EVENING SESSION

Committee of the Whole on Bill 47 continued

Mr. Chairman: — Order. When we rose for calling it 5:00 o'clock there was a motion before the committee that the committee stand Section 7 and report progress. This was made by the member for Lakeview (Mr. Malone). Is the committee ready for the question?

Mr. Malone: — Mr. Chairman, I have a number of questions that I would like to direct to the Attorney General about the intention of the government on this particular section and I am particularly intrigued, of course, with subsection 1(f) . . . "any deduction that is not reasonable in the circumstances." I wonder if the Attorney General would just tell me what the government's thinking is in this regard and what a deduction would be that is not reasonable in the circumstances? What basis do you have for this particular subsection? What are you trying to get at? Who is going to decide what is reasonable or not reasonable?

Mr. Romanow: — Well, Mr. Chairman, this section, basically, subsection 1(f) is in its general objective, designed to prevent taxpayers from artificially reducing their oil well income by artificially inflating their costs. Accordingly, since this is the deduction section what we feel is necessary here is the kind of general provision which would prevent a deduction. I am not sure that I could give a specific example at this time but a kind of a deduction which would be viewed to be artificially high. Quite clearly an artificially high deduction would mean a reduced income and a way to get around the tax. Accordingly, the power there is needed in order to make sure that there is no deduction which is unreasonable in the circumstances.

Mr. Malone: — Perhaps you could answer the rest of my question as well as to who is going to make this determination?

Mr. Romanow: — Well, the determination, of course, would be made by the assessor applying the interpretation of the regulations. The regulations say here, under 7(1) that "no deduction shall be made" . . . sorry, I guess I have the wrong section . . . there will be no regulations here. This is an out and out prohibition section. Section 7(1) just simply says "any deduction not reasonable in the circumstances" and the guy who is going to be making that judgement calls the assessor.

Mr. Malone: — That's what concerns me. So what guidelines . . .

Mr. Chairman: — Order, please. I think in order to keep in order I think we should deal with this motion that we have before us and then if you care to go back into the section again, that's fine. But if you can keep and confine your remarks to this motion that we stand Section 7 and report progress, that's the motion that's before you and if you care to deal with that.

Mr. Malone: — What I am trying to illustrate, Mr. Chairman, is that that the government has no idea what they are going to do with this section and because they have no idea what they are going to do with this section that the matter should be stood

to allow for further study and I am attempting, by my questioning of the Attorney General, to try and gather from him the government's intentions now. If you wish to go on with the vote, fine, but we are going to return to this after the vote. I think it is appropriate to me to continue with this questioning and my remarks.

Mr. Chairman: — That's in order if that's the way you intend to go.

Mr. Malone: — Well let me again say to the Attorney General that with this discretion being in the hands of the assessor, it allows him to go to two companies, carrying on business in exactly the same location in the province, having a similar operation (that is the same number of wells) but what it does presumably allow an efficient company which operates on the basis of trying to pay the least tax possible under the Act and so complying with the Act, to arrange its affairs in such a way that it pays less than perhaps the other company which is not so efficient. And what this particular subsection then says is that the assessor can come along to the efficient company and way, 'well, we don't care how you arrange your affairs, you have artificially reduced the amount of taxation that you should be paying.' (this is what you just told me). 'The company that is right down the road from you is not as efficient and as cunning as you are in avoiding taxation so you are going to pay the same tax as that particular company.' Isn't that a logical result of the subsection?

Mr. Romanow: — No, it's not a logical result of the subsection because the hon. member overlooks the fact that there is, of course, a right of appeal. If the assessment is illogical or unreasonable as the hon. member would, in his example, say the assessor would arrive at, there is of course the avenue of appeal. So I believe that the assessor's action are subject to a lot of recall or a lot of review and I cannot agree with your conclusion.

Mr. W.C. Thatcher (Thunder Creek): — Mr. Attorney General, pardon my legal ignorance on this particular subject but I think the member for Lakeview has come up with an extraordinary good point here. Now I believe in your opening response to the member for Lakeview you indicated that you could not give a specific example. I would ask you to consult with your officials and give us a specific example. My curiosity is aroused in this area.

Mr. Romanow: — I say I do not have a specific example readily at hand. Maybe the officials could give one, but it doesn't matter in any event because it would be purely of a hypothetical nature. I say again that the purpose for the subsection is clear, it is to prevent taxpayers from artificially reducing their income by artificially inflating their costs. We will see as to the particular circumstances. I think it is a reasonable provision under the circumstances.

