

TAXATION DECISIONS AND RULINGS

Since the last appearance of this department¹ the following Directives have been issued by the Taxation Division of the Department of National Revenue for public circulation: Nos. 124, 131, 132, 133, 138, 140, 141, 146, 150, 153, 160, 168, 175 and 185. Directive No. 124 of December 17th, 1947, deals with the treatment for Dominion tax deduction purposes of Province of Ontario vacation-with-pay credits in industries other than the construction industry. Directive No. 150 of January 30th, 1948, lists the bonds or other securities of the Provinces of Manitoba, Alberta, Saskatchewan and New Brunswick, the income from which is not subject to the 5% corporation income tax of those provinces, when such income is deemed to have been earned in the province that issued the bonds or other securities. It is further stated that there are no bonds or other securities issued tax-free by the Provinces of British Columbia, Nova Scotia and Prince Edward Island.

The remaining directives mentioned are reproduced in full here:—

Assessments—Repayment of Refundable Portion of Excess Profits Tax — Section 18(5)

(Directive No. 131 of January 8th, 1948)

The regulations concerning the repayment of the refundable portion of Excess Profits Tax in the event of the dissolution of a partnership or the death of one of the partners have been amended by Order in Council P.C. 4749 which was published in Part II of the 10th December 1947 issue of the Canada Gazette. The amended Order in Council reads as follows:

His Excellency the Governor General in Council, on the recommendation of the Minister of National Revenue, is pleased to amend the regulations determining the persons to whom amounts refundable under section 18 of the Excess Profits Tax Act shall be paid in the event of the bankruptcy, liquidation, winding up or dissolution of the taxpayer, established by Order in Council of the 14th February, 1945, (P.C. 78/982) and they are hereby amended by rescinding paragraph (b) of regulation 4, and the first paragraph of regulation 5 and substituting therefor the following:

- “4. (b) The balance of the Refundable Portion shall be repaid to the partnership at the time or times provided

¹ (1947), 25 Can Bar Rev. 1169.

by subsection (2) of section 18 of the said Act, for distribution to the surviving partner or partners in accordance with their respective interest or interests in the partnership in the taxation year or years to which the Refundable Portion is referable.

5. In the case of the dissolution of a partnership by action of law the Refundable Portion shall be repaid to the partnership for distribution among the partners in accordance with their respective interests in the partnership in the taxation year or years to which the Refundable Portion is referable."

*Assessments — Repayment of Refundable Portion
of Excess Profits Tax — Section 18(6)*

(Directive No. 132 of January 8th, 1948)

The following regulations concerning the repayment of the Refundable Portion of Excess Profits Tax in the event of the death of the taxpayer or winding-up of a corporation have been made by Order in Council P.C. 4748 and have been published in Part II of the 10th December 1947 issue of the Canada Gazette.

1. In the case of a deceased taxpayer who carried on business alone and whose whole estate is immediately distributable, the whole of the Refundable Portion under the provisions of the Excess Profits Tax Act referable to the years 1942, 1943, 1944 and 1945, not previously refunded, shall be repaid to the legal representative of the deceased taxpayer forthwith provided:—

- (a) payment is made of all succession duty arising under The Dominion Succession Duty Act in respect of successions consequent upon the death of the said taxpayer,
- (b) payment is made of all taxes due under The Excess Profits Tax Act and the Income War Tax Act in respect to profits and income of the taxpayer to date of death,
- (c) application in writing by the legal representative is made for such refund to the Director General or Director of the Taxation District in which the deceased resided,
- (d) there is filed with the said application for refund a notarial copy of Letters Probate, Letters of Administration or other satisfactory proof that he is the lawful person to receive such refund.

2. In the case of a deceased taxpayer who carried on business in partnership and whose estate is immediately distributable,

that portion of the unrefunded Refundable Portion to which the taxpayer would be entitled if the whole amount were repaid to the partnership will be repaid to the legal representative of the deceased partner upon the same conditions set out in Regulation Number 1 above.

