Taxation Decisions and Rulings

Revised rules of practice and procedure before the Income Tax Appeal Board, being order in council P.C. 4302 of August 24th, 1949, were published in Part II of the Canada Gazette of September 14th, 1949, at page 1726. These rules replace the rules published in Part II of the Canada Gazette of February 23rd, 1949.

The form of advertisements of patronage payments has been prescribed by the Minister of National Revenue in the Canada Gazette, Part II, of November 9th, 1949, at page 2189, as follows:

1. For the purposes of subsection (5) of section 68 of The Income Tax Act the following form of advertisement is prescribed:

'As required by The Income Tax Act this will advise our customers that it is our intention to make a payment in proportion to patronage in respect of the year ending the.....day of..... 19.... and we hereby hold forth the prospect of patronage payment accordingly.'

2. The advertisement, referred to above, may also include such other matters as may appear advisable.

Dated at Ottawa this 14th day of October, 1949.

JAMES J. MCCANN,
Minister of National Revenue.

Income Tax Cases

In the *Provincial Treasurer of Manitoba* v. *W. M. Wrigley Jr. Company Limited* (Privy Council, not yet reported), a Dominion company had its head office and manufacturing plant in Ontario with a branch office and warehouse in Manitoba. Chewing gum manufactured in Ontario is stored in the Manitoba warehouse and from the stocks of that warehouse are filled orders for chewing gum obtained from customers in Manitoba and also in Alberta, Saskatchewan and parts of Ontario. Although the orders for such sales are received by the branch office in Manitoba, payment is made to the head office in Ontario. The company was assessed under the Income Taxation Act of Manitoba for the

years 1936-1939 inclusive as though the whole net profit from a sale in Manitoba ought to be treated as arising from the business in Manitoba and there taxed, with the result that no part of that profit could be treated as arising from the part of the business that consisted of manufacturing and other activities in Ontario. The Court of King's Bench in Manitoba found in favour of the company in 1943. That judgment was reversed by the Manitoba Court of Appeal in 1945 and restored by the Supreme Court of Canada in 1947. Before the Privy Council, it was agreed that the question as to the ascertainment of the profit arising in Manitoba was answered by the case of *International Harvester Company of Canada Limited* v. *Provincial Tax Commission*, [1949] A.C. 36. Accordingly that issue was not again argued in the Privy Council in the *Wrigley* case. Instead the appellant argued that the Manitoba Court of King's Bench had no jurisdiction to arrive at an actual figure of assessable income or to direct the appellant to adopt it, but rather that the court should have referred the matter back to the appellant. The Privy Council found that the statutory power given to the court to "decide the matter of the appeal" included power to decide both the question of law whether there should be an allowance for "manufacturing profit" and the question of fact, what, if there ought to be such an allowance, the net profit or gain in Manitoba was to be treated as being.

The majority of the Supreme Court has upheld the decision of the Exchequer Court in the case of *Carden S. Bagg* v. *Minister of National Revenue* (not yet reported). The appellant owned shares in a company whose capital assets had included an item of goodwill that had been written off against surplus in several stages between 1921 and 1937, resulting in a reduction of capital from $180,000 to $40,000. This write-off was not admitted by the taxing authorities and it was conceded by the appellant that, from an income tax point of view, on June 3rd, 1938, the company had undistributed income on hand of $38,091.61. On that date by supplementary letters patent the authorized capital of the company was decreased from $200,000 to $79,200 by cancelling 200 unissued shares, each of $100 par value, and by reducing the par value of the 1,800 issued shares from $100 per share to $44 per share; in addition the 1,800 shares of a par value of $44 each were converted into 1,800 preferred shares of a par value of $40 each and 1,800 common shares of a par value of $4 each. The appellant was assessed with respect to 1938 as being deemed to have received a dividend equal to the portion

of the undistributed income represented by his holding of shares in the company. The Exchequer Court held that within the meaning of section 15 of the Income War Tax Act the undistributed income was capitalized as a result of the reduction and conversion in 1938. The majority of the Supreme Court found that upon the facts brought out in the testimony taken before the Exchequer Court the proper conclusion in law was arrived at by the Exchequer Court. Accordingly the appeal was dismissed.

During the years 1942 to 1945 Mrs. Chernenkoff owned and, with her son, operated a farm in Saskatchewan. Following a demand from the Minister, income tax returns were filed on her behalf. The tax department did not accept these returns and, following an investigation and from information supplied by her, issued arbitrary assessments on a net worth basis. Mrs. Chernenkoff appealed from the assessments alleging that the returns as filed by her were substantially complete and accurate. The Exchequer Court stated that the onus was on the appellant to establish affirmatively that her taxable income was not that for which she was assessed and found that, although she was given opportunities to ascertain her income with complete accuracy by production of available records both at an interview with tax inspectors and at the trial, she did not do so. Therefore, she failed to discharge the onus and the appeal was dismissed. *Chernenkoff* v. *Minister of National Revenue* (not yet reported).

