

Estate Tax Act

testator was indicating in a will that he wanted to set up some scholarships, to leave it to the trustees rather than, shall we say, specifically to a university or to an organization, that it would be invalid in so far as exemption from estate tax is concerned.

Mr. Fleming (Eglinton): The other question raised by the hon. member concerns whether the charitable foundation in question must be one set up by the testator himself. No, it need not be so, but I want to make the point clear that hitherto a mere gift to a charitable foundation, so-called, did not entitle that gift to be treated for the purpose of the act as a gift to charity unless the charitable foundation itself was engaged in a charitable enterprise. In that case the gift was brought under the first of the two cases, but it was because the recipient was actually engaged in a charitable operation. This is intended to enlarge the provision and make it clear that a gift to a charitable foundation, even though the foundation itself might not be engaged directly in a charitable operation but is dispensing funds among charitable agencies or organizations engaged in charitable operations, will now become exempt for this purpose.

Mr. Benidickson: Has the minister given consideration to the practice in the United Kingdom where I believe the matter of whether or not a bequest is for a charitable purpose is based on common law precedents with respect to what is a charity. I would imagine that in the first instance the taxation authorities have discretion to decide whether or not some personal arrangement for scholarships such as I have indicated was satisfactory for that purpose. If there were a dispute between the taxing authorities and the executors I suppose it would be settled by the law courts. In our case, it must be an organization, I think. Has the minister given consideration to following British common law with respect to a wider concept of what is a charitable bequest?

Mr. Fleming (Eglinton): The provision in the act to which I direct the attention of the hon. gentleman is section 7(1) which provides:

For the purpose of computing the aggregate taxable value of the property passing on the death of a person, there may be deducted from the aggregate net value of that property—

Certain amounts. Subparagraph (d) specifies gifts to what may be called charity. In this particular case it is the value of any gift made by the deceased, whether in his life time or by his will, where such gift can be established to have been made absolute to:

(1) any organization in Canada that, at the time of the making of the gift, was a charitable

[Mr. Benidickson.]

organization operated exclusively as such and not for the benefit, gain or profit of any proprietor, member or shareholder thereof.

In the interpretation of these words of the statute I do not think there has been any serious difficulty. Reference could, of course, be made to the common law and to the decisions of the courts as to what is a charitable gift.

Mr. Crestohl: I think there is a departure here, because the Canada Council is also known to hand out scholarships.

Mr. Fleming (Eglinton): That is the next paragraph. We are dealing with No. 1 at the moment. That is No. 2.

Mr. Crestohl: I beg your pardon. I should like to discuss that.

The Chairman: Is it agreed that we discuss this paragraph by paragraph? Shall paragraph 1 carry?

Paragraph 1 agreed to.

On paragraph 2.

Mr. Crestohl: Of course we all welcome paragraph 2, but I wonder whether we understand it in its entirety. The Canada Council is not restricted to dealing with charities pure and simple; they also hand out funds and provide for scholarships and bursaries. I wonder whether the minister envisaged that anyone who does make a bequest, which would be the equivalent of a scholarship or 10 scholarships or 10 bursaries in the same class that the Canada Council provides, would be in this position, that those bequests would be deductible even though they are not bequeathed to the Canada Council itself but are for the very same objectives? I am afraid that we are opening up a door here which I think would be very welcome to encourage scholarships and higher education.

Mr. Fleming (Eglinton): I point out to the hon. gentleman that to qualify under the act at present it would have to conform with the provisions of section 7(1)(d), which I read a moment ago. The gift in that case must be made to some charitable organization. The present paragraph is designed to make gifts to the Canada Council qualify as charitable donations. The Canada Council is a charitable organization within the meaning of the old Dominion Succession Duty Act and the present Income Tax Act. Hitherto, it has not been deemed a charitable organization for the purpose of this act. That is the reason why we are asking the committee now to provide for the purposes of the Estate Tax Act the Canada Council