Mr. Thatcher: — Mr. Attorney General, with all due respect, income tax is income tax. Now how do you artificially inflate your costs? Give us a hypothetical example, give me any sort of an example because I believe the member for Lakeview strikes a very valid chord when he suggests the government really doesn't know what this subsection is themselves. They really don't know what they want it for. Give us a hypothetical example.

Mr. Romanow: — Mr. Chairman, one could, I am sure, think of a lot of hypothetical examples.

An Hon. Member: — Just one, just one.

Mr. Romanow: — Let me say, one could think of a lot of hypothetical examples. The question is whether or not they can, under the circumstances, all of the hypothetical examples can under the circumstances be viewed to be reasonable examples. But when the member asks me for a hypothetical example he also presumably is asking me for one which is one that it totally reasonable. I can think of an example which you may not agree with because the moment I give it to you you would say, 'oh no, it never happened'. Buy five Lear jets and try and write it off on cost. Oh no, no corporation would ever do that. Or fly up on a Lear jet to examine one well and write it off, write the cost of the travel off as against the company in business. Whether those are reasonable or unreasonable, I don't know, but those are hypothetical kinds of unreasonable costs, perhaps, under all the circumstances, it would not be permitted. You ask for an example, I gave you two.

An Hon. Member: — He says probably, and sits down.

Mr. Thatcher: — Mr. Attorney General, now I can't believe that you sat down after those two. I refuse to take those seriously. Now let's get down to the specifics. Give us an explanation of two, what you would call, hypothetical examples. Now realistically the Lear jets are again, pretty far out. You've got something in mind for this particular subsection. Now consult your officials, take 30 seconds or a minute or whatever you have to and tell us exactly what you are trying to get at.

Mr. Romanow: — Mr. Chairman, that's exactly what I am trying to get at, the kind of hypothetical answer that I gave to a hypothetical question. It's exactly what we are trying to get at. There may be others that one could think of. I can't add to those examples. The hon. member doesn't accept those examples because he doesn't choose to accept those examples, but that doesn't say they are any less valid. In fact, I would say that, quite frankly, I feel they are good examples of possibilities that could occur. That, I think, would be an unreasonable inflation of costs and wouldn't be accepted.

Mr. Malone: — Let's just use that example but make it a little more logical one. Are you suggesting that a company that says we can maintain our oil wells by having one truck, one service unit and by, perhaps, having more intelligent people involved in this particular job, we can get away with maintaining the six wells in this area with just this one unit, driver mechanic truck, I am not sure what they use, but say it is a driver mechanic truck. But because of the efficient operation of the company they have determined that they can keep their wells running with these few people, this one piece of machinery. The other company that also has six wells in the same field is, perhaps, not so efficient and it determines that we have to use two trucks and two drivers and two mechanics. It really doesn't matter because it is a legitimate expense and it is a legitimate expense, I suppose, if that is the only way they can do it.

Are you suggesting because of the efficiency of one company that it leaves an opening for the assessor to come in and say, well, the one company is getting away with just using one truck therefore, the other company that is using two trucks is in a different situation, therefore, the companies are paying, one company or the other is paying less tax. We determine you are artificially reducing the amount of t axes you are paying because of your efficient operation, pony up and pay the tax. Is this what this leads to?

Mr. Romanow: — No, not at all. I don't see where the member comes to that kind of a conclusion. Under your hypothetical example if the assessor, in his wisdom or lack of wisdom, should decide that one taxpayer's expenses in having two trucks is an

unreasonable expenditure under all the circumstances, the proper course to follow for the operator would be, of course, to appeal that assessment if he couldn't persuade the assessor the other way around.

This section is a flexible section which is designed to give the assessor the kind of freedom which is necessary to block abuse. But I can use that example that you say, perhaps, against you. Maybe one truck for six wells is reasonable, maybe two trucks for six trucks is reasonable, but maybe six trucks for six wells, with six mechanics, six service operators for six well is unreasonable. That would be a kind of situation that might very well allow the assessor to say, no, that is not a reasonable expense under all the circumstances. One can't draw a firm line on these things. Very often there is a fine judgmental line that has to be drawn by the assessor. That is the situation. The assessor draws the line and there it is, but he has to have that kind of freedom. And if the judgement should be wrong then, of course, the avenue open for the taxpayer is to take the necessary appeal.

Mr. Malone: — Another question on this point. At least can you tell me, in the Act, where it is the assessor that has this power?

Mr. Romanow: — Mr. Chairman, I am trying to put a finger on this, but this is quite clearly like an assessment in income tax under the Income Tax Act. There are certain deductions claimed. We all claim them on our income tax. We do them, partly, under the law as it is written up by the income tax rules. We do it, partly, by the regulations as they are ruled. There is an assessment of that and this is what happens here. Section 16(1):

> The assessor shall examine the returns delivered and any other information furnished under this Act, and shall send to every taxpayer a notice of assessment.

