

Income Tax Act

mine whether this was so or not without going through the whole case. I can see no reason for a taxpayer being forced into a court case to which he does not want to be a party. I can advance a dozen reasons, and I have already given two examples. He does not want his appeal to be tied to the appeal of someone else. This would only seem to be fair to the taxpayer.

All I would propose at the moment, and I am putting this forward for consideration by the minister, is that if, in fact, a person can separate himself from the appeal of another taxpayer, and the government agrees this can be done, it should be spelled out in the bill. My proposal would be that the words "with the consent of such taxpayers" be inserted in section 174(1) in line 43 on page 446. The subsection would then read that the minister, in respect of two or more taxpayers, and so on, might, with the consent of such taxpayers, apply to the tax review board or to the federal court, trial division, etc. As the section stands I do not think the exception in subsection (3), in accordance with which the review board or the federal court has to decide that cases are similar, is sufficient protection for the public. I have prepared an amendment to this subsection, but before putting it I should like to know whether the minister is unequivocally opposed to my proposition. I cannot see any reason he should be.

• (4:20 p.m.)

Mr. Gray: Mr. Chairman, I can see the hon. member's point of view. It seems to me that the wording of the section before us does not fail to meet his point to the extent that he suggests. First of all, I think he will agree that the final word on whether there is a common question of law, fact, or mixed law and fact is not that of the minister but that of the Tax Review Board or the Federal Court. Of course, this provides a further opportunity for the taxpayer in question to make his point that he should not be included in the matter.

Second, the hon. member has spoken of a similar question of fact; if I am not mistaken, he did use the word "similar". Again I submit that the jurisdiction intended by the clause is already circumscribed by the existing wording in that there must be a common question of fact or law and not a similar question.

If I may take a moment I should like to give the committee some idea of the type of case intended to be dealt with in this section. For example, it is contemplated that the section could be used in those cases where there is a dispute as to whether amounts paid or received have been paid or received as alimony. For example, under section 56 an amount received by a taxpayer as alimony is required to be included in his income, and under section 60(b) the amount so paid as alimony may be deducted in computing the income of the person who made the payment.

In many cases of payments between former spouses there is often an irreconcilable difference of opinion as to whether moneys paid, say, by the husband to the wife are payments on account of alimony. In such cases, the revenue authorities are basically indifferent to the resolution of the dispute provided it is one that applies both to the person who has made the payment and the person who has received the money. I use this as an example of the

type of situation to which it is intended this section should apply.

I might also point out that if the wording of the hon. member is included in an amendment to section 174—I think the wording he suggested is "with the consent of the taxpayer"—I am advised that, in effect, section 174 would be really no different from section 173, with which I think we have just dealt. That section provides that where a minister and the taxpayer agree in writing that a question of law, fact, or mixed law and fact arising under the act should be determined by the Federal Court, the question shall be determined by the court, and so on. This section we are presently studying is intended to deal with a somewhat different situation.

Mr. Aiken: That is rule 75(c).

Mr. Gray: However, as I say, I can see the hon. member's point of view, and if he would let us see his wording, and the committee consents to standing the clause for a period, we are prepared to give the matter some further thought.

Mr. McCleave: Mr. Chairman, I mentioned the point I am going to raise to the hon. member for Parry Sound-Muskoka and he was kind enough to yield me the right of way. I should like to raise this question with the minister and his officials so they will consider it along with the matters raised by my hon. friend from Parry Sound-Muskoka.

My point can be briefly expressed. Canada is a very large country and to notify a taxpayer in, say, Halifax that he has the same problem as a taxpayer in Midland or in Edmonton might work some injustice. These people could be stuck with journeying to courts situated far away from their own territory in order to join in a common front against the Department of Finance and the Department of National Revenue.

I have read section 174 on three or four different occasions, and it does seem to me that the powers being given are a little too broad in that no regard is had to the fact that a taxpayer might be put to more expense than a case was worth. For example, a taxpayer might be put in a position where he has to say he will not go to Toronto to argue a case since it will cost him \$500 to do so, whereas the point at issue could be settled for, say, \$300. This might sound like a very technical objection, but I think it is a valid one given the wide geographical spread of Canada.

Mr. Aiken: Mr. Chairman, I am quite happy to have the minister consider this amendment. I should like him to consider this additional matter at the same time. He pointed out that we have just passed section 173 which deals with doing things by consent. He said this provision would cover the situation to which I was referring. But what I am trying to prevent is this. I have no objection to the provisions in section 173 where the parties agree that there shall be an appeal presented, but I do object to a situation where the parties say they will not agree and then the minister comes along and says they will have to go to court anyway because they are going to be added under section 174. This is rule 75(c) of the House of Commons rules being repeated in the Income Tax Act. The