Excess Profits Tax Case

A commercial traveller represented nine mills or business houses in 1942 and 1943 and eight in 1944. He travelled throughout his territory calling on customers, displaying samples and soliciting and obtaining orders which he transmitted to his principals. He was paid by commission and took care of his own travelling expenses. He had no office, staff, telephone, typewriter or stationery of his own. He was assessed for those years under the Excess Profits Tax Act on his total commissions, less his expenses and the minimum standard of $5,000. In dismissing his appeal the President of the Exchequer Court held that the appellant was carrying on a business, was not merely an employee, was not carrying on a profession, and was, accordingly, properly taxed. *Blackwell* v. *Minister of National Revenue* (not yet reported).

Income Tax Appeal Board Cases

The wife of an ex-serviceman in receipt of an educational grant under the Veteran's Rehabilitation Act claimed the exemption for married status in 1947 on the ground that she supported her spouse. The grant plus the husband's earnings of $315 as a law clerk brought his revenue up to more than $750 in that year. It was claimed on her behalf that the grant should not be included in her husband's income for the purpose of determining her eligibility for the married status exemption. The majority of the board held that, although the grant was tax-exempt in the hands of the husband, it was nevertheless income, so that she was properly taxed as having single status. *Bergart* v. *Minister of National Revenue*, [1949] Tax A.B.C. 184.

A great part of the expenses of entertaining customers in Montreal and New York, and the cost of Christmas presents to customers, claimed by the taxpayer company for 1946 was disallowed. The company imports merchandise, which it sells to wholesalers and department stores. The evidence indicated that among companies engaged in similar business the practice of entertaining and giving Christmas presents to customers was widespread. The Minister did not invoke section 6(2) of the Income War Tax Act, to disallow the expenses as being in excess of what is reasonable or normal for the business of the taxpayer, but relied on section 6(1)(a), contending that they were not "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income". The president and controlling shareholder gave as his sworn testimony, which was uncontradicted, that the moneys had been spent as claimed and for the purpose of increasing the sales of the company. The majority of the board found in favour of the taxpayer. *A. S. Herrmann Limited* v. *Minister of National Revenue*, [1949] Tax A.B.C. 208.

The taxpayer, a provincial inspector of schools in a rural district in Quebec, claimed in 1946 deduction from income of the following items: rent of an office in his home, cleaning his office, depreciation and maintenance on office furniture and equipment, services of a secretary and telephone. The Minister disallowed the deduction on the ground that the items were not expenses wholly, exclusively and necessarily laid out for the purpose of earning the taxpayer's income within the meaning of section 6(1)(a) of the Income War Tax Act. In view of the duties of the inspector the board found that the appeal should be allowed with respect to the cost of secretarial services, office cleaning and telephone. The rent claim was disallowed on the ground that no

rent in fact was paid out. The depreciation claim was referred back to the Minister. *Desgagne* v. *Minister of National Revenue*, [1949] Tax A.B.C. 225.

WILLIAM J. HULBIG

Montreal

One View of Us

Yet I repeat, there are, who nobly strive
To keep the sense of moral worth alive;
Men who would starve, ere meanly deign to live
On what deception and chican'ry give;
And these at length succeed; they have their strife,
Their apprehensions, stops and rubs in life;
But honour, application, care and skill,
Shall bend opposing fortune to their will.
Of such is Archer, he who keeps in awe
Contending parties by his threats of law:
He, roughly honest, has been long a guide
In Borough-business, on the conquering side;
And seen so much of both sides, and so long,
He thinks the bias of man's mind goes wrong:
Thus, though he's friendly, he is still severe
Surly though kind, suspiciously sincere:
So much he's seen of baseness in the mind,
That, while a friend of man, he scorns mankind;
He knows the human heart, and sees with dread,
By slight temptation, how the strong are led;
He knows how interest can asunder rend
The bond of parent, master, guardian, friend,
To form a new and a degrading tie
'Twixt needy vice and tempting villany.
Sound in himself, yet when such flaws appear,
He doubts of all, and learns that self to fear:
For where so dark the moral view is grown,
A timid conscience trembles for her own;
The pitchy taint of general vice is such
As daubs the fancy, and you dread the touch.

(George Crabbe: The Borough. 1810)