3. In the case of a corporation in respect of which a Receiving Order in Bankruptcy or a Winding-up Order (other than such an Order made pursuant to a resolution of shareholders) has been made the refundable portion referable to the years 1942, 1943, 1944 and 1945, not previously refunded, shall be repaid to the trustees or liquidators of such corporation forthwith provided:—

- (a) payment is made of all taxes due under The Excess Profits Tax Act and the Income War Tax Act in respect to profits and income of the corporation to the date of the Order in Bankruptcy or Winding-up Order,
- (b) application in writing by the trustees or liquidators is made for such refund to the Director General or Director of the Taxation District in which the corporation filed its Excess Profits and Income Tax returns,
- (c) there is filed with said application for refund a certified copy of the said Order and satisfactory proof of the appointment of the said trustees or liquidators.

*Succession Duties — Apportionment of Debts
Against Foreign Realty*

(Directive No. 133 of January 9th, 1948)

Heretofore, it has been the practice to exempt foreign realty at its value less mortgages and similar specific charges but not less any proportion of the general debts of the Estate.

In future, foreign realty is only to be exempted at its value less specific charges and less a proportion of all the general debts of the Estate for which such realty is liable. Thus, if an Estate of \$50,000.00 includes foreign realty worth \$10,000.00, against which there is a mortgage of \$2,000.00, and there are general debts for which all the property of the deceased is liable, amounting to \$5,000.00, the exemption for the foreign realty will be calculated as follows:—

ASSETS OF ESTATE

Foreign Realty.....	\$10,000.00	
Less Mortgage.....	2,000.00	
		\$8,000.00
Other Assets (all liable for debts).....		42,000.00
		<u>\$50,000.00</u>

LIABILITIES OF ESTATE

General Debts.....	\$5,000.00
Aggregate Net Value.....	<u>\$45,000.00</u>

Exemption for Foreign Realty

$$10,000.-2,000.- \left\{ \frac{10,000.-2,000.}{50,000.} \times 5,000. \right\} = \$7,200.00$$

Assessments — Automobile Expenses of Commission Agents

(Directive No. 138 of January 7th, 1948).

In dealing with the allowance of automobile expenses for income tax purposes, commission agents may be considered as being in one or other of the following groups:

- (1) Those who operate their own business.
- (2) Those who are employed.

Commencing 1st January, 1947, a person in Group 1 operating his own automobile exclusively for business purposes will be allowed the total expenses incurred in operating such automobile if conclusive evidence by way of continuous records, supported by vouchers, is produced in support of his claim. The expenses allowed will include depreciation of his automobile at the rate of 20% per annum of the cost thereof, provided that depreciation will not be allowed upon the amount of cost in excess of \$2,500.00.

Where a person has failed to keep acceptable records an allowance at the rate of 7c. per mile (which will be deemed to include all automobile expenses including depreciation) will be made in respect of mileage required for the business done by him. In estimating such mileage regard should be had to the nature of the business, the extent of the territory covered and the number of times it was visited during the taxation year.

In cases where the automobile is used for personal, as well as business, purposes and where an allowance is requested on an expenses-incurred basis, only 25% of the expenses, including depreciation, will be allowed unless an affidavit is supplied, supported by factual evidence, to the effect that the automobile was used more than 25% for business purposes. If the affidavit and the supporting evidence satisfactorily establish the claim,

the amount of the expenses, including depreciation on the basis referred to above, incurred for business purposes will be allowed up to but not in excess of 75% of the total expenses incurred for both personal and business purposes. In no case, where the automobile is used for both personal and business purposes, will more than 75% of the total expenses, including depreciation be allowed.

Persons in Group 2 may be employed either—

- (a) on a commission basis only, or
- (b) on a salary-plus-commission basis.

Expenses not paid or payable by the employer will be allowed to persons in (a) or (b) on the appropriate basis outlined above for persons in Group 1, except that in the case of those in (b) the allowance may not exceed the amount of commissions earned.

All expenses incurred as the result of accidents to automobiles are to be disallowed.

Assessments — Allowance for Patronage Payments and Fiscal Year Losses

(Directive No. 140 of January 20th, 1948)

The Income War Tax Act allows inter alia as a deduction from income both patronage payments and losses with respect to prior and subsequent years.

The question has arisen as to which is deductible first in the calculation of taxable income as, if the loss of a prior or subsequent year were to be deducted first, the taxpayer may be precluded in some cases from deducting the amount of patronage payments that would otherwise have been deductible, due to the operation of the 3% of capital employed limitation.

