

APPENDIX "B"

(See p. 2093)

INCOME TAX ACT

BILL TO AMEND

FIFTEENTH REPORT OF NATIONAL FINANCE COMMITTEE

TUESDAY, June 19, 1990

The Standing Senate Committee on National Finance has the honour to present its

FIFTEENTH REPORT

Your Committee, to which was referred Bill C-51, An Act to amend the Income Tax Act, has, in obedience to the Order of Reference of Wednesday, May 30, 1990, examined the said Bill and now reports the same without amendment but with the following observations:

The Committee, at its meeting to review the Bill on Wednesday, June 13, 1990, heard evidence from officials of the Department of Finance and representatives of the Canadian Insolvency Association.

Bill C-64, which was passed by the previous Parliament in 1987, amended the Income Tax Act to give Revenue Canada, Taxation, under Subsection 224 (1.2), an enhanced garnishment authority to collect unremitted source deductions. Unremitted source deductions for employees' income taxes and contributions for unemployment insurance and the Canada Pension Plan amount to between two and four hundred million dollars a year. Subsection 224 (1.2) allowed Revenue Canada to garnishee the receivables of a tax debtor that had been assigned to a secured creditor and to apply them against the debtor's liability for unremitted source deductions. However, in June 1989 the Alberta Court of Appeal, in a case involving Lloyds Bank of Canada and the International Warranty company, ruled that Subsection 224 (1.2) neither transferred property in the garnished amounts to Revenue Canada nor gave the department priority over all other secured creditors. Clause 1 of Bill C-51 contains amendments designed to ensure that property is transferred and that Revenue Canada has such priority, thereby confirming the intentions of the 1987 Income Tax amendments included in Bill C-64.

Bill C-51 confirms that concept of a deemed trust, whereby the trust attached to unremitted source deductions is transferred to the firm's other assets, including receivables assigned to a secured creditor, when the tax debtor becomes insolvent. Members of the Committee agree with the view of the Canadian Insolvency Association that the proliferation of governmental deemed trusts and statutory liens threatens the orderly administration of bankruptcies. As well, the government should proceed expeditiously with its proposed amendments to the Bankruptcy Act, since that Act, rather than the Income Tax Act, is the appropriate vehicle for remedying the problems associated with insolvent tax debtors.

The government should consider revoking its cash flow incentive provisions whereby firms, in return for collecting income taxes and UI and CPP contributions on behalf of the federal government, are allowed to use the source deductions as interest-free working capital for a short period of time prior to remitting them to the government. Instead, consideration should be given to implementing the alternative proposed by the Canadian Insolvency Association, namely, a requirement that all employers post security with the government, in the form of a bond or letter of credit, based on an estimate of the firms' forthcoming payroll deductions over an appropriate period. Posting of such a security would have the added advantages, in the event of insolvency, that the amounts owing to the government would be known to the trustees in bankruptcy and to other secured creditors of the tax debtor and that legislation giving Revenue Canada priority over all secured creditors would be unnecessary.

Respectfully submitted,

FERNAND - E. LEBLANC
Chairman