

*Income Tax Act*

matter is, this is still double jeopardy. This is the sort of thing that is not reasonable, regardless of whether an individual is fined \$1 or \$1,000. He should not be hit twice. I still think the principle is wrong. I know that it has been in the act for a long time, but we are revising the act now and I think it is reasonable for us to reconsider these sections, particularly in view of the increase in the penalty rate.

**Mr. Bigg:** Mr. Chairman, what I have to say touches very closely on that same point. Perhaps I am a devil's advocate in assisting the department, but it seems to me that these sections covering penalties were drafted in a way that confuses the meaning. There is apparently no penalty as long as you file a return. The return can be incomplete or inaccurate, but as long as it is filed within the statutory limit there is no penalty. If a person had a large amount of tax to pay, say about \$1 million, it would be a simple thing for him to file an incomplete or inaccurate statement. He could continue in this manner and forward returns to the department indefinitely. Presumably, in this way he could get around the section which would impose a penalty for not coming forward with a proper return. I wonder whether this fact has been considered.

• (3:40 p.m.)

It is my understanding the penalty is 6 per cent. If so, at present rates of interests, I believe this in effect is a licence to evade the Purpose of the taxation act. If the penalty for not filing or for being delinquent in paying is only 6 per cent it would be to a person's advantage not to pay his tax and earn, shall we say, the difference between 6 per cent and 9 per cent. In other words, once could borrow from the government at a very low rate of interest.

**Mr. Mahoney:** Mr. Chairman, the hon. member is not quite correct. The 6 per cent, of course, is interest charged on payments which should have been made and were not made in time. In section 163(2) he will note there is also a penalty of 25 per cent of the tax which should have been paid in the case of a return filed that either contains false statements or omissions. I do not think there is really the loophole the hon. member sees in this particular case.

**Mr. Aiken:** Mr. Chairman, I do not feel like allowing this subject to drop so easily. Because of this section I believe the average citizen will accept the 50 per cent assessment on his income tax rather than fight the minister in court. The department in this case has a second lever on the individual who the officials feel has deceived them. Before making any assessment at all someone in the department may feel that a person has attempted to deceive the department. Then, having this feeling the person makes the assessment of 50 per cent and waits for the taxpayer to come back and object to it. This might be the situation if one happens to be in the department on a salary and has an impersonal attitude toward the matter. The taxpayer, however, is scared to death of being hauled into court on a charge of tax evasion even if he feels he is not guilty and, therefore, he probably will not argue about the 50 per cent but will let it go. He will pay his assessment and the 50 per cent and say, "Please, now don't bother me anymore; don't take me into court". For that reason sub-

section 3 to which the parliamentary secretary referred is very good in theory but in practice is of very little help except to the large corporate bodies and those who can afford to hire legal counsel and accountants to help them prepare their case.

The average person is hit two ways. He has the terrible lever over his head that if he does not pay the 50 per cent he will be taken into court. The burden of proof does not bother him very much. He does not understand exactly that the burden of proof is on the minister in this case unless he has consulted a lawyer. He would probably decide he would rather pay whatever is owing, which might be \$100 or \$1,000, rather than face the disgrace of being hauled into court for tax evasion. I believe this is so wrong that I move:

That clause 163 now under consideration be deleted.

I will submit the motion, Mr. Chairman.

**Mr. Mahoney:** Mr. Chairman, I really think the hon. member is insulting the average Canadian. I do not think the average Canadian who fails to file an income tax return does so in a wilful attempt to evade the tax payable. Certainly, there are a number of such instances, but the average case is covered in section 162 and not section 163. Section 162 provides that the person who fails to make a return as and when required is liable to a penalty of an amount equal to 5 per cent of the tax up to an amount of \$10,000 of the tax payable and \$500 if the amount of the tax unpaid is \$10,000 or more. That covers the average Canadian. The hon. member seems to be equating the average Canadian who files a return with one who wilfully attempts to evade taxation. I believe that is wrong. I think it would be quite improper to eliminate this type of penalty from the Income Tax Act which is designed to properly penalize people who wilfully attempt to evade taxation.

**Mr. Aiken:** Mr. Chairman, I come back to the parliamentary secretary's first argument given when I raised the question. At that time it was slightly different. In this case it does not really matter whether the person concerned is big or little if the department should claim he is wilfully attempting to evade. This is a serious charge and I have no hesitation in saying such a person should be brought into court and prosecuted. But that is not what is happening here. The person is not being brought into court and prosecuted. He is being given a penalty first of 50 per cent and then must go to court to see whether or not he is going to be hit for some more. I do not think this is a proper attitude. The word "lawfully" appears here. So far as the parliamentary secretary is concerned I agree that section 162 relates to a lesser offence, but in section 163 we get into the matter of wilful evasion. So, somebody is to be penalized twice.

This weakens the argument of the parliamentary secretary. The person must satisfy the minister that he was not evading and then must go to court to defend himself. I think this is a most iniquitous section in the Income Tax Act. I dealt with this matter on many occasions while practising law. This did not involve large corporations but rather people who were involved in income tax matters. Perhaps sometimes they were guilty and sometimes perhaps they were not. The point, however, is that they were