It is considered, therefore, that patronage payments are deductible from income before making an allowance for losses of prior or subsequent years.

Assessments — Charitable Organizations — Approval

(Directive No. 141 of January 22nd, 1948)

By Memo. No. 89 (1940-41) it was provided that any charitable organization approved by the Minister of National War Services would be regarded as a charitable organization within the meaning of section 5, subsection (1), paragraph (j) of the Income War Tax Act. The approval of the Minister of National War Services was under the authority of the War

Charities Act 1939, (Chapter 10, Statutes 1939, 2nd Session). Following this, donations made to any organization accepted and registered under the War Charities Act were allowed as a deduction in determining the taxable income of the donor.

At the last session of Parliament, the War Charities Act was amended as follows, effective as of 27th June, 1947:

“(1) On and after the coming into force of this Act, the War Charities Act 1939, (Chapter 10 of the Statutes of 1939, 2nd Session) shall apply only to or in respect of, a war charity fund registered prior to the coming into force of this Act.”

Following this the Deputy Minister of National Health and Welfare, administering the Act, issued a circular letter indicating that approval would not be given to any new funds or organizations and that with respect to those already approved, the registration would be continued for a limited period only.

Such organizations as desire to continue to raise funds, therefore, are seeking approval of the Division in order to retain the exemption for donations received. This has disclosed that certain organizations, while of a deserving or benevolent character, are not charitable organizations within the meaning of the term as used in the above mentioned section of the Act.

In order, however, to give a measure of uniformity in dealing with these, it is proposed that the exemption in respect of donations made to organizations registered under the War Charities Act will continue up to 31st December, 1948, without further approval from this office. After that date, donations will be deductible when given only to those charitable organizations which are recognized as such for the purposes of section 5, subsection (1), paragraphs (j) and (jj) of the Income War Tax Act.

Donations made to organizations which are or were not registered under the War Charities Act, and which include those constituted since 27th June, 1947, will be allowed as a deduction only if such organization is approved by this Division.

Any organization desiring to obtain approval as “charitable” under the above paragraphs of the Income War Tax Act may make application therefor on forms which will be available at District Income Tax Offices.

*Assessments — Charitable Organizations — Application
for Approval under Sec. 5, ss.(1), Para. (j) and (jj),
of the Income War Tax Act*

(Directive No. 146 of January 27th, 1948)

Section 5, sub-section (1), paragraphs (j) and (jj), of the Income War Tax Act, provide as follows:

“5(1) ‘Income’ as hereinbefore defined shall for the purpose of this Act be subject to the following exemptions and deductions:

- (j) An amount not exceeding ten per centum of the income of any taxpayer, other than a corporation, which amount has been paid by way of donation within the taxation period to and receipted for as such by any charitable organization in Canada operated exclusively as such and not for the benefit or private gain or profit of any person;
- (jj) An amount not exceeding five per centum of the income subject to taxation of any corporation, which amount has been paid by way of donation within the taxation period to and receipted for as such by any charitable organization in Canada operated exclusively as such and not for the benefit or private gain or profit of any person:”

In future those organizations which desire to be recognized as being charitable for the purposes of the above sections of the Act (excluding religious bodies and organizations affiliated therewith) will be required to make application for approval on Form T. 511; such Form must be completed in accordance with the requirements set forth therein, and with the necessary documents attached, forwarded to Head Office for approval.

Recognition will not be granted to any fund or organization the purpose of which is to establish local facilities for recreational or social purposes. It is deemed that such projects which are purely local in character do not qualify as a charitable organization within the meaning and intent of the legislation. Where approval has heretofore been given in respect of any such purpose, it will apply only to amounts contributed during the calendar year 1948. Thereafter any contributions made will not be allowed as a deduction for the purposes of the above-mentioned Sections of the Act.

This ruling will not apply to those organizations which are instituted in a community having charitable objects within the following purposes or those analogous thereto:

- (1) the advancement of religion.
- (2) the advancement of education,
- (3) the relief of poverty.

The decision as to whether any purpose for which donations are sought from the public comes within or is analogous to the three classes, referred to above, will be given by Head Office on the basis of the application on Form T. 511 as submitted.

