

Taxation Decisions and Rulings

Parts I - VII of Regulations under the new Income Tax Act have now been made public. Parts I and II have been promulgated in Order in Council P.C. 150, dated January 18th, 1949, and appearing at pages 218 and following of the Canada Gazette of February 9th, 1949. Income Tax Regulations, Parts III to VII inclusive, have been promulgated in Order in Council P.C. 347, dated January 27th, 1949, and published in the same issue of the Canada Gazette, at pages 294 and following.

Part I deals with tax deductions at source by employers as provided in section 44(1) of the Income Tax Act. Attached to Part I as Schedule A is a reproduction of the Table of Income Tax Deductions which has been in force since July 1st, 1947.

Part II is headed "Information Returns" and contains an enumeration of returns required to be made by persons other than the ultimate recipient, for example, employers who have paid salary or wages, companies which have paid dividends, persons who have received interest or dividends as agents for others. The appropriate forms to be filed are those to be prescribed by the Minister.

Part III is entitled "Capital Element of Annuity Payments" and relates to section 11(1) (i) of the Income Tax Act. This Part, in effect, reproduces the Departmental Regulations which were issued under the predecessor section of the Income War Tax Act.

Part IV deals with Consolidated Returns and relates to section 75(1) of the Income Tax Act.

Part V prescribes the manner in which a corporation may elect to be taxed as a non-resident-owned investment corporation under section 63 of the Act.

Part VI is the "Definition of Corporation Tax Paid to a Province or Municipality" referred to in section 12(1) (g) of the Act and reproduces Order in Council P.C. 5948 dated December 23rd, 1948, issued under section 6(1) (o) of the Income War Tax Act, except in so far as it was necessary to make

reference to the Income Tax Act instead of to the Income War Tax Act.

Part VII deals with "Taxes on Income from Mining and Logging Operations" and relates to section 11(1) (n) of the Income Tax Act. This Part, in essence, reproduces Order in Council P.C. 331, dated January 30th, 1948, and issued under section 5(1) (w) of the Income War Tax Act.

*Appeal to the Income Tax Appeal Board—
Form of Notice — Procedure*

Order in Council P.C. 659 dated February 10th, 1949, and published in the Canada Gazette, Part II, dated February 23rd, 1949, at pages 439-40 establishes the form of Notice of Appeal to the Income Tax Appeal Board. Also given are rules of practice and procedure governing the supplying of such additional information as may be required by the Board, the fixing of the time and place of hearing of an appeal and the giving of notice thereof, and the service of documents.

* * *

Directive No. 254, dated February 21st, 1949, has been issued by the Deputy Minister (Taxation) for public circulation and reads as follows:—

*Administration — Interim or Tentative Information Returns
(Directive No. 254 of February 21st, 1949)*

Public attention is directed to the Information Return filing dates shown below:

<i>Form No.</i>	<i>Description of Annual Return</i>	<i>Filing Date</i>
P.D.5	Return of patronage payments	Last day of February
T.4	Return of salaries, wages and other remuneration paid	Last day of February
T.5 Annuities	Return of contractual annuities paid	Last day of February
609	Return of interest paid on fully registered bonds and debentures	Last day of February
609B	Return of interest paid or credited on deposits	Last day of February

U.S.T.4-5-6	Return of amounts paid by Canadians to residents of United States	*Date of filing of related Information Return
T.5	Return of dividends paid	Extended to 15th March, 1949.
T.3	Return of the income of estates or trusts and the distribution thereof	31st March
U.S.T.1	Return of amounts received by Canadian residents from sources within the United States and paid to non-residents.	15th June

The Taxation Division considers it of first importance that the returns of individual taxpayers be assessed without delay. Information contained in the various returns referred to above is essential to the carrying out of this programme and, therefore, it will not be possible to grant extension of time for filing Information Returns.

Furthermore, tentative or interim Information Returns cannot be accepted.

