

Mr. GAUSIE: If the executor had not taken any depreciation, there would be nothing to recapture.

The CHAIRMAN: But you might have a case where an executor or trustee has taken depreciation since the estate has come into his hands.

Mr. GAUSIE: That part of the depreciation, that is depreciation taken by an executor or trustee since he came into possession of the property, would be subject to recapture, but what I thought the senators were talking about was depreciation taken by an individual during his lifetime.

Hon. Mr. HAYDEN: That is right. I was discussing the depreciation that had accumulated with relation to the property prior to the time that it came into the hands of the executors, and I was asking whether in the event of a sale by the executrix there would be a recapture of depreciation that the testator had accumulated in his lifetime.

Hon. Mr. CAMPBELL: Would you look at clauses (a) and (b) of subsection 1 of section 20, on page 5 of the bill? There it is provided that the tax will be on the lesser of the amount of the excess, or the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer.

Hon. Mr. CAMPBELL: Until you recover your capital cost you are free of tax?

Mr. GAUSIE: If the amount of the excess is less than the 1949 cost, you take in only the excess. But if the amount realized on the sale is more than the 1949 cost you take in only the amount up to the 1949 cost, and the amount above that is free.

Hon. Mr. HAYDEN: But that does not deal with the question we were discussing.

Hon. Mr. VIEN: What we would like to know is what is meant by an event. If a man dies, that is an event?

Mr. GAUSIE: Yes.

Hon. Mr. VIEN: If he leaves a will, that is an event. If there is a deed of sale, that is an event. If a man dies you have no scruple against going back to his estate and revising his income tax returns for one or more years. So in the event of a man dying and his executor acting as we have suggested, could you not under these provisions take the stand that the deceased benefited from depreciation to which he was not entitled because his property has not depreciated?

Mr. GAUSIE: While it is true that we go back in the case of a deceased taxpayer, we go back to the period when he was alive. But in the absence of specific provisions to the contrary in the law, anything received after the moment of his death is not part of his income. The event that gives rise to the proceeds of disposition of property is a sale made by his executor after his death. My interpretation—and I offer it only as my interpretation—is that the event which becomes a disposition for the purposes of clause 7 is a sale made by the executor after the death of the taxpayer, and in my opinion—it is only my opinion—that sale would entail bringing back into the income of the estate only the depreciation that was taken by the executor or trustee after the death of the individual.

Hon. Mr. HAYDEN: You would have no objection, then, to making that clearer in this particular section?

Mr. GAUSIE: I do not draft these bills, sir. I do not wish to suggest that I am entitled to the credit for this language.

Hon. Mr. HAYDEN: Whose language is it?

Mr. GAUSIE: The language of the Department of Justice.

Hon. Mr. MACLENNAN: You say the Department of Justice?