordance with section 12, represented by the proportion between the rent paid for the month of December of that year in respect of that dwelling and the aggregate of the rents paid for that month in respect of the immovable and of a reasonable amount representing the rents that would actually have been paid for that month in respect of any part of that immovable that is not leased, other than that contemplated in section 12.

Real estate
tax certifi-
cate.

14. A person who, on 31 December in a year, owns an immovable in which is situated a dwelling inhabited by a person contemplated in section 2 and in respect of which a rent has been paid for the month of December of the year must, if that person, his spouse or the person supported by him requests it of him, send to him, not later than the last day of February of the following year, a certificate in respect of the real estate tax ascribed to that dwelling for the year in the form and containing the information prescribed by the Minister.

DIVISION IV

APPLICATION FOR AND DETERMINATION AND PAYMENT OF A REAL ESTATE TAX REFUND

Applica-
tion for
refund.

15. Every person who wishes to receive a real estate tax refund in respect of the dwelling in which he lives on 31 December in a year must make an application therefor to the Minister in the form and containing the information prescribed by the latter, not later than 30 April of the following year.

Fiscal
return.

He shall file his application at the same time as the fiscal return contemplated in section 732 of the Taxation Act; he must file that return even if he is not subject to the payment of tax under the said act.

Certif-
icate from
spouse.

16. The person designated as the spouse in an application filed under section 15 shall annex to that application a certificate in the form and containing the information prescribed by the Minister.

Determina-
tion of
refund.

17. The Minister shall, with all due dispatch, examine the application sent to him and determine the real estate tax refund to which the person is entitled.

Exception. However, he is not bound to examine a person's application so long as he has not received the fiscal return contemplated in section 15 and, where such is the case, the certificate contemplated in section 16.

Notice. **18.** After examining an application, the Minister shall send a notice to the applicant informing him of his decision.

Payment. **19.** Subject to the second paragraph of section 4 and section 45, the Minister shall pay the real estate tax refund to the person who applied for it and section 776 of the Taxation Act applies, *mutatis mutandis*, to that payment.

Minister not bound. **20.** The Minister is not bound by information supplied in an application or in a certificate and he may determine the real estate tax refund to which a person is entitled on the basis of information from another source.

Redetermination of refund. **21.** The Minister may redetermine the amount of a real estate tax refund

(a) within four year from the day of mailing of the notice provided for in section 18, or

(b) at any time, if the person who has filed the application or the certificate has falsely represented the facts through carelessness or voluntary omission or has committed a fraud in filing the application or certificate or in supplying any other information required by the law or the regulations.

Reimbursement of refund. **22.** Every person who has received a real estate tax refund to which he is not entitled in whole or in part must, within 90 days from the mailing of a notice from the Minister, reimburse that refund or that part of the refund to the Minister, whether or not an objection or an appeal in respect of that real estate tax refund is in progress.

DIVISION V

OBJECTIONS AND APPEALS

§ 1.—*Objections*

Notice of objection. **23.** A person who objects to the decision rendered by the Minister on his application for a real estate tax refund may, within 90 days from the day of mailing of the notice provided for in section 18, serve on the Minister a notice of objection in duplicate in the form prescribed by the latter, setting out the reasons for the objection and all the relevant facts.

Notice
accepted.

The Minister may accept a notice of objection even if such notice was not served on him in duplicate or in the form he prescribed.

Service.

24. Such notice of objection must be served by being sent by registered mail.

Decision of
Minister.

25. Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the application for a real estate tax refund, vacate, confirm or vary the determination contested or redetermine the refund and make his decision known to the person concerned by sending him a notice by registered mail.

Section not
to apply.

26. Section 23 does not apply to the redetermination of a real estate tax refund established under section 25.

Redeter-
mination.

27. A redetermination of a real estate tax refund made by the Minister pursuant to section 25 is not invalid by reason only of not having been made within four years from the day of mailing of an original notice given under section 18.

§ 2.—*Appeals*

Right to
appeal.

28. Where a person has served a notice of objection on the Minister under section 23, he may appeal to the Provincial Court sitting for the district in which he resides to have the decision rendered by the Minister on his application for a real estate tax refund vacated or varied after either

(a) the Minister has confirmed the determination of the real estate tax refund or redetermined that refund, or

(b) 180 days have elapsed after service of the notice of objection and the Minister has not notified that person that he has vacated or confirmed the determination of the real estate tax refund or redetermined that refund.

Delay.

29. No appeal may be instituted after the expiry of 90 days from the date on which, under section 25, the Minister has sent notice of his decision to the person concerned.

Irregular-
ity, infor-
mality.

30. The decision of the Minister on an application for a real estate tax refund shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of anyone in the observance of any non-peremptory provision of this act.

Motion.

31. An appeal before the Provincial Court is exercised by a mere motion, three copies of which must be filed in the office of the Court.

Filing by registered mail.

Such copies may also be filed by sending them, by registered mail, to the clerk of the Provincial Court sitting for the district where the appeal is to be instituted.

Documents transmitted.

When these copies have been filed and the amount of \$15 mentioned in section 32 has been paid, the clerk of the Court shall immediately send two of these copies to the Minister, who shall then send to the clerk without delay copies of all the documents relating to the objection and to the determination of the real estate tax refund.

Costs.

32. On filing his motion, the person concerned must pay the sum of \$15 to the clerk of the Court and, if his appeal is wholly or partly successful, that amount shall be repaid to him.

No additional costs.

The Court cannot compel that person to pay any additional costs.

Summary procedure.

33. An appeal shall be heard and decided by preference. Subject to the other provisions of this subdivision, such appeal and the hearing thereof are subject to the procedure governing ordinary actions before the Provincial Court.

Power of Court.

