

Income Tax Act

Second, the taxpayer may feel that his case is different from the one involving the other people, and that the cases should not be tried together. I am, therefore, suggesting that section 174 should only come into effect with the consent of the taxpayer and that the decision should not rest solely with the Minister of National Revenue. I think it is most likely, in situations like this, that the taxpayer would consent; after all, he will need to pay only a portion of the costs of obtaining counsel and taking the matter to appeal. I am suggesting that the section should be invoked only with the consent of the taxpayer, and the decision should not rest solely with the minister. May I have some comment on this? I think it is a reasonable request. I have not prepared an amendment yet on this particular section, but I might be prepared to do so if there is not a reasonable response.

Mr. Lambert (Edmonton West): Mr. Chairman, while I am addressing a few remarks to the Chair and to the minister, perhaps my colleague will consider whether he wishes to submit an amendment. I share his apprehension. I do not think that the minister should have the sole determination of whom the parties shall be in this, shall we say, reference to either the Tax Appeal Board or the Federal Court, Trial Division. It is a well known axiom, and it is provided for elsewhere in the act, that there must be no riding in on coat tails. In other words, one taxpayer cannot sit idly by and let another taxpayer bear the brunt of litigation, either before the Tax Appeal Board, the Federal Court, Trial Division, or a higher court, in the possible anticipation that the result will be favourable to the original litigating taxpayer. Otherwise, once the litigant taxpayer has obtained a satisfactory decision from the tribunal, the chap who has sat idly by could ride in and make a claim as well, without having shared or borne any risk or cost and I do not think that this is right.

However, in this particular case it is the minister who has discretion as to whom he may join and whom he may put aside and keep out of the case. It may be that the taxpayer in question has not had the opportunity of knowing that the minister will start proceedings against someone else. It seems to me that there has to be some protection for a taxpayer who has been excluded, but who should have been included by the minister. You will have it either one way or the other. Either the minister's discretion to join certain parties shall be challengeable in one way or another, or the exclusion by the minister from the proceedings shall not operate to the prejudice of the claim of a taxpayer who has a common basis for the assessment. I know this is a rather fine point, but I suggest that we must provide justice on both sides of the street, shall we say. The minister is entitled to do something. I fully accept the proposition that the minister should have some rights in regard to these matters; but then, I think the taxpayer has certain rights, too. The prerogatives are not entirely with the minister.

• (4:00 p.m.)

Mr. Gray: Mr. Chairman, I think the last two members who have spoken have raised some very useful points with regard to this section. First of all, I would submit to the committee that the hon. member for Parry Sound-Muskoka is attempting to give the wording of the section a wider meaning than is in fact intended. I would suggest

that the wording of the section in effect, provides that the jurisdiction given would be circumscribed in that there must be a common question in fact and law, and not merely a similar question, in order for the minister to take the action intended under Section 174(1).

Also Mr. Chairman, may I submit that if one looks at Section 174(2) and (3) I think it would be apparent from the wording that a taxpayer who is included in a notice from the minister would not therefore automatically be bound by a decision of the Tax Review Board or a Federal Court but rather, if I may use the wording of the section, the Tax Review Board or the Federal Court would have to be satisfied:

—that a determination of the question set forth in an application under this section will affect assessments in respect of two or more taxpayers who have been served with a copy of the application and who are named in an order of the Board or the Court, as the case may be, pursuant to this subsection, it may

(a) if none of the taxpayers so named has appealed from such an assessment, proceed to determine the question in such manner as it considers appropriate, or

(b) if one or more of the taxpayers so named has or have appealed, make such order joining a party or parties to that or those appeals as it considers appropriate.

I would think from this, Mr. Chairman, that it is open to a taxpayer who receives a notice to go to the Tax Review Board and make his case that he should not be included in any determination of the question referred to the Board by the minister because the question is not a common question of fact and law.

To conclude, Mr. Chairman, I think that the hon. members who have just commented on this section have raised points which are certainly worthy of consideration, but I respectfully submit that the wording of the section does, in effect, deal with the matters of concern.

Mr. McCleave: Mr. Chairman, I think we have a rather important point here, because of the changes that are being brought about in the Income Tax Act, so I should like to present for the consideration of the minister the following suggestion. He has mentioned that under Section 174(1) it is a question of law or mixed law and fact common to assessments in respect of two or more taxpayers.

Let us consider the example discussed earlier under a subparagraph which was passed, and which may have a great deal of relevance to thousands of people across Canada, namely the travelling salesman who is provided with the use of a company vehicle. The first four or five travelling salesmen in the fray, who have a question of law or mixed law and fact common to themselves and also common to several thousand other travelling salesmen who have not entered the fray, may be blazing the trail to try to find out exactly what the law is on this point. I wonder why the minister, or whoever drafted the bill, did not make this provision broad enough to include an association of travelling salesmen or an association of this, that or the other type of taxpayer with common interests who could raise questions before the court. Was any consideration given to the approach of not really dealing with the numbers of taxpayers but dealing with the class or kind of taxpayer?