Income Tax Decisions

The first Canadian judgment dealing with the application of business losses against the profits of a succeeding year is that of the Exchequer Court in *Luscar Coals Limited v. The Minister of National Revenue* (not yet reported). The case interprets section 5(1) (b) of the Income War Tax Act as it was in force in 1943, the significant words being "losses sustained in the process of earning income". The appellant was actively engaged in the business of coal mining. In computing its income for 1943, a loss suffered in 1942 was deducted. In arriving at the 1942 loss, dividends from other Canadian companies, exempt under section 4(1) (n), were not included. When the assessment was made by the Taxation Division the 1942 loss was reduced by the amount of the dividends. The Company appealed from the assessment. In rendering judgment in favour of the appellant the court found that the use of the words "in the process of earning the income" in the paragraph entitled the appellant to deduct, not the net loss incurred in 1942, but its loss incurred in the operation of its business of coal mining, since that was the only activity in which there was a "process of earning income".

The judgment is of very limited application because section 5(1) (p) was repeated and re-enacted to affect income of the 1944 and subsequent taxation years. In this version of the section, the words "in the process of earning the income" do not appear. The effect of sections 26(d) and 127(1) (w) of the Income Tax Act appears to be the same as that of the judgment just mentioned.

In the case of *Russell v. The Minister of National Revenue* (in the Exchequer Court, not yet reported), the appellant during the war was an Auxiliary Services Supervisor of the Y.M.C.A. He appealed against assessments for the war years on the grounds that he was exempt under section 4(1) (t) of the Income War Tax Act with respect to service pay and allowances received while he was a member of the Canadian Military Forces on strength of an overseas unit outside the Western Hemisphere, that he was not resident in Canada during the period in question, and that he was a servant of the Government of Canada within the meaning of section 9(1) (f) of the Act. His appeal was dismissed on all three counts.

Employees of a contractor filed mechanics' liens under the Mechanics' Liens Act of Manitoba. They were adjudged to be entitled to certain sums. The owner deposited in court the amount required by the provincial Act to be retained by him as owner. The Minister of National Revenue, who had a judgment against the contractor in respect of deductions made by the contractor from his employees under the Income War Tax Act, claimed a first charge on the moneys paid into court by the owner as being assets of the contractor within the meaning of section 92(7A) of that Act. The Manitoba Court of Appeal dismissed the appeal of the Minister of National Revenue, holding that "assets" are only such properties of the debtor as are available for the payment of his debts so that the moneys in question were not "assets" of the contractor. (*Sandberg et al. v. Meurer and Sigurdson and the Minister of National Revenue*, [1949] 1 W.W.R. 117)

Excess Profits Tax Decision

In the case of *Bower v. The Minister of National Revenue* (in the Exchequer Court, not yet reported) the appellant, an optometrist and a duly registered member of the Saskatchewan Optometric Association, appealed from Excess Profits Tax Assessments for the years 1940 and 1941 on the ground that his profits were

the profits of a profession within the meaning of section 7(b) of the Excess Profits Tax Act as then in force. The court pointed out that, inasmuch as he was claiming the benefit of an exemption, the onus was upon the appellant to bring his case within the ambit of the express terms of the section.

The learned President went on to say:

I have no difficulty finding that so far as he performed the functions of an optometrist, that is to say, the examination of the eyes and the prescription of the necessary correction for any visual defects thereby disclosed, he rendered services of a professional character, but I am unable to find that the work which he himself describes as optician's work, that is to say, the fashioning of the lenses and the assembly of the glasses and mountings was the carrying on of a profession. In my opinion, he combines the professional services of an optometrist with the commercial business of an optician. . . . Under the circumstances, I find that the business which the appellant carried on in 1940 and 1941 was not a profession, notwithstanding the fact that some services of a professional character were rendered.

The court found further that the appellant failed to discharge the onus of showing that his profits were wholly or mainly dependent upon his personal qualifications. Accordingly, the appeal was dismissed with costs.

WILLIAM J. HULBIG

Montreal

Recent Judicial Appointments

William Mitchell, Esquire, of the City of Montreal, in the Province of Quebec, Advocate, to be a Puisne Judge of the Superior Court for the District of St. Francis, in the Province of Quebec.

His Honour William Frederick Schwenger, Junior Judge of the County Court for the County of Wentworth, Ontario, to be Judge of the County Court for the County of Wentworth, and also a Local Judge of The High Court of Justice for Ontario.

Theodore Leslie McCombe, Esquire, K.C., of the City of Hamilton, in the Province of Ontario, to be Junior Judge of the County Court for the County of Wentworth, and also a Local Judge of The High Court of Justice for Ontario.