34. The Court may dismiss the appeal, or vacate or vary the determination of the real estate tax refund or refer it to the Minister for reconsideration and redetermination of the refund.

Decision transmitted.

35. The Clerk of the Court shall, within eight days from the decision on the appeal, send a copy of it, by registered mail, to the Minister and to the person concerned.

Final judgment.

A decision of the Court on an appeal is a final judgment of the Provincial Court within the meaning of the Code of Civil Procedure.

Appeal to Court of Appeal.

36. An appeal lies to the Court of Appeal from any final judgment of the Provincial Court rendered under this subdivision.

Rules of procedure.

The appeal is brought, heard and decided in accordance with the rules of the Code of Civil Procedure, subject to any contrary provision of this subdivision.

Expenses granted to respondent.

Where that appeal is brought by the Deputy Minister of Revenue otherwise than by means of a counter appeal, the Court of Appeal, when deciding on the appeal, shall grant to the res-

pendent the reasonable and justified expenses incurred by him in respect of that appeal.

Recovery. **37.** An appeal brought under this subdivision does not prevent the recovery by the Minister of the amount of the overpayment of real estate tax refund which is the subject of the recourse.

Payment deemed under protest. Payment of the amounts contested under this subdivision is deemed made under protest.

Deposit in consolidated revenue fund. **[[38.** The deposit of \$15 mentioned in section 32 shall be paid into the consolidated revenue fund, and repaid out of that fund when required.

Payment out of consolidated revenue fund. The expenses contemplated in section 36 shall be paid out of the consolidated revenue fund.]]

§ 3.—*Provisions applicable on an objection or appeal*

Presumption. **39.** Where a person objects to or appeals from an assessment made under the Taxation Act, he is deemed to object to or appeal from the decision of the Minister on his application for a real estate tax refund, in all cases where the Minister, consequently to that assessment, should also vary the amount of the real estate tax refund granted on that application.

Objection or appeal not valid. **40.** A person cannot validly object to the decision rendered by the Minister on his application for a real estate tax refund or appeal from that decision, if he does not object to or appeal from the question in dispute under the Taxation Act, in all cases where the Minister, consequently to that dispute, also varies the amount of tax that that person must pay under the Taxation Act.

DIVISION VI

REGULATIONS

Regulations. **41.** The Government may make regulations

(a) establishing what proof is required by the Minister to establish the facts relevant to the determination of a real estate tax refund; and

(b) generally prescribing the measures required for the carrying out of this act.

Coming into force. Regulations made under this act come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date fixed therein; they may also, once published and where

Sec. 44. *The proposed amendment to section 1 of the Revenue Department Act establishes that the Real Estate Tax Refund Act is a fiscal law, and thus enables the Ministre du revenu to exercise, for its administration, the powers conferred on him by the Revenue Department Act with respect to such a law.*

they so provide, apply to a period prior to their publication, but not prior to the year of that publication.

DIVISION VII

OFFENCES

Offences
and penal-
ties.

42. Every person who makes a false or misleading declaration, or participates in, consents to or acquiesces in its formulation in an application, a certificate or any other document made or filed under this act or a regulation, is guilty of an offence and is liable, on summary proceeding, in addition to the costs, to a fine of not less than \$50 nor more than \$1 500.

Offences
and penal-
ties.

43. Every person who, under section 14, must furnish the certificate contemplated in that section within the period provided for therein and omits or refuses to do so, is guilty of an offence and is liable, on summary proceeding, in addition to the costs, to a fine of not less than \$25 nor more than \$100 for each day during which the omission or refusal continues.

DIVISION VIII

MISCELLANEOUS PROVISIONS

1972, c. 22,
s. 1, am.

44. Section 1 of the Revenue Department Act (1972, chapter 22), amended by section 1 of chapter 17 of the statutes of 1974, section 1 of chapter 25 of the statutes of 1978 and by section 37 of chapter (*insert here the chapter number of Bill 1*) of the statutes of 1979, is again amended by replacing paragraph *a* by the following paragraph:

“fiscal
law”;

“(a) “fiscal law”: this act, the Act to promote industrial development by means of fiscal advantages (Revised Statutes, 1964, chapter 67), the Act to authorize payment of allowances to certain self-employed workers (Revised Statutes, 1964, chapter 66), the Act respecting lotteries, racing, publicity contests and amusement machines (1978, chapter 36), the Act respecting work income supplement (1979, chapter *insert here the chapter number of Bill 1*), the Real Estate Tax Refund Act (1979, chapter *insert here the chapter number of Bill 6*) or any other act imposing duties, the administration of which is entrusted to the Minister;”.

Compensa-
tion.

45. The payment of a real estate tax refund under this act is deemed to be a refund by reason of the application of a fiscal law. The Minister may thus apply the real estate tax refund owing to a person contemplated in section 2 to the payment of

Sec. 46. Division IX of Chapter III of the Revenue Department Act, to which this section refers, deals with procedure and proof.

a debt to which that person is bound under a fiscal law within the meaning of the Revenue Department Act.

Notice of
assessment.

46. For the purposes of Division IX of Chapter III of the Revenue Department Act, a notice sent under section 18 or under section 25 is deemed to be a notice of assessment.

Refund in-
alienable
and un-
seizable.

47. A real estate tax refund paid under this act is inalienable and unseizable.

Moneys
required.

[[**48.** The amounts required for the payment of a real estate tax refund owing for a year to a person contemplated in section 2 are taken out of the taxation revenue collected from individuals under the Taxation Act.]]

Minister
respon-
sible.

49. The Ministre du revenu is entrusted with the administration of this act.

Effect.

50. This act has effect from 1 January 1979.

Coming
into force.

51. This act comes into force on the day of its sanction.