It sets out there if it is the right amount should be paid if not there is an appeal and so forth. That is the kind of a mechanism. So that is the provision that is attached there. That is part of the assessment process.

Mr. Thatcher: — Well, if I could get back to this real winner of a hypothetical example that you used, the Lear jet. What part under this Act would be, in the opinion of your assessor, which would be the greater of the evils? The part that cannot be deducted, is that going to be the depreciation of the Lear jet, the depreciation of the capital cost, or is the operation cost providing a pilot, the fuel and the maintenance going to be the part that cannot be deducted? If I could respectively as you that question to your own example.

Mr. Romanow: — I am afraid I can't answer and the boys here don't think that they can give me an easy answer to that because, really, one has to see what the circumstances, the totality of the circumstances, are.

Mr. Thatcher: — I just told you.

Mr. Romanow: — No, you haven't told me and the totality of that taxpayer's circumstances would decide what is reasonable under the circumstances and what is unreasonable under the circumstances, allowing the assessor to take the provision of subsection (f).

Mr. Thatcher: — Well, Mr. Attorney General, under this, I suppose my question is, is your assessor going to evaluate how this company operates? In other words, are they going to have the power to say to the company, and I am sorry to keep referring back to the Lear jet that is the one that you have chosen, but are they going to have the power to say, you don't need a Lear jet. You simply don't need this in your operation, that a fleet of cars will do the job. Is that what he is getting to power to say? I suppose then in essence to then say that they cannot depreciate off the capital cost of the Lear jet. Or are they saying, or does he also have the power if he can determine this particular level of management to them, can he also say the operational costs would involve the pilot, maintenance, hanger, etc., can he also say you cannot deduct that too? Let's go into it a little further.

Mr. Romanow: — Mr. Chairman, first of all I forgot to say that I am glad to see the Conservatives entering into this debate on Committee of the Whole after an afternoon of silence. I wouldn't suggest that it has anything to do with the fact that their leader is outside of the city today. But in any event I welcome the contributions, particularly of my good friend, the member for Thunder Creek.

I want to say however, speaking to this substantive issue that is before us, that the questioner says, look, is this section intended to have the assessor tell the oil company how to run their business. That is what it boils down to your question and the answer to that is, no, this is not the intention nor it is the operation of the law. The law operates here as it does in your own personal or corporate income taxes. You file a personal income tax or a corporate income tax and somebody assesses that and puts out a final assessment notice in the Department of Revenue Canada, under the Income Tax Act of Canada, and they say we are not going to allow this deduction. The fact your farms, ranches, the Lear jet under the circumstances is not a proper allowable one, or under the regulations isn't an allowable one, or whatever, and makes an assessment. If you don't like it and readjust your income tax accordingly and if you don't like it you have your avenues of appeal under the Canada Income Tax Act and this is the same kind of a provision that is applicable here, exactly the same. How one can say, with any precision, as to what is reasonable and what is unreasonable and under what circumstances these things operate, it is not possible to speculate. All that I can say in specific answer to the question is that it is intended to tell the company what it can or can't do. The answer is, no. What this is intended to do is to make sure, as I have said, that the company can't artificially inflate or add costs which are really not a part of the cost of pulling the oil out of the ground which is part of the revenue.

Mr. Thatcher: — Mr. Attorney General, under whose jurisdiction or what department or what minister will this assessor be operating under?

Mr. Romanow: — It is Mineral Resources.

Mr. Malone: — Subsection (e) of Section 7(1) as I read it, but before I get to that let me just ask another question on (f). In an earlier reply to my question you said that this subsection was required to prevent a taxpayer from artificially reducing the taxes paid. I assume you used the word 'artificially' advisably in that it is the subsection that says that even if your tax deductions are legal or permitted within the Act and if it is artificial you can't do it. So if you have that particular subsection here in 7(1)(f), I wonder if the Attorney General can tell me why he needs, what I call rather extraordinary powers, in Section 31 which would seem to be the similar provision — I am sorry, not 21, 34 which I took exception to the other day when I was going over these amendments in general. That is the subsection which talks about artificial reductions. It seems to do the same

thing as Section 7(1)(f) and I am inquiring of you now as to why you need both sections?

Mr. Romanow: — Well, to some extent the powers are complimentary, but under Section 34 here the minister is given the power to make directions if he determines that one of the main purposes for any transaction was, obviously as the side note says, an improper avoidance or deduction of taxes, whether that transaction was entered into before or after the effective date of the Act. The tax here is to be assessed or reassessed and collected in accordance with any direction of the minister, under Section 34. So we are dealing here with a transaction or transactions which the minister has determined, really are in effect in a sense almost avoidance or out at arm's length, if you will, under 7(1)(f). We are dealing with one of the factors which the assessor must take into account in the assessments of the tax.

