

*Tax Review Board Bill*

I should like to make one more point. I had some difficult skating to do in and out of many clauses in several bills to get around this point. We know that hitherto all the statutory requirements concerning the Tax Appeal Board were contained in division I of the Income Tax Act. This starts with section 86, and includes sec. 104. This present legislation purports to delete merely a small number of sections in that division of the Income Tax Act. Then, the bill makes what is called consequential amendments to other parts, one of them being section 101 of the Income Tax Act. Strangely enough, however, it fails to recognize that the definition of the word "court" in that whole part of the Income Tax Act is contained in section 104, in which section "court" is defined as being the Exchequer Court. But if we go to Bill C-172 and look at Schedule B, which has the consequential amendments, section 104 is not amended. Therefore, under the Income Tax Act the Exchequer Court is still the Court. This will necessitate some changing around. I merely raise the matter at this point because I would like to have the government prepared to meet the objections to this in committee with an appropriate amendment.

● (3:30 p.m.)

This is merely a minor point, Mr. Speaker. I know it becomes a little tiresome for other hon. members when we are dealing with such minor dressing up of legislation, but I think it is better to give the government notice now so that it can consider my objection. If I am wrong, then when we examine the legislation in committee I can be told so, and we will not have to waste a lot of time. The government will be prepared. In a manner of speaking, we have now had the preliminary hearing on this particular bill and the government has seen my case. Having said that there are some things wrong with the bill, I must repeat that I am quite prepared to have second reading given to it and have it referred to the appropriate committee. It may be that the Justice and Legal Affairs is the best committee to which to refer the bill, because this is strictly lawyers' law. Some other bills are scheduled to be referred to that committee which might be more appropriately considered by other committees.

**Mr. Max Saltsman (Waterloo):** Mr. Speaker, in trying to determine what is significant about the legislation before us, I think the key was given by the minister in his remarks on Friday when he said that not only should justice be done but it should appear to the public to be done. In many ways, this bill does not change anything substantially. It will make some changes which I believe are improvements, in the sense of assuring the public that not only is justice done but that it will appear to be done.

The idea of providing for judges who will hold office until 70 years of age and not just a ten-year period, is an important consideration in re-assuring any taxpayer who goes before the appeal board. It is also important to

[Mr. Lambert (Edmonton West).]

remove jurisdiction over the board from the Department of National Revenue and place it under the Department of Justice.

If I might digress for a moment, Mr. Speaker, this is much like everything else that we give to the Department of Justice. Often that department is asked to correct, through legislation, some of the basic flaws in our society. In this case the basic flaw is the tax system. If we had a better tax system there would be small need for this kind of board. As it is, this board will have its hands full, because although the white paper on tax reform started out to remove many of the anomalies that exist in the tax system, I suspect that what we will eventually get will be more of what we had previously. Therefore, the appeal board will be called upon to adjudicate many cases that it would not have to adjudicate at all if we had a proper tax system. This is part of the whole approach we take in our society of providing opportunities, either under the Criminal Code, the Department of Justice, combines legislation or in other ways, to correct basic difficulties that we are not willing to correct by tackling the fundamental problems in our society.

What kind of cases will come before this appeal board? Most of the present cases deal with allowable expenses, the question of whether somebody who has made certain expenditures can charge them as legitimate expenses. They are not cases of fraud, or cases where somebody has been caught in an embarrassing position by not declaring the full amount of his income. These cases occur in marginal areas where a taxpayer says, "This is permissible under the law. I am permitted to go to this convention even though it is taking place in the South Seas, because it is a business expense." Then the department argues, "This is not what the tax laws were designed to encourage."

Other cases concern the distinction between what is a capital gain and what is an ordinary profit, because all kinds of arrangements are made in order to try to get as much income as possible in the form of capital gain rather than as regular income, since at the present time capital gains are not taxed at all and ordinary income is fully taxed.

So long as we have this kind of system, and given the outlook and psychology of our society, it is almost inevitable that people are going to try to take their gains in one form rather than in another and thus minimize their tax liability. This has been the great difficulty facing this court. The court's decisions deal with how a person took his income, and the way he arranged his business life. The white paper on tax reform, which started out to change all this, has created as many difficulties as existed previously. Even if you accept the entire proposals in the white paper, and there seems to be some evidence that they will not be accepted in their entirety, there will still be left a distinction between capital gains and ordinary income. As long as this distinction remains, the courts will be busy trying to clean up this Augean stable. They will be busy all the time because people will try to take