

most. Feelings of outrage over this practice run deep. When losses are disallowed over four years, very large tax bills result, especially since the income available to pay them is often low. And payment was demanded immediately.

There is no doubt that Revenue Canada was legally empowered to reassess for a four-year period. But was it justified in doing so? Was it acting reasonably in the circumstances? It is essential for the department to assess retroactively in many situations where deductions have clearly been incorrectly made, where expenses are unreasonable and where dishonesty or fraud have occurred.

The reassessments of visual artists were based on an opinion of Revenue Canada about their activities being presented to them for the first time. Artists who had been filing in good faith, in the same manner over the years and usually with professional assistance, suddenly found that losses for four years were disallowed and that they owed a large amount of tax. Neither the artists nor the activities, however, had changed.

This question is related to, but independent of the application of the reasonable expectation of profit test to artists and whether the test had changed. Even if no change had occurred in the interpretation, the test did change the status of these artists from business person to hobbyist. Moreover, the previous interpretation of their status had been both widespread and reasonable, from their point of view and that of their advisors. In this kind of situation, it is understandable that one group testified that Revenue Canada's actions were an ambush.

It appears that the department agrees partially with this view. In his appearance before the Sub-Committee, Mr. John Robertson who is the Director General of the Audit Directorate announced that reassessments made in this category after April 1, 1984 would cover only the current year and one prior year. Taxpayers who had settled before that time and signed waivers, however, would not receive refunds.

The Sub-Committee commends the first half of the announcement and the flexibility it shows, but not the second. It is firmly of the opinion that the initial four-year reassessments were admittedly unreasonable and that waivers should not now protect the department.

RECOMMENDATIONS

4. That Revenue Canada adopt the principle that full retroactivity in reassessing should not be strictly applied when a taxpayer's course of action was reasonable in all the circumstances, especially where a pattern of filing had been established upon which the taxpayer had been reasonably relying.
5. That reassessments relating to the business losses project computed before April 1, 1984 be conducted on the same basis as those subsequent to that date regardless of the existence of waivers.
6. That in the future, where the professionalism of artists and writers is at issue and results in a changed view of their status, that the change be effective for that year and future years, not retroactively, provided their course of action was reasonable in the circumstances.