Mr. Malone: — Let me then turn to Section 7(1), I guess it's (c), the tax section. Do I take it, Mr. Minister, from this particular section that the purpose of that is to disallow as a deduction any taxes a taxpayer may pay to the federal government by virtue of the provisions of the Income Tax Act Canada?

Mr. Romanow: — Well, under 7(e) . . .

An Hon. Member: — Pardon me, (c).

Mr. Romanow: — Yes, well under 7(c), income profit and similar taxes, which would of course include federal income taxes and provincial income of corporation taxes and I would say to the hon. member that it's been the law for quite some time that in calculating income or profit for the purposes of any income tax statute no deduction is allowed for income or profit taxes paid to any other jurisdiction, unless of course this is authorized specifically by the taxing authority or a taxing statute. The member will know of course that there is nothing in law to prevent two jurisdictions from imposing taxes on the same income of a taxpayer. The amount of tax paid to one jurisdiction is not a deduction for the purposes of the other jurisdictions since it's not an expenditure for the purpose of earning the income before taxes. This is a fairly longstanding provision so the answer to your question is correct as you've asked it. The prohibition of deducting federal income tax I think is self-evident.

Mr. Malone: — My question then to you is, are you saying to me that Bill 42 or amendments or regulations had a similar provision or a provision that had a similar effect as Section 7(1)(c)? My recollection is that it didn't. I could be wrong but my recollection is that this is changing the situation.

Mr. Romanow: — I don't know what the exact provisions on Bill 42 were in this regard but what, of course, must be kept in mind is that Bill 42, so the Supreme Court also told us, it was not an income tax. We are dealing here with an income tax, we are giving accordingly in the determination of the income that is to be taxed the allowable deductions. The question, therefore, comes up in determining that income whether or not tax is paid to another jurisdiction is a cost of doing business. I am saying that the law has been stated for some time in income taxation law that it is not a cost of deduction or cost of doing it. I say to the hon. member that that's the situation.

Mr. Malone: — Let me again, I know what the law is, Mr. Minister. What I am asking you is, does this particular section in any way change the effect of previous taxing authority, whether it be Bill 42 or some other authority that allows you to tax the oil industry? I suggest to you that the effect of this section changes the situation between

Bill 42 and Bill 47. If it doesn't, I hope that you can explain to me how it doesn't.

Mr. Romanow: — Well, Mr. Chairman, I am not quite sure how I can answer this question other than to perhaps put it the other way around. We are not here dealing with Bill 42, we are dealing here with an income tax Act and I have to come back to the same answer that I gave the hon. member earlier. Bill 42 was not an income tax Act and that the Supreme Court said. This is an income tax Act and as an income tax Act this is the standard provision. That's the only answer I can give to the member. When he says, what did you do under Bill 42, he is trying to compare apples with oranges, to use an old cliché, and no such comparison can be made.

Mr. Malone: — Well, let me put this to you then. Is it conceivable because of this particular provision that an individual taxpayer could be put in a position of losing money on his day to day operations because of the fact that he is required to pay income tax to the federal government on profits that accrue to him as a corporation and at the same time, on the same profits, he's required to pay taxes to the province of Saskatchewan pursuant to the provisions of Bill 47?

Mr. Romanow: — Well, Mr. Chairman, one is tempted to turn the tables in a sense on the Liberals, on the Leader of the Liberal Party or at least to try to turn the tables on them by saying that I don't know, it's possible I suppose, to answer the question specifically. But I remind you that if this kind of a situation takes place, I am not sure that it will have that impact. I remind you that it was the Turner budget of May, 1974 which resulted in this kind of an invasion, in a sense, of the provincial field. As I say, one is tempted to get into that. I don't think that much can be done by getting into that kind of a discussion tonight but that is partly relevant to the extent that we've taken the position that there is provincial primacy in the field of resource taxation over and above any of the other arguments that I've talked about in terms of allowing the standard deductions in income tax and arriving at the tax payable. So I can't answer with precision whether or not somebody could be losing because of the tax situation. It's possible, I suppose, is the short answer.

