

not know what the value of a regulation was if you did not have some statutory background for it. There is nothing in the proposed amendment that would give authority for filing of a completed contract method; but the practice has gone on for some years.

Senator Carter: There was nothing in the previous Income Tax Act, was there?

The Chairman: No.

Senator Carter: So we are still in the same position?

The Chairman: Silence in a statutory enactment is an uncertain basis on which to pass a regulation, or to presume that forever they are going to be effective. Someone may come in sometime and say, "There is no law on this. Therefore I am going to disallow it". The only defence you have is that the custom is there, or that is the traditional method. I think it is something we should note and examine further, and see if the industry has actually received some assurance. If they have, it may well be that it should have statutory confirmation.

Senator Cook: In our Proceedings, at page 51:30, Mr. Benson dealt with the point of joint venture.

Senator Connolly: Someone should have asked him what the authority was for the present practice or rule.

The Chairman: Yes. I think I said something to Mr. Benson about that. At page 51:30 it says:

One submission of the construction industry was in connection with joint ventures.

That was another aspect of it.

Senator Cook: Another aspect, yes.

Senator Burchill: What is the present practice on a completed contract under two years' duration? Does the contractor, when making out his income tax, estimate the amount of profit made so far? How do they do it now?

The Chairman: The explanation they gave to us was that they filed on a completed contract basis. I have not examined any of their returns, nor do I act for any construction company. So it may be that Mr. Poissant or Mr. Mitchell would know more about that aspect of it.

Mr. Mitchell: I believe that statement made to the committee is correct, that on contracts of this type the completed contract method is used. That means that no profit or loss is reported on that particular contract until the job is finished.

Senator Connolly: It is a sort of cash basis.

Mr. Poissant: The great disadvantage of this method, which is permitted by administrative practice at the federal level, is that they say that if you use that method of reporting your income you will not be permitted the "holdback" at the end of the year or at the end of the contract. The industry says that it is unfair, because the government has no right to say that holdbacks are not permitted, when the courts have decided that holdbacks were not income.

Therefore, the construction industry feels that if the complete method is used they should not be refused the right of holdback, which is permitted by court decisions. This is the unfairness of permitting the use of the complete method in practice, but not in the law. Should the department have the right to say that if the taxpayer wants holdback, he cannot use the complete method, this method is not recognized in the Act but only in practice? Therefore the construction industry says: "Insert the complete method, as a recognized method of reporting income, in the Act. Follow your practice but do not refuse us the holdback at completion of the contract, which we are normally allowed to do."

Senator Connolly: Are you referring to the holdback made by the principal contractor in respect of subs?

Mr. Poissant: The general contractor, or subcontractors with the general contractor.

The Chairman: This would take care of the possibility of liens. There must be some holdback.

Senator Connolly: How does the problem arise in respect of the holdback by the main contractor in respect of subcontractors? He is simply holding back to protect himself against liens and claims of various types, but that is not income in his hands.

Mr. Poissant: Not until it is received.

Senator Connolly: That becomes income, perhaps, when it gets to the hands of the subcontractor.

Mr. Mitchell: The point is that the amount held from the contractor by the person having the work done is still owing.

Senator Connolly: Do you mean the owner?

Mr. Mitchell: Yes.

Mr. Poissant: This could apply, of course, from the owner to the general contractor and, in turn, from the general contractor to the subcontractor.

Senator Connolly: The problem arises that if I am the owner and hold back 15 per cent, when the contractor receives it it becomes income to him.

Mr. Poissant: When it is actually received, because it was decided by the court in the *Wilson* case that a holdback is not income until you are entitled to it.

Senator Connolly: I can understand the problem of the contractor who wishes to be taxed on the basis of completed contracts. Was the other problem, connected with holdbacks from the contractor by the owner, raised by the industry?

The Chairman: As Mr. Mitchell told us, the department declares that if the filing is on the basis of the completed contract, the holdbacks must be included as part of the income on which the profit is calculated. If that is not done there is no law to enable the filing on a complete contract basis.