Assessments — Corporations — Corporations Tax (Sec. 6(1)(o))

(Directive No. 153 of February 9th, 1948)

A regulation, by Order-in-Council P.C. 332, dated the 30th January, 1948, defining "corporation tax" as contained in Section 6(1)(o) of the Income War Tax Act, has been made as follows:

His Excellency the Governor General in Council, on the recommendation of the Minister of National Revenue, and pursuant to powers conferred by the Income War Tax Act, is pleased to make the following regulations and they are hereby made and established accordingly:

1. For the purposes of Paragraph (o), Subsection (1) of Section 6 of the Income War Tax Act 'corporation tax' means a tax or fee other than a tax on net income or gross revenue, the imposing of which singles out for taxation or for discriminatory rates or burdens of taxation corporations, or any class or classes thereof, or any individual corporation, either formally or in effect, by imposing a tax or fee on or in respect of any act, matter or thing or any activities or operations mainly done by, or affecting, or carried on by corporations, or otherwise, except
 - (i) a bona fide and reasonable provincial license, registration, filing or other fee; provided that no fee of a class of fees first charged or imposed after the first day of January, 1947, shall exceed \$250 per annum for each corporation and no fee charged or imposed on or prior to the said day which is in excess of \$250 per annum for each corporation shall be increased and no fee charged or imposed on or prior to the said day which is less than \$250 per annum for each corporation shall be increased to an amount in excess of \$250 per annum for each corporation;
 - (ii) the fees charged for the incorporation of a company;

- (iii) a license fee or other fee or tax for specific rights, benefits or franchises granted by a municipality, or where they are to be exercised or enjoyed only in territory not included in any municipality by any authority (including a Province) having jurisdiction in such territory;
- (iv) any assessment under The Workmen's Compensation Act of any Province;
- (v) a business or occupancy tax based on floor space or on the rental or assessed value of property, imposed by a municipality, or in territory not included in any municipality by any authority (including a Province) having jurisdiction in such territory; or
- (vi) any royalty or rental on or in respect of natural resources within a Province.

2. In Section 1 hereof,

- (a) 'natural resources' means lands and waters, any rights to or interests in lands and waters, vested in the Crown in right of a Province, including forests, minerals, petroleum and natural gas on or in such lands and waters and rights vested in the Crown in the said right to take wild animals and fish on or in such lands and waters;
- (b) 'rental' means a charge imposed on a person in respect of the occupation or use by him of a natural resource, whether improved or unimproved, including the use of water or water power sites, without severance, taking, extraction or removal thereof or of any part thereof, the real intent and purpose of which charge is to compensate for the value of such occupation or use; and
- (c) 'royalty' means a charge
 - (i) required to be paid by a person in respect of any right conferred on or vested in him to sever, take, extract or remove any thing forming part of the natural resources of a Province including therein timber, mineral ore, petroleum and natural gas, and wild animals or fish the right to take which forms part of said natural resources,
 - (ii) the amount of which is determined by reference to the quantity or value or both of the thing that he severs, takes, extracts or removes, or alternatively

in the case of mineral ore, the value at market prices of the minerals contained therein after extraction therefrom, and

- (iii) the real intent and purpose of which is to compensate a Province for the value in whole or in part of the said thing prior to its severance, taking, extraction or removal;

but does not include a charge, the amount of which is determined in relation to the profits or gross receipts derived by the said person from the sale of products produced by the processing or manufacturing of the said thing unless provision is made for a reasonable deduction from the profits or gross receipts in determining the amount of the charge, in respect of the costs and value added to the said thing by reason of the processing or manufacturing for the purpose of eliminating, in the determination of the amount of the charge, any value added to the said thing by the said processing or manufacturing.

Assessments — Avoidance of Duplication of Procedure under the Income War Tax Act and the Provincial Corporation Income Tax Acts.

(Directive No. 160 of February 27th, 1948)

By virtue of Agreements entered into between the Government of Canada and the Governments of the Provinces of Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia, the Deputy Minister (Taxation) is administering the Corporation Income Tax Acts of such provinces, (except with respect to Sections 47 and 48, which relate to appeals).