Mr. Malone: — Well, that's what I wanted to get to, of course. What you are doing this particular section is similar to what happened under the Turner budget, which you deplored and damned and I can't let it go by without commenting that you were the author of that particular piece of legislation because of your tactics under Bill 42, but I don't think any purpose would be served by getting into that particular debate again. What I bring to your attention now is that when you reached this position where, quite properly, the government of Saskatchewan indicates that it has the right to tax resources and when the Government of Canada indicates, quite properly, that it has a right to tax income, whether it comes from resources or not, that you're set on a collision course and that somewhere along the way somebody is going to have to sit down and determine, as I said before, who can tax what and under what circumstances. Now some time ago we urged on the Premier the course of action whereby you would attempt to get together a First Ministers' conference to determine this particular point. The Prime Minister was recently in the province before Christmas and indicated at that time that he was favourably disposed to such an arrangement. Now my question to you at this time is what headway, if any, has happened in this regard? Have there been any discussions with the Premier's counterparts in other provinces and in particular, Premier Lougheed, about such a conference so that this question can be determined once and for all?

Mr. Romanow: — Well, Mr. Chairman, I don't think very much by way of concrete results can be explained or set out this evening because the simple fact of the matter is that while there have been on again and off again discussions, jointly and separately, involving some of the provinces or all of the provinces, involving the federal government and so forth, there has been no kind of an accommodation or arrangement arrived at. I don't think the agenda is quite firmed up for the First Ministers' meeting in February coming up in a month's time or a month and a half's time but my understanding is that there will be at least room for discussion of this very situation at meeting at that time. I don't know what results we can expect but certainly Saskatchewan, I think, would be prepared to look at some sort of an accommodation with the federal people but it must be done and it must be consistent with our belief that, as I have said, in the field of resource taxation the provinces have primacy in that area. If we can sort of work from that assumption then I think some kinds of arrangements may very well logically result but quite clearly it is a bone of contention.

Mr. Malone: — I am not suggesting for a moment that you back off any position that the provinces have available to them to ensure that the provinces get the maximum amount of revenue from resource taxation. But what I am seeking from you now is an acknowledgement on behalf of the government that until such time as such a meeting is held or until such time as administrative arrangements, if that's a correct recollection of the Prime Minister's statement, are arrived at is that we are not really going to solve the problem on resource taxation by passing a law in the province of Saskatchewan when all the other provinces are going to be affected by this critical question and, indeed, the only way you are going to be able to get the whole murky situation cleared up is by such a conference. Now do I have your undertaking, as a member of the government, that you will be seeking such a conference at the earliest possible date?

Mr. Romanow: — Well, Mr. Chairman, I can't give the member that kind of a commitment because I really haven't had an opportunity to discuss it with the Premier. I really think he's responsible for those kinds of commitments, but my failure to give a specific commitment to get a conference to work out the administrative and other kinds of accommodations, ought not to be viewed negatively because the fact of the matter is, as I have indicated in the first part of the answer, a minute or so ago, this situation will be back up for discussion at the First Ministers' meeting in the middle of February. I don't know whether it is a specific agenda item or what the situation is but I do know that it will be discussed at that particular time. I think that sometimes, while this matter has not moved very quickly, that it's best be left to its natural course and see where it goes.

Mr. Cameron: — Don't you think one of the necessary things here is to seek the view of the federal government with respect to the deduction of your taxes before they calculate their taxes? Now that's the very dilemma you got into with respect to your charges under Bill 42 because the federal government, as you know, moved to disallow the expensing of royalties paid provincially with the exception of the first 25 per cent.

Now what you are saying here is that the federal government is saying to you, first of all, you can't expense any portion of your provincial royalties, with the exception of that 25 per cent. You didn't like that very much, and you are now saying in this Act that any portion of federal tax is not deductible first in determining what your income is for taxation purposes under this Act. So you are sort of back in that same ball game again with them and the rules presumably now are sort of wide open for additional negotiations. Isn't it essential to tack that down?

Mr. Romanow: — Well, Mr. Chairman, I sympathize in some ways with the objective and I don't know what can be gained by me sort of repeating again to the members that we try to achieve that objective but we have been doing that now since 1974, May, 1974 with the federal government and there have been all kinds of representations with them for three and one-half years.

Mr. Malone: — What has happened since CIGOL?

Mr. Romanow: — Well specifically since November 23 I don't think anything specifically happened other than perhaps the exchange of some document (well I won't say exchange of documentation) but at least the discussion of this matter at the forthcoming First Ministers' meeting in the middle of February. It's not because of CIGOL, but the First Ministers' meeting was going to come on stream in any event because of Prime Minister Trudeau's objectives, but CIGOL came in between there and conveniently we will be able to discuss it. I can't say it is because of CIGOL but that's probably the event since CIGOL. I don't know what more I can say other than to say that we have been met with (I don't mean this in any political sense necessarily) but we have just been unsuccessful in doing the kinds of things that the member for Regina South and the member for Regina Lakeview want us to do.

