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Federal Tax Board of Appeals

By FRANK LOWSON

The confidence of the taxpayers in the treasury department's administration of the bureau of internal revenue has been shaken by the recent discussions in the public prints and by erroneous adverse decisions by the commissioner of internal revenue, but notwithstanding these, the taxpayer's hope of getting a square deal has revived with the appearance of the Mellon bill which offers a new tax board of appeals. One construction that could be placed on that offer is that it is evident that the treasury department and the commissioner recognize the need for improvement in the administration of the income-tax law. The country is fortunate in having as secretary of the treasury a man who has the courage to propose such a new board.

The Mellon bill proposes to have the board appointed by and responsible to the secretary of the treasury, but in no way under the commissioner of internal revenue, to sit as a semi-judicial board hearing both the taxpayer and the commissioner of internal revenue and to give an impartial judicial decision on the merits of the cases presented to it. On the other hand several public organizations have proposed to the ways and means committee of the house that in order to give more impartial results, the proposed board of tax appeals should be divorced from the treasury department and should be appointed by the president with the consent of the senate. Congress must decide which of these proposals is to be enacted into law.

It is desirable to restore the taxpayer's confidence. To do so it is necessary to provide such legal machinery as will in the opinion of the taxpayer give him a fair and impartial decision based solely on the merits of his tax case—as one witness before the ways and means committee expressed it, will give him “a fair run for his money.”

Many taxpayers are dissatisfied with the decisions made against them by the commissioner. There can be no question that in many cases these decisions are wrong and that the taxpayer is justified in his dissatisfaction. Even in the cases where the taxpayers' dissatisfaction is not well founded, an impartial hearing is necessary to determine that fact. Furthermore, even in the cases where a taxpayer's dissatisfaction is unreasonable, it is

highly important, still, that a hearing be afforded him, because the bureau of internal revenue is vitally interested in maintaining the confidence of taxpayers that they will get an impartial hearing. The bureau of internal revenue is helpless, in spite of its great power, unless the rank and file of taxpayers have confidence in its fairness. The taxpayer will forgive the bureau more easily for being *wrong*, than for refusing to give a sufficient number of impartial hearings. That is, the public values fairness above accuracy. Both are important. If taxpayers are able to get an expeditious, impartial hearing from a judicial board, before which the government must be represented just as they are represented—a board which does not combine the functions of judging and advocacy—he will feel better satisfied that he is getting a “fair run for his money.” It is not necessary to create a new judicial board to pass on cases other than those adversely decided by the commissioner.

The new bill is unwise insofar as it provides that opinions shall not be written unless a special rule is made to that effect. On the contrary, it should provide that unless the chairman certifies “in the particular case that it is against the interest of the government for an opinion to be written, an opinion shall be written in every case.” This is necessary: (1) because otherwise the board might be making a serious mistake, which the interested party could discover in a few minutes and call to the attention of the board for immediate correction, and (2) because it is impossible to convince a litigant that a case is being fairly decided if the judge refuses to give the reasons for his decision.

As to (1) above, it is clear that a taxpayer cannot point out a mistake in fact or theory, no matter how flagrant it is, unless he knows the ground on which the decision is reached, and he cannot do that without an opinion. As to (2) above, there is virtually a presumption in the mind of a taxpayer that a decision that will not stand publication is probably not correct. To decide a case right a judge must analyze it thoroughly in his mind. If he does that, it is no trouble to write an opinion. If a judge finds that the statement of his reasons for a decision is difficult, it means that he has not had sufficient training to qualify him for his work, or that he does not know the reasons himself.

The proposed secretary's board, being a part of the treasury department, cannot be unbiased as the proposed president's board,

which will more nearly have the status and independence of a court. Regardless of the length of tenure of office, any member of the secretary's board could probably be removed on an investigation and order of the secretary. The members of the president's board, confirmed by the senate, could not be removed by any such procedure.

Other points of difference might be raised, all should be raised now to assist congress in deciding what would best meet the country's needs. The discussion should eliminate personalities. The present secretary of the treasury would undoubtedly appoint the best man he could find. The president would do likewise.

A study of the tax simplification board report and the Mellon bill supplemented by conversation with at least four prominent officials of the treasury department, leads me to the conclusion that the Mellon bill contemplates the discontinuance of the present committee on appeals and review and that the proposed board of tax appeals should take over the work of that committee.

It is hoped that that will not be done for several reasons:

1. The period of 30 days allowed by the Mellon bill in which to appeal to the board from the commissioner's decision may be a sufficient time allowance to the taxpayer in which to complete such an appeal from a decision previously rendered by the committee on appeals and review *but it certainly would not be sufficient time* to prepare and complete an appeal from a decision of the income-tax unit to the board of tax appeals.

2. Conferences or discussions with the income-tax unit do not in practice develop all the points of objection by the department and in many cases do not develop the essential points on which the case may ultimately be decided. The recent order by which the taxpayer receives a copy of the unit's contentions, unsupported by argument or references though they may be, gives the taxpayer an opportunity to prepare further to disprove the unit's supposed facts or arguments or contentions. And later, at the committee on appeals and review hearings further information and briefs have frequently to be filed, either at the hearings or following thereon to answer the committeemen's questions. Nothing should be done by the Mellon bill or the department under that bill to interfere with the foregoing process of developing the case and arguments. If that procedure is cut short or abolished it will be

a serious detriment to the taxpayer first, and to the government second. This is the opinion of a number of practical men.

3. The new board is to be as nearly equivalent to a court as possible. It should not be burdened with investigation work such as the present committee on appeals and review must of necessity do. The new board should only have to decide the appeals on the cases rejected by the committee on appeals and review. That would cut the board's work fifty per cent. and enable it to much more expeditiously give leading and authoritative decisions on much that is wrong now. These leading and authoritative decisions must then be accepted by the commissioner's committee on appeals and review or taken to court. If accepted the result will be a clearing of the tracks for the committee on appeals and review and an increased production therefrom with similar beneficial reflex action on the income-tax unit.

4. If the committee on appeals and review is abolished and all its work transferred to the new board, that board will in a short time find itself relatively in as bad a position as the committee on appeals and review is now with respect to volume of cases decided.

5. The main object to be accomplished by the new board is to restore the confidence of the taxpayer that he will get an impartial judicial hearing. That can best and quickest be done by submitting to the board only the cases decided adversely to the taxpayer by the committee.

The membership of the new board should be made up of lawyers, accountants or economists, and practical business men, each class equally in proportion as nearly as may be.