

Income Tax Act

Mr. Gray: Mr. Chairman, the hon. member has also raised a useful point. I think he is right in saying, and I am so advised, that associations of the type he had in mind would not be covered by the sections we are studying. I think the reason is that there is quite a difference of opinion among people in the type of associations he has in mind about whether they should be bound by action taken allegedly on their behalf by the association—perhaps a professional association. It was thought, therefore, that for the time being we would not attempt to resolve this question.

If I may have the floor for another moment with your permission, Mr. Chairman, and if I am out of order I know you will bring me to order. We had asked that Section 172 stand so that we could have a chance to read the wording of the amendment proposed to it by the hon. member for Parry Sound-Muskoka. We have now read the wording and we would certainly like to give further consideration to the point he has raised. It may be that something could be considered in the area he has suggested, but at the very least we will have to give further consideration to the wording and so on. I should like to inform the committee and the hon. member of this and ask the consent of the committee that this section continue to stand, not simply to allow a reading of the hon. member's amendment.

Mr. Lambert (Edmonton West): Mr. Chairman, I hope the minister does not feel at all put out that we are questioning rather closely on this particular group of sections. If he will examine Bill C-259, he will see that, according to the explanatory notes, all of the paragraphs in these sections are new. These are new sections, so I think we would be remiss if we did not question them very carefully. After all, if there had been prior experience with this type of legislation we could say that it had been working out fairly well in the past, but this is all brand new. The point made by my colleague from Parry Sound-Muskoka is just one example.

The other point I have to make, and I would like the minister to take it under careful consideration, is one that is quite relative to this section. It is very much on all fours. I refer to the section which gives the minister, and I repeat, which gives the minister a discretion in joining of parties properly qualified as to communion of circumstances. If, as a result of the exercise of that discretion, a person who should have been included in the action is thereby excluded, this exclusion should not operate to that person's prejudice. That is what I want, justice for the minister and justice for the taxpayer.

I should like the minister to take that point under advisement so that there are not people who are simply told "Look, old boy, we did not join you; perhaps we should have, but the fact is we did not". There is another rule which says, because you were not a party to the action or you did not take any formal steps such as filing a notice of appeal or an application to be joined to the action, you are thereby precluded from any benefit of the court's decision. I think that would be terribly wrong.

Mr. Gray: Mr. Chairman, I agree with the hon. member that these sections are very important. I think that the hon. member can infer from responses not only by myself but by the parliamentary secretaries who are speaking on

behalf of the government on this subject, that we are trying to listen very carefully to the points raised, and to give them reasonable consideration. I can only repeat the points I made when I last spoke a few moments ago on the section.

• (4:10 p.m.)

First, I would think there is recourse for people who are mentioned in the notice and who think they should not have been mentioned. But I hope the hon. member's point is somewhat different—that it deals with people who are not joined in the notice but who would like to be joined. It would seem to me that the recourse for them would be to have the matter disposed of through an appeal directed to their own particular case, and this could be done without altering the section in any way.

Mr. Lambert (Edmonton West): Perhaps I see a glimmer of the solution to the problem I have posed. Under paragraph (b) of section 174(3) the tribunal is given power to join a party who was not originally a party to the appeal.

If one or more of the taxpayers so named has or have appealed... the review board or the federal court... may make such order joining a party or parties to that or those appeals as it considers appropriate.

It seems to me it is within the practice of the tribunal in dealing with the conduct of its affairs to provide for a simple form of notice in which a taxpayer can say to the board, in effect, that he has heard that a certain case is to be tried, that he has a case which is comparable, and he would like it to be heard also. It could all be done in very simple language, and a solution might be devised by way of regulations covering either or both tribunals.

Mr. Aiken: My hon. friend from Edmonton West and I have approached the same problem from different directions. I did not find the response of the minister satisfactory from my point of view. I have read through the subsections (2), (3) and (4) in the light of the hon. gentleman's remarks, and I still feel that a taxpayer who does not particularly wish to be drawn into a case with another taxpayer is left without any real remedy. The subsection provides that his case can be joined and makes a decision on his assessment final. It is as simple as that.

I can think of a number of cases where the consequences would be undesirable. For example, a fraudulent or scandalous aspect might arise in connection with a particular tax case, and one of the taxpayers may have no connection whatever with those particular circumstances or with those concerned—he just happens honestly to be in a similar situation. He may wish very much to dissociate himself from the publicity which might attach to that case. It is possible that such a case might become a matter of public interest, that the press would take it up, believing there was a real story in the events behind the scenes. Another person in a similar situation might well have no desire in the world to be associated with those circumstances. Yet he might have been unfortunate enough to have come along at the same time and to have been forced into becoming a party to the appeal.

Then again, a taxpayer may feel that his situation is not, in fact, similar. He may believe there are other points of fact or of law which he needs to make. It do not feel that the review board or the federal court could in fact deter-