Mr. Cameron: — What I suggest to you now is you are making it even worse. Because now what you are saying is that how you calculate income under this act is you calculate your gross income and you make certain deductions. Now you are not giving the companies an opportunity to deduct what they pay in the way of income tax. So they calculate what their income is. They pay a pound of flesh to the federal government. You are not permitting them to deduct that pound of flesh under your scheme and you say you want a pound of flesh with respect to the same subject matter here. Now as you know the last time this happened is when it was done in reverse. The federal government didn't disallow the expensing of provincial royalties. You got yourself into a jam and you had to back off your taxing, you had to give special incentives to the industry to encourage them to explore and then you had to go into Estevan and give them a sort of special subsidy program there to keep some of those people in business and so on. So you had to back off substantially and the federal government backed off a little bit. Now you are back into this whole new area but you are the guy it seems to me that is sort of taking 100 per cent at this stage.

Mr. Romanow: — Well, Mr. Chairman, I really want to sort of emphasize that 7(1)(c) that we are talking about here does not change the situation any. Any kind of a royalty, I think in fact any kind of a payment or tax payment by a company to the provincial government could not, ever since Turner's budget in May of 1974, be deducted as your cost of doing from the federal income tax payable. That's the situation. This doesn't change it one bit, so when the member for Regina South says that we are back into it or we are compounding the situation, we are not compounding it because up until May 1974 the rule was that anything paid by a company to a provincial government was deductible from the tax, the federal income tax. In May of 1974 Mr. Turner in his wisdom changed those ground rules, the first ever change in the history of Canada. There it is. We have been working with this new rule for the last four years. All this is, this is a royalty, this is an income tax and the same provision applies. Now we would like to see some sort of an arrangement or accommodation worked out but to do that at the expense of what we say is paramount here and end the provincial primacy in the resource taxation area, which is what I think is implied if not directly suggested by the hon. member for Regina South, something that we can't go along with.

Mr. Cameron: — Well I want to make one little observation. Mr. Attorney General, you are confusing chalk and cheese. You keep talking about taxes being matters of expenses. Now you don't expense taxes. The Income Tax Act gives you certain expenses that you can write off against your income. You are given certain exemptions that you can deal with. You are given certain deductions under the Act. Taxes are not matters of expense. You keep referring to taxes as not being money spent to earn income, which is a test of an expense, but a tax isn't a test of an expense.

For example, any taxpayer, take the ordinary farmer, he pays education and health tax. He is permitted to deduct that expense from his expenses in computing his income. He pays municipal property taxes, he deducts that as an expense in computing his income on which he has to pay tax. Well those are the logical, normal rules. Now you are trying to lead us to believe that ordinarily taxes are not expense items, which is a lot of nonsense because taxes normally are expense items. And I have just proven it to you by indicating to you that farmers are entitled to deduct education and health tax and they are entitled to deduct property and municipal taxes, plus all the other licence fees and expenses they incur by way of tax in generating their income.

Mr. Romanow: — Well, Mr. Chairman, again, I don't know if much can be gained in going over this again, but I maintain the position that there are two points here. First of all, an income tax legislation, it is standard not to allow the deduction of income tax paid to another jurisdiction as far as the taxing jurisdiction is concerned.

I am saying that in the are of resources the effect of Mr. Turner's budget was an attempt to muscle the provincial governments out of their area of resource taxation, their additional area, that's the impact of it. And I am simply saying that whether he had the right to do that legally, that's one issue. The impact and the effect of it is another issue. But in any event, my point is this: (1) that's the standard provision in an income tax; (2) we can continue to work with the federal government on this area and see if we can come out to a solution.

Mr. J.G. Lane (Qu'Appelle): — What representations did you have from the oil industry with regard to specific provisions in Section 7?

Mr. Romanow: — With respect to Section 7(1)(a), (b), (c) . . . all the way down we had nothing . . . but actually the only representation we had was on 7(2)(b) and that deals with overhead or administrative expenses. They simply said that they thought some difficulties in the regulations could come out when they are formulated if the wording persists as set out in 7(2). It talks about unit agreements in existence that provide contractually for overhead and administrative changes and we understand there is no intention to disallow the same and there is no intention to disallow the same with respect to these unit agreements. And that's not very much. That's the end of the objection and that's the only comment on all of Section 7 from the oil industry.

Mr. Lane: — In other words, you are saying that the oil industry is prepared, in effect, to allow the government of Saskatchewan to review its books to such an extent as to be able to basically go into the day-to-day operations of the oil companies and they made no strong objection to you?

