

Mr. McENTYRE: The second point I would like to make refers to section 43, subsection (13), which restricts the duties of the trustee. The Income War Tax Act imposes upon the trustee the obligation to file income tax returns. Section 37 of the Income War Tax Act provides as follows:

Every trustee in bankruptcy, assignee, liquidator, curator, receiver, administrator, heir, executor and such other like person or legal representative administering, managing, winding-up, controlling, or otherwise dealing with the property, business or estate of any person who has not made a return for any taxable period or for any portion of a taxable period for which such person was required to make a return in accordance with the provisions of this Act shall make such return.

The Taxation Division has experienced some difficulty in obliging the trustees to prepare and file statements of profit and loss, returns showing salaries and wages paid and the tax deductions therefrom and other information returns in the case of debtors in bankruptcy. The trustees explain that to provide this information and to make up the necessary returns entails considerable time and expense which they are not permitted to charge against the assets of the estate. The argument is that the obligation to file these returns is personal to the debtor and that the creditors should not be obliged to suffer the expenses of having this work done. On the other hand, the books of account are all in the hands of the trustee and even if they are available to the debtor he may not have the necessary capacity to compile the information. Naturally the debtor who is in bankruptcy has not the means to employ qualified persons to make up the returns for him. In virtue of the semi-official capacity of the trustee in bankruptcy, the Taxation Division have refrained from taking legal action against trustees who have refused to comply with section 37 quoted above.

It would seem to be an opportune time when the Bankruptcy Act is being re-drafted to make some provision, either by a provision in the Bankruptcy Act or by an administrative ruling of the Superintendent of Bankruptcy, to assist the Taxation Division in obtaining compliance with section 37 of the Income War Tax Act by permitting the trustee to charge a reasonable fee for his time in completing the income tax returns which are required of the bankrupt debtor.

In this connection reference should be made to section 43, subsection (13) of the bill, which reads as follows:

The trustee shall be required to perform only the duties specifically imposed on him under this Act or the Rules or a court order made thereunder notwithstanding any Act or Statute to the contrary.

The explanatory note with respect to this section is:

In many cases attempts have been made to impose duties on a trustee in no way related to the administration of the estate, such as filing returns of one type or other which the bankrupt failed to do. It is a perversion of justice to try to make a trustee responsible for the misdeeds of others.

In view of the fact that section 37 of the Income War Tax Act is particularly directed to trustees in bankruptcy, it would appear to be extraordinary for the same legislative body to purposely contradict itself in two Statutes. In order to make the Bankruptcy Act consistent with the Income War Tax Act, it is suggested that section 43, subsection (13) be made to read as follows:

The trustee shall be required to perform only the duties specifically imposed on him under this Act or the Rules or a court order made thereunder or the Income War Tax Act notwithstanding any Act or Statute to the contrary.