To avoid a multiplicity of similar procedure under the Income War Tax Act and the Corporation Income Tax Acts of the above-mentioned provinces, all directives, decisions, determinations and approvals by or on behalf of the Deputy Minister (Taxation) under provisions of the Income War Tax Act apply in respect of the same matters and questions arising out of like provisions under such Corporation Income Tax Acts.

While the foregoing applies generally throughout the Corporation Income Tax Acts of the above-mentioned provinces, it has special reference to the following sections therein:

Section 4(k) — Exemption of income from the operation of ships or aircraft of non-resident corporation.

Section 4(s) — Certifications *re* mines.

Section 5(1)(c) — Approval of an employees' superannuation or pension fund or plan.

Section 5(1)(f) — Approval of special payment or payments on account of an employees' superannuation or pension fund or plan in respect of past services of employees.

Section 5(1)(h) — Approval of scientific research associations, etc.

Section 5(6) — The filing of newspapers for the purposes of Section 5(11) of the Income War Tax Act will be considered as complying with the similar requirement of Section 5(6) of the Provincial Corporation Income Tax Acts.

Section 8(6) — The filing of certified statements of expenditure as required in Section 8(9) of the Income War Tax Act will be considered as complying with the requirements of Section 8(6) of the Provincial Corporation Income Tax Acts.

Section 28 — A corporation filing consolidated returns under the Income War Tax Act will be permitted to file consolidated returns under the Provincial Corporation Income Tax Acts without formal election thereunder.

Assessments — Corporations — Taxes on Income Derived from Mining and Logging Operations (Sec. 5(1)(w))

(Directive No. 168 of March 16th, 1948)

A regulation, by Order in Council P.C. 331, dated the 30th January, 1948, as amended by Order in Council P.C. 952, dated the 6th March, 1948, with respect to the deduction, under Section 5(1)(w) of the Income War Tax Act, of provincial and municipal taxes on income derived from mining and logging operations, has been made as follows:

"His Excellency the Governor General in Council, on the recommendation of the Minister of National Revenue, and pursuant to powers conferred by the Income War Tax Act, is pleased to make the following regulations and they are hereby made and established accordingly:—

1. Subject to these regulations the amount that a person may deduct from income under paragraph (w) of subsection one of section five, is an amount not exceeding the proportion of the total taxes therein mentioned paid by him to

(a) the Government of a Province, or

- (b) a municipality in lieu of taxes on property or any interest in property other than his residential property or any interest therein that the part of his income that is equal to the amount of
- (c) income derived by him from mining operations as defined herein, or
- (d) income derived by him from logging operations as defined herein
is of the total income in respect of which the taxes therein mentioned were so paid.

2. No deduction from income shall be allowed under these regulations unless the taxpayer produces to the Minister a receipt or receipts for payment of the taxes in respect of which the deduction is claimed.

3. In these regulations,

- (a) 'Income derived from logging operations' by a person means
 - (i) where logs are sold by him to any person at the time of or prior to delivery to a sawmill, pulp or paper plant or other place for processing or manufacturing logs, or delivery to a carrier for export from Canada, or delivery otherwise, the net profit or gain derived by him from
 - (A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and sale, or the cutting, transportation and sale of the logs, or
 - (B) the acquisition, transportation and sale of the logs, or
 - (ii) where he does not sell but processes, manufactures or exports from Canada logs owned by him, the net profit or gain reasonably deemed to have been derived by him from
 - (A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and the transportation of the logs to the sawmill, pulp or paper plant or other place for processing or manufacturing, or to the carrier for export from Canada, as the case may be, or
 - (B) the acquisition of the logs and the transportation of them to such point of delivery

computed in accordance with sound accounting principles with reference to the value of the logs at the time of such delivery, excluding any amount added thereto by reason of processing or manufacturing the logs;

