

DOMINION INCOME TAX ACT.

An important decision was given recently in the Exchequer Court of Canada in the case of *The King v. Lithwick*, reported in 57 D.L.R. 1. An annotation to this report discusses the law on the subject as follows:—

The duties imposed by the Income War Tax Act, 7-8 Geo. V. 1917 (Can.), ch. 28, upon persons acting in a fiduciary or representative capacity, may be grouped under six heads:

1. Sub-sec. 6 of sec. 3, as amended by 10-11 Geo. V. 1920, ch. 49, provides that: "Income accumulating in trust for the benefit of unascertained persons or of persons with contingent interests shall be taxable in the hands of the trustees or other like persons acting in a fiduciary capacity as if such income were the income of an unmarried person." This is interpreted by the Department of Finance to mean that where the whole or any portion of the income of an estate received by a trustee is not payable in the year of receipt to any beneficiary, as for example, where there is a direction in the will to accumulate the income until the happening of some future event or until some one is born or definitely ascertained, the trustee must deliver a return of the portion of the income not distributable on what is known as Form T.1. The trustee must pay the tax due in respect of the income in the same manner as is required in the case of a personal return. As the trustee as such can have no relatives, the maintenance of which gives an unmarried person an exemption of \$2,000, the exemption from normal tax to which the trustee is entitled is \$1,000. It has to be noted that this sub-section is retrospective in its operation to the commencement of the 1917 taxation period. As the Act provided no penalties for delay in delivering returns for 1917 or 1918, returns for these years may still be filed without penalty. Where returns for 1919 are filed after May 31, 1920 (the time for delivering of returns having been enlarged by the Minister from April 30, to May 31), the taxpayer is subject to a penalty of 25% of the amount of the tax payable. This penalty, however, was reduced by Order in Council to a penalty of 5% of the amount of the tax payable, the penalty in any case not to exceed \$500.

Where a trustee has discretion as to the amount which he may pay to a beneficiary out of the income of an estate, the amount retained by the trustee has to be returned as income under this sub-section. While there may be cases where the income of an estate is not payable to any beneficiary during the taxation year nor accumulated in trust for the benefit of "unascertained persons" or of "persons with contingent interest," it was apparently the intention of Parliament to provide that all incomes should be taxed regardless of the disposition made of them and if any part of the income of an estate is not taxable as part of the income of a beneficiary, the trustee is only safe if he makes a return of such income himself. The amounts received by beneficiaries, or amounts which they are entitled to receive whether they actually withdraw them or not are of course part of the income of the beneficiaries and must be shown by them in their personal returns. The residence of the probable or possible beneficiary is immaterial in determining whether