

*Income Tax Act*

an unfair burden to place on the taxpayer. It would be far better for the minister to clarify this matter of gross negligence. I think it is incumbent upon the members of this House to get clarification of this part of the section rather than leave it worded in such a confused manner that the taxpayer will have to go to the expense of appealing to the courts for a ruling. Many taxpayers would not want to do that. We should have clarification of it now. I cannot accept the explanation that gross negligence is a matter of legality. I am not a lawyer and many taxpayers are not lawyers, and I think we are placing an unfair burden on taxpayers.

• (4:10 p.m.)

**Mr. Downey:** Mr. Chairman, may I return to the point I brought up earlier. It seems that the parliamentary secretary was not interested in answering me and he asked me to refer to the specific section I was talking about. I cannot tell him that, since I was reading from the Summary of 1971 Tax Reform Legislation, the booklet which is produced by the department for the benefit of the average taxpayer so that he may understand the workings of the 707 page tax bill. I am afraid that most often lawyers will look at it and some of them may not understand it. May I read a paragraph entitled "Enquiries" on page 60 of this little red booklet, the Summary of 1971 Tax Reform Legislation. It reads:

At the present time, an enquiry may be held in the course of the administration or enforcement of the Income Tax Act without the presence of the taxpayer concerned. The new legislation will entitle the taxpayer, in most cases, to attend or be represented.

Let me ask the parliamentary secretary again to what part of the act that paragraph pertains. The officials of the department are sitting at the little table; surely he can ask them. To what part of this 707 page bill does the paragraph I have read refer? I ask him to clarify this matter, so that his answer may be recorded in *Hansard*. That way, taxpayers who read the Summary of 1971 Tax Reform Legislation will know, if they read the answer in *Hansard*, the part of the bill to which the paragraph I read has reference.

**Mr. Mahoney:** The particular matter the hon. member is raising is dealt with in section 231 of the act, which is in Part XV. That is in the next block of sections we shall deal with after we have finished dealing with the sections in divisions I and J. I wonder if the hon. member would be satisfied to deal with it when we get to that point, instead of dealing with it under the particular sections we are now considering.

**Mr. Downey:** That would be satisfactory, Mr. Chairman. I would appreciate it if the parliamentary secretary would, on his own, bring this matter up and indicate what the part I have read means. I am satisfied if we proceed on that basis.

Amendment (Mr. Aiken) negatived: yeas, 14; nays, 33.

**The Deputy Chairman:** I declare the amendment lost. Shall section 163 carry?

**Mr. Aiken:** Mr. Chairman, we have disposed of the amendment. Obviously, section 163 will remain in the bill. However, I am not satisfied and neither are other hon. members, because we have not been told the reasoning

[Mr. Smerchanski.]

behind the increased rate. I am talking about penalties, which are to be raised to a flat rate of 50 per cent. There is to be no adjustment and no discretion, as there was formerly. The penalty rate might have been 25 per cent, which may have been reasonable. I do not want to press the parliamentary secretary beyond his ability to answer; yet he has not answered our question except to say that it was deemed best to do this. That, surely, is not a proper answer.

I realize the situation he is in and I suspect that within the department lots of problems have arisen. Perhaps one assessor has been asking for 25 per cent, another for 50 per cent and still another for 37½ per cent. I think I agree with him that it was fairest to fix the rate. I am not sure that I disagree with that. I will not argue that point too strongly because it will be fairer to everyone across the board if the same rate is applied. If a person pushes his case to the limit and goes to court, the rate might be reviewed. Nevertheless, the increase bothers me. I do not know why the rate has been jumped to 50 per cent. Surely, the parliamentary secretary can tell us why the rate was increased to the level of the maximum. Why was it not left at the minimum level in a section that involves double jeopardy and a double penalty?

**Mr. Bigg:** Mr. Speaker, I must agree thoroughly with the last speaker. Since there is a mandatory penalty of 50 per cent, surely in cases where perhaps \$1 million might be involved, extracting \$500,000 by way of penalty will be unconscionable. If we were dealing with the criminal law and were concerned about punishment, a man would first have to be found guilty, in this case guilty of depriving the people of Canada of legitimate tax money. He would be just as guilty if he deprived them of \$1,000 as if he deprived them of \$1 million. I do not think under British law, and I presume we are still a British country, that you could in all conscience impose a penalty of \$500,000 in the situation to which I have referred. Nevertheless, taxation law is not criminal law, in the true sense.

From time immemorial most Anglo-Saxons have thought that it was the duty of the Crown to prove 100 per cent that it has a right to your property. A taxation statute merely says that the Crown has a right to your property. I suggest that every man has the right to protect his property, and therefore the onus is on the Crown to prove its case. Of course, I like to think that our courts are always right in their decisions; nevertheless, I still feel that this section may provide, in some circumstances, for a silly penalty. Perhaps \$1 million is a large figure to take as an example, because in that case the statutory penalty would be \$500,000 under the present wording of the act. Of course, people who face the prospect of paying this kind of penalty can afford to hire the best legal brains in the world and fight the case. On the other hand, the man who may have to pay, perhaps, \$1,000 cannot afford a \$2,500 lawsuit in order to protect the \$1,000, so to speak, that he does not want to pay. Here a stiff penalty would be imposed merely because a man did not want to go to court.

**Mr. Hogarth:** Mr. Chairman, I want to ask the parliamentary secretary a question in order to see if three sections have been correctly construed. I want to put before him the case of the taxpayer who deliberately fails