- (b) 'Income derived from mining operations' means the net profit or gain derived or deemed to have been derived from mining operations by a person engaged therein with or without an allowance in respect of depletion and if such a person receives net profit or gain from sources other than mining operations either by reason of the carrying on by him of the processing of mineral ore extracted by him or otherwise, the net profit or gain to be deemed to have been derived by him from mining operations shall not exceed that portion of the total net profit or gain received by him from all sources, determined by deducting from the said total
- (i) the returns received by him by way of dividends, interest or other like payments from stock, shares, bonds, debentures, loans or other like investments;
 - (ii) the net profit or gain, if any, derived by him from, and attributable in accordance with sound accounting principles to, the carrying on of any business, or derived from and so attributable to any source, other than mining operations and the processing and sale of mineral ores or products produced therefrom, and other than as a return on investments mentioned in subparagraph (i) of this paragraph; and
 - (iii) an amount by way of return on capital employed by him in processing mineral ores or products derived therefrom equal to 8 per centum of the original cost to him of the depreciable assets including machinery, equipment, plant, buildings, works and improvements, used by him in the processing of mineral ore or products derived therefrom but not in excess of 65 per centum of that portion of the said total net profit or gain remaining after deducting therefrom the amounts specified in sub-paragraphs (i) and (ii) of this paragraph: provided that, in the case of a person who mines and smelts mineral ores from which metals other than gold, silver or platinum are recovered in amounts exceeding in value 5 per

centum of the total value of the metals recovered, the amount to be deducted under this subparagraph shall not in any case be a smaller amount than the following proportion of the total net profit or gain remaining after deducting therefrom the amounts specified in subparagraphs (i) and (ii) above:

1. Where both copper and nickel are recovered, each in amounts which exceed in value 5 per centum of the total value of metals recovered..... 40%
 2. Where both lead and zinc are recovered, each in amounts which exceed in value 5 per centum of the total value of metals recovered..... 30%
 3. Where both copper and zinc are recovered, each in amounts which exceed in value 5 per centum of the total value of metals recovered..... 20%
 4. In other cases..... 15%
- (c) 'Mine' includes any work or undertaking in which mineral ore is extracted or produced, including a quarry;
- (d) 'Minerals' includes gold, silver, rare and precious metals or stones, copper, iron, tin, lead, zinc, nickel, salt, saline deposits, alkali, coal, limestone, granite, slate, marble or other quarriable stone, gypsum, clay, marl, gravel, sand and volcanic ash but does not include petroleum or natural gas;
- (e) 'Mineral ore' includes all unprocessed minerals or mineral bearing substances;
- (f) 'Mining operations' means the extraction or production of mineral ore from or in any mine or its transportation to, or any part of the distance to the point of egress from the mine including any processing thereof prior to or in the course of such transportation but not including any processing thereof after removal from the mine; and
- (g) 'Processing' includes milling, concentrating, smelting, refining, fabricating, transporting or distributing."

Assessments — Returns by Corporations

(Directive No. 175 of April 5th, 1948)

It appears that some District Offices are not insisting on certain corporations filing T-2 returns and T-2 questionnaires because, being inactive or for some other reason, such corporations would appear to be non-assessable.

Starting with fiscal periods ended in 1947, the required returns must be secured from *all* corporations on the tax roll of each District Office. Where necessary, a formal notice or demand in writing, under Section 33(2), should be sent to corporations failing to file T-2 returns and T-2 questionnaires.

*Assessments — Taxes deductible under Section 5(1)(w) of the
Income War Tax Act*

(Directive No. 185 of April 26th, 1948)

It has been indicated that some corporations are mis-interpreting the regulations made with regard to Section 5(1)(w) of the Income War Tax Act, and are, in computing taxable income under the Income War Tax Act, incorrectly deducting corporation income taxes that do not come within the scope of the regulations mentioned above. These regulations are set out in Directive 168, issued under date of 16th March, 1948.

The deduction permitted by such regulations relates only to an amount to be allowed in respect of taxes imposed by a province or a municipality "by way of tax on income derived from mining operations or income derived from logging operations".

No deduction will be allowed which is calculated with reference to provincial or municipal taxes imposed generally on corporation income. The only taxes that can be brought into calculation for the purposes of Section 5(1)(w) are taxes imposed specifically on the particular types of income mentioned above.

In particular, the relief afforded by Section 5(1)(w) of the Income War Tax Act does not extend to the taxes imposed by the Provincial Corporation Income Tax Acts administered by this Division, to the Corporation Tax Act, 1939, of the Province of Ontario, nor to the Corporation Tax Act of the Province of Quebec.

WILLIAM J. HULBIG

Montreal