Taxation Decisions and Rulings

Income Tax Cases

In 1932 appellant sold his assets to a corporation for a life annuity of $1000 a month. He appealed against 1941, 1942 and 1943 assessments of income tax on the annuity. His contention was that, in view of the wording of section 3 of the Income War Tax Act, defining income as *inter alia*, ". . . also the annual profit or gain from any other sources including . . . (b) annuities or other annual payments received under the provisions of any contract. . .", the several paragraphs of the section are enumerations of sources of income and not items of taxable income. In the result, he contended, of the annuity in question only the income element was taxable and the balance, being return of capital representing sale price, was not. The Exchequer Court said that before the 1927 revision of the statutes this argument would not have been possible because in the earlier statute a semi-colon appeared after the word "sources" and found that the ambiguity should be resolved by adopting the meaning consistent with that of the previous act. It was further found that the appellant's contention would not make sense if applied to the other paragraphs of section 3. Appellant claimed alternatively that the payments were exempt to the extent of $5000 a year under section 5(1)(k). The court refused to accept this argument, holding that the contract was more than an annuity contract, being for the sale and purchase of the appellant's assets; and, further, that to qualify for exemption under section 5(1)(k) an annuity contract must be like the annuity contracts with the Dominion Government. Accordingly the appeal was dismissed by the Exchequer Court, with costs. *Wilder* v. *Minister of National Revenue* (not yet reported).

The Income Tax Appeal Board has recently rendered four decisions which are summarized in the following paragraphs.

Appellant's wife in 1946 received tax-free income in excess of $660. Appellant was assessed as a single man. His appeal claiming married status for tax purposes was dismissed on the grounds

that the relevant sections of the act provided that, where husband and wife each had "separate income" in excess of $660, each would be taxed as single; that the sections did not say "separate taxable income"; and that tax-exempt income was nevertheless income. *Currie* v. *Minister of National Revenue*, [1949] Tax A.B.C. 64.

In another decision, the following items, claimed as deductions with respect to 1946, were disallowed: cost of ambulance service and glasses; membership fees of County Judges' Association and library fee to local Law Association; and expenses of attending division courts for the period March 1st, 1941, to March 31st 1943 or, alternatively, the same amount as automobile depreciation for the same period. The board dismissed the appeal holding that the cost of ambulance service and glasses did not come within the definition of deductible medical expenses in the Act; that the appellant was under no necessity of joining the Association or paying the library fee; that the board has no authority to direct an allowance in 1946 of expenses or depreciation relating to 1941-3; and that there is no set-off against the Crown. *Morley* v. *Minister of National Revenue*, [1949] Tax A.B.C. 81.

In November 1945 appellant purchased shares of $25 par value at the market price of $34 a share. In April 1946 the shares were redeemed at $35 each. He appealed against the 1946 assessment that levied tax on the difference between the par value and the redemption price, *i.e.* $10 a share, as premium on redemption (section 17 of the Act). Appellant claimed that he should only be taxed on the difference between his purchase price and the redemption price, *i.e.* $1 a share. The board expressed sympathy but found that the law had been correctly interpreted in the assessment. *Wharton* v. *Minister of National Revenue*, [1949] Tax A.B.C. 93.

A carpenter, living in Flaxcombe, Sask., population about 100, found steady employment in Kindersley, a larger centre some twenty miles distant. He could not find suitable accommodation for his family in Kindersley. Because of the exhausting nature of his work and the uncertain transportation at his disposal, he roomed in Kindersley throughout 1946, visiting his family weekly. His claim in his 1946 return, under section 5(1)(f), of a deduction of $300 as travelling expenses when away from home in pursuit of a trade or business was disallowed. The board, W. S. Fisher dissenting, dismissed his appeal, holding that the expenses were not in the pursuit of his trade, but rather in con-

nection with the care and maintenance of his family and that section 5(1)(f) was meant to apply to those whose duties in their very nature impose upon the individual the necessity of travelling from place to place. *Hunter* v. *Minister of National Revenue*, [1949] Tax A.B.C. 97.

Succession Duty Cases

In *Re Webster Estate*, [1949] C.T.C. 263, the Ontario High Court, dealing with an Ontario Succession Duty assessment, held that the onus is on the appellant to show affirmatively that the assessment made by the Provincial Treasurer is erroneous. Duties were levied on the value of certain property that the executor claimed belonged, not to the estate, but to himself. At the hearing the executor contended that the onus was on the treasurer to support his assessment or, alternatively, if there was any onus on the executor, it was merely to show affirmatively a measure of probability, derived from ascertained facts, that the treasurer's decision was wrong. The court found that the appellant had failed to shift any part of the onus to the treasurer by the evidence adduced.

A Quebec marriage contract provided for a donation inter vivos by the future husband to the future wife of $10,000 within five years of the marriage. The husband died more than five years after the marriage, but before payment had been made, and the widow exercised her right to receive the payment from the late husband's estate. The Quebec succession duty authorities refused to consider the $10,000 as a debt of the estate, asserting that section 22 of the Succession Duty Act was applicable to it and that this section did not permit such a deduction. The relevant part of section 22 reads as follows:

> When property disposed of by gratuitous title consists in a sum of money, the disposition thereof is, for the purposes of this act, deemed to take effect only on the date on which the said sum is really paid.

Duty with respect to the $10,000 was paid under protest and a petition of right was taken, claiming a refund. The Superior Court held that, in the face of the specific provision of the contract that it was a donation inter vivos, and in view of other terms of the contract that could only be given effect to if it was a donation, the $10,000 was disposed of by gratuitous title and section 22 was applicable. It dismissed the petition. *Courey* v. *Attorney-General, Quebec*, [1949] C.T.C. 266.

Montreal WILLIAM J. HULBIG