Mr. Romanow: — Well, Mr. Chairman, let's be clear about what the member says. The member started off by asking what did the oil companies say to you about Section 7? This I have answered specifically. There is a short four-sentence argument which I

have advocated on Section 7(2)(b). I don't believe that there is anything else on the submission with respect to the business of fear about going into books. I would have to go through the submission in detail to check that out. But that's another issue, unrelated to Section 7.

Mr. Malone: — Let's pursue this income thing from another angle. I usually don't like asking questions that I don't know the answer to but I will take the chance this time. Prior to CIGOL am I correct in saying that a federal tax liability for a company carrying on business in the oil patch in Saskatchewan, the companies were allowed to deduct 25 per cent of the royalties that they paid to the province of Saskatchewan from their federal tax liability as an expense? Is that correct?

Mr. Romanow: — I am advised that they were allowed to deduct 25 per cent of their net income as a resource allowance.

Mr. Malone: — Sorry, 25 per cent of their net income or the royalties that they paid? I understood it was on the basis of royalties.

Mr. Romanow: — Net income.

Mr. Malone: — Now, here is the question I don't know the answer to. As a result of Bill 47 being retroactive, wiping out the provisions of Bill 42, companies now in effect filing new returns for provincial tax liability under the new income tax Act being Bill 47, does it change in any way their liability to the federal government from the years 1973 to 1977, either to their advantage or to their disadvantage?

Mr. Romanow: — The explanation that I get is, for all purposes of the questioning this evening, the answer is no, there is no change. They get their resource allowance. There is, however, a period, I am advised by the boys here, between January 1, 1974 and May 1974, and May 1974 being the time of the Turner budget which is kind of a grey area, and we are working on the federal people for that period in order to allow the resource allowance of 25 per cent net income as resource allowance to work, also, for them during January to May 1974.

Leaving that as an aside for the time being there should be no change in the circumstances.

Mr. Malone: — then the period that you refer to, that early 1974 period, how does it work so far as the oil industry is concerned? Do they get an advantage by the new Act or are they facing a disadvantage because of the new Act?

Mr. Romanow: — Well, Mr. Chairman, this gets all rather complicated but the officials advise me that they have been working with the federal government to try and work out an administrative arrangement whereby nobody is penalized so that the question you asked can be answered so that nobody gets hurt and nobody gets advantaged during that period of January to May of 1974. During that period from January to May 1974 it was straight payment of royalties. Those were the deductible amounts allowed. Since May of 1974, of course, the Turner budget changed the ground rules with respect to the 25 per cent net income. There are some difficulties there but we are in active consultation with the feds to try and in effect, this is a bad word but I will use it this way, to equalize out the situation during this period so that there is nobody advantaged or disadvantaged by it.

Mr. Malone: — I am not sure I follow you and I'm not sure you know what you're talking about but anyway let me pursue it a little further. In an earlier question to you I believe I asked you about negotiations with Ottawa. I suppose I framed it at the higher level of the Premier but do I understand that there are negotiations going on with Ottawa at the departmental level about the provisions of Bill 47 and do they go beyond this particular problem that I have raised?

Mr. Romanow: — These discussions with the federal government are at the official level involving this period of January to May, 1974. It took place very shortly after the CIGOL decision. I think the federal people were here at the time or soon after the CIGOL decision as to allow this matter to be raised at that particular stage.

Mr. Malone: — We are correct in assuming that for your departmental officials to intelligently discuss the matter with the officials at Ottawa, they must have some knowledge of what the tax rates are under Bill 47, to be able to sit down and determine this equalization situation that you are talking about.

Mr. Romanow: — I'll bet you thought you had me, ah? No, we don't need it. Apparently the discussion has been going on a basis of the principle and the concept.

Mr. Malone: — Let me just ask one more question on this and I'll get off this area. Do you anticipate having to have amendments to this particular Act or legislation of some nature to put into effect whatever administrative arrangements are evolved as a result of the negotiations that are going on?

Mr. Romanow: — I don't think so. I don't want to close the door because I know that I've had enough bills that I have piloted through the House and we have had to come back with some amendment or other but right now we can't foresee this because of this.

Mr. Cameron: — Well, let me ask you how that subsection (e) would apply to a net royalty lease? Do you propose to permit the deduction by the operator of the ell of the 50 per cent that goes to the Crown of don't you?

Mr. Romanow: — What's your question again, I'm sorry.

Mr. Cameron: — Among other leases that you have out do you recall the old net royalty lease you used to have which in the last three or four years you have re-instituted. Under a net royalty lease the operator of the well drills the well, produces the oil, 50 per cent of the income is attributable to the government, 50 per cent the operator retains. That's the usual arrangement under those net royalty leases although there are different percentages that apply. Let's take a standard net royalty lease under which 50 per cent of the oil that is produced belongs to the Crown, goes to the government of Saskatchewan under that net royalty lease. Are you permitting the operator of that well to deduct the 50 per cent that is payable to the government? If not he is paying his income tax on 100 per cent of the production but he is only getting 50 per cent. I don't see how, under subsection (e) you are giving him the right to deduct the 50 per cent of the production he pays to the government by way of net royalty.

