

Income Tax Act

Mr. Downey: May I ask a further question? Can the parliamentary secretary give us some indication of the amount of time involved when an official of the department is engaged on a particular case? Is there a charge per man-hour or man-day and, if so, what is that charge? Just what should we expect by way of cost in addition to the blanket fee of \$150?

Mr. Mahoney: The fee is based on a rate of \$20 per hour.

Mr. Downey: Has any consideration been given to a reduction in the cost? It may well be that many people would like to obtain an advance ruling, particularly in the case of capital gains. For example, take the case of a widow whose late husband's estate is subject to the capital gains tax. There might be only a few thousand dollars involved and, although the amount would not be large from the government's point of view it might be large from the point of view of the estate.

Has any consideration been given to setting up some sort of legal aid plan under which people who can ill-afford to get an advance ruling could obtain one in a case where it would be essential to the administration of the applicant's affairs? It could be essential for the proper administration of affairs for taxation purposes.

I suggest that \$20 an hour on top of the \$150 blanket fee could very well mean an additional \$160 per 8-hour day if one departmental official is employed on researching a tax ruling. If two employees are engaged on that research the cost would be \$320 for an 8-hour day, and this, in addition to the \$150, would be prohibitive to a great many people. Therefore, I suggest that the minister and his parliamentary secretary consider reducing these fees to something a little more realistic, even though some people may be able to afford to avail themselves of an advance ruling.

Mr. Mahoney: The purpose of the advance ruling is not to give ongoing tax advice to taxpayers, it is to give taxpayers a combined ruling in advance of a transaction they propose to enter into. The purpose of setting a fee, which would go a long way at least to compensate the average taxpayer in Canada who has to carry the payroll and other charges on the Department of National Revenue, is to assure that frivolous applications for advance rulings are kept to a minimum. Those who do make these applications and appear to meet the legitimate requirements for them under ordinary circumstances will be anticipating the amount of tax involved in such a transaction and the fee for the advance ruling will be a nominal portion of the potential tax involved in the deal. It is not a system involving ongoing tax. District taxation offices provide that type of information without additional charge.

Clause 1—section 162 agreed to.

On clause 1—Section 163: *Wilful failure to file return.*

Mr. Aiken: Mr. Chairman, I might have raised this matter when we were discussing sections 161 and 162, but I think it has more application to section 163. This is the section which creates a penalty for failure to file a return of income, and it involves a penalty of 50 per cent of the tax that should have been paid. There is also section 239 which sets out a similar type of penalty for this offence.

[Mr. Mahoney.]

Very briefly, this bill creates a double penalty and places a person in double jeopardy for any alleged offence against the Income Tax Act. There have been objections to this system for a great many years. I think it is most unreasonable that a person who fails to file a tax return should be subject to a penalty under section 163 and also under section 239. This is contrary to normal justice and it seems to me that if the department proceeds under section 163 it should be debarred from proceeding under section 239. Such a provision would then be reasonable.

I do not know why the department has taken this opportunity to fix the penalty at 50 per cent of the amount of tax rather than leaving it as it was before, that is 25 per cent. This is merely compounding the unfairness of the section. Not only is the amount of the penalty increased under section 163 from a minimum of 25 per cent to a minimum of 50 per cent, it also provides for adding that penalty to any fine or penalty under section 239. I should like to ask the parliamentary secretary why it was felt necessary in the first place to increase the minimum penalty to 50 per cent, without any option. Second, I should like to know what his views are on the matter of the double penalty for the same offence, which is fundamentally contrary to our justice.

Mr. Mahoney: In the first place, the penalty referred to in section 163 applies to people who wilfully attempt to evade the tax payable by failing to provide a return. I call the hon. member's attention to subsection (3) of that section which places the burden of proof on the minister to establish the facts justifying the assessment of the penalty.

Then, going on to section 239, which the hon. member mentioned, subsection (3) makes it very clear that the double penalty need not be involved unless the penalty under section 163 was assessed before the information or complaint was alleged or made which would result in the penalty under section 239. So, the effect of section 163 and the penalty assessed would be known to the magistrate or the judge before he determined what he should do following a conviction under section 239. Very obviously this would be something the magistrate or the judge would take into account.

I think, on balance, considering the fact that we are talking about people who wilfully attempt to evade payment of tax, and who can be proved to have done so, and the burden of proof rests with the minister, I do not think the sections are inequitable.

Mr. Aiken: I wonder if the parliamentary secretary would answer the first question about the increase of the minimum penalty from 25 per cent to 50 per cent?

Mr. Mahoney: I really cannot cast any illumination on that, except perhaps to speculate that in cases where very small amounts of tax are involved the penalty should be increased.

Mr. Aiken: I merely want to make one final comment before yielding the floor to someone else. The parliamentary secretary says the penalty imposed under section 163 would be known to the magistrate, and he would then consider this in passing sentence. I think the fact of the