

Income Tax Act

penalized twice. If they were innocent of evasion, they were sometimes penalized only once. If they were guilty they were penalized twice. There is something wrong with such a system because if these people are innocent, the 50 per cent should not be added to other penalties. I submit that practical people will pay it rather than be hauled into court. As I have said I believe this is an iniquitous situation. It is even worse when the rate of taxation is increased from 25 per cent to 50 per cent.

Mr. McCutcheon: Mr. Chairman, I, too, should like to add my support to what the hon. member for Parry Sound-Muskoka has said. This is a most iniquitous section and, in my humble opinion, is being used by some branches of the income tax department—I will not say by all of them but by some specific branches—the officials of which are bucking for a corporal's stripes and use this method to intimidate taxpayers. As the hon. member has mentioned, if the department can prove wilful evasion, then the taxpayer is hit twice. However, if they cannot prove it, he is hit only once. In my humble opinion that is definitely unfair, and I have no hesitation in recommending the amendment of the hon. member for Parry Sound-Muskoka.

• (3:50 p.m.)

Mr. Bigg: Mr. Chairman, I just want to make a short comment regarding the burden of proof. The burden of proof, which is the responsibility of the Crown, is exceptionally easy to satisfy. As anybody who has ever had to go to court knows, as soon as the Crown has established what is called a prima facie case on the simple facts established by the accounting department that the taxpayer is delinquent in the matter of taxation, the burden of proof is switched to the taxpayer and the responsibility of proving himself innocent rests upon him. So I also want to lend whatever support I can to the amendment of the hon. member for Parry Sound-Muskoka.

Mr. Smerchanski: I should like to make a comment regarding the same section which appears on page 424, section 152 (4)(a)(i), which reads:

has made any misrepresentation that is attributable to neglect, carelessness or wilful default—

I should like to deal with misrepresentation because the penalty referred to by the hon. member for Parry Sound-Muskoka is a heavy one. The question to be asked is what is misrepresentation? It might be that a bookkeeper or someone else in one's office might have made a representation that is attributable to neglect or carelessness, and then the taxpayer is faced with a heavy penalty which might be an unfair one. The point was raised that there is a double penalty. I suggest that instead of increasing the penalty from 25 per cent to 50 per cent, it should be decreased to 10 per cent so that the taxpayer is not penalized unnecessarily and so that the legislation is fair. This section refers to misrepresentation which can be attributable to neglect and carelessness of someone working in one's office or one's corporation, and this is very important. This is a very far-reaching piece of legislation, and I suggest that we take a hard look at it because in my view this penalty section is unfair.

[Mr. Aiken.]

The Chairman: Is the committee ready for the question on the amendment.

Mr. Downey: I have a question or two on the penalty section, Mr. Chairman. In the Summary of 1971 Tax Reform Legislation it is stated:

In addition, documents seized other than by search warrant in the course of an investigation must be returned within a reasonable time unless a court decides otherwise. A person whose documents are seized will have the opportunity of reviewing them.

What are the other circumstances in which documents can be seized other than by search warrant? Could the parliamentary secretary clarify this for me?

Mr. Mahoney: We are dealing at the moment with sections 162 and 163 and I am wondering where one finds the particular words which the hon. member has read in those sections. I would be glad to reply to his question, but I do not see these words in the sections we have been discussing.

Mr. Downey: They may not be in the specific sections but, in essence, they are relevant to this subject. I wonder whether the parliamentary secretary could clarify this situation to a certain extent.

There is another question which I would like to ask him with regard to the enquiries section. This part 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.

In what situation would the taxpayer not be entitled to be represented? The reference is to, "most cases", and I wonder in what cases he would not be represented.

Mr. Mahoney: Again, we are dealing with a block consisting of some 53 sections. If the hon. member would be good enough to give the section numbers when he asks questions, I would be very happy to look at them and try to give him answers if the references are to the particular sections with which we are dealing at the moment. Certainly, the questions he is asking are relevant to the block—I am not arguing about that—but I do not see the words he quoted in either section 162 or 163.

Mr. Downey: I ask the parliamentary secretary whether or not it really matters if I provide him with section numbers. My questions are pertinent to the sections with which we are dealing. Why is he not able to give us a simple and concise answer to the questions I asked him, and why is he trying to run me off the tracks by asking me to provide him with certain section numbers? Would the parliamentary secretary tell me in what cases a taxpayer will not be able to be in attendance or be represented when an inquiry is being conducted? Of course, he will recall the first question I asked him. Would he please give me an answer to my questions.

The Chairman: Is the committee ready for the question?

Mr. Alexander: I am seeking some clarification. I also support the amendment moved by the hon. member for Parry Sound-Muskoka to section 163(1) which puts the minister in the position of imposing a double penalty. I do not know whether the parliamentary secretary has as yet answered any questions with respect to the increase in the