Mr. Romanow: — No, the answer is, no, to the question. The net royalty lease is, I am advised, in the same category as something known as a bonus bid and the answer to the question there as you have explained it is, no.

Mr. Cameron: — Well, let me understand, is an operator with a net royalty lease permitted to deduct the 50 per cent of the production that goes to the Crown under a net royalty lease?

Mr. Romanow: — No.

Mr. Cameron: — How, you tell me how you can explain the justification of that. If I am an operator and I have a net royalty lease and let's suppose I produce 100 barrels of oil in a given day, 50 of those barrels belong to the government under the lease and I retain 50 barrels. Now are you saying I have to pay tax on the whole 100 barrels even though only 50 come to me.

Mr. Romanow: — I'll try to give an explanation. Is your Dad giving you the bullets here to fire away? I shouldn't shay that because I know that you're . . .

Mr. Cameron: — I didn't hear that.

Mr. Romanow: — Well, I said is your father giving you the bullets to shoot at me here on bonus bids and net royalty leases? You've got to watch these Camerons. Seriously for a moment, I'll try to give an explanation and if I don't make it clear take another run at me and I will try to get the officials to explain it to me again. As I understand the situation, on something called a bonus bid, the bid and the money bid for the production is allowable as a deduction; it's allowable as a cost of doing business.

In respect to a net royalty lease, on the 50 barrels which are paid to the government, that is allowed as a deduction as a cost of doing business, but where the confusion has come in, on my part or otherwise with respect to subsection (e), the royalties are not. If you view the 50 barrels as a royalty, you don't. The 50 barrels is equivalent to the bonus bid cost. Rather than paying an all round sum in your initial bid you are saying, look we will take it on a net royalty basis and I will pay you the percentage, the 50 per cent as the cost rather than for the bid. If you take the bid sum you can deduct it but you are not doing it on the net royalty, you're paying a certain percentage through the barrels. If you're paying net percentage you're paying through the barrels.

Mr. Cameron: — Mr. Chairman, my friend is, I think, wrong about that. Listen, we've got two items here. When you bid to acquire a net royalty lease you offer a cash payment in order to get your net royalty lease.

Mr. Romanow: — It can be very small.

Mr. Cameron: — Yes, it can be very small. Suppose I want to bid on a half section of land and I will offer $5,000 to get the lease, that's the bonus bid. Now you say that is deductible and I agree with you that that would be deductible as a bonus bid. That's an expense. Then I get my lease if I am successful. Now I have my lease in my pocket and under that lease I have to pay to the government such percentage of the value of the production as I bid on. If, as is usual I bid on the basis of 50/50, I would then have to pay to the government the net amount of 50 per cent of the production, and that's a royalty under the lease.

Mr. Romanow: — No.

Mr. Cameron: — Well, you say no, but I tell you it is. Yes, it is. Well, as my friend knows, he is entitled to collect a royalty. A royalty traditionally is in the nature of a rent paid for the use of the land belonging to the government. That's how, through all of these years you are entitled to collect royalties. It is not an indirect tax for that reason. And I believe that those payments are called royalties under those net royalty leases. Now you check that and tell me under what section I can deduct the 50 per cent that I have had to turn over to the government by way of cash incidentally. That is paid in cash and not in kind.

Mr. Romanow: — We will just take another run at it here, O.K.? the advice I am getting on this is that you would be deductible under Section 7(2)(c) as a pre-production expense.

Mr. Malone: — While my colleague considers that, 7(2)(c) doesn't permit any deductions unless authorized by regulation. Now what is the anticipated regulation, that 50 per cent will be allowed as a deduction?

Mr. Romanow: — Well the . . . I don't know what the 50 per cent figure — I don't know whether it's a 50 per cent figure or not. The intention would be to allow the net royalty figure, the percentage figure whether it's 50 per cent or whatever. That's the intention that I know is the present thinking.

Mr. Cameron: — Look, surely what you are doing is taking a quick run at this. Surely if you can't get a deduction under 2(c) . . . If you look at subsection 2, subsection (c), that's an expense that you are not allowed unless specifically authorized by regulation. But that is called a pre-production expense. How could you possibly dub this a pre-production expense, and remember that to do so you would fly in the face of the express words of subsection 7(1)(e) which specifically, with no flexibility disallows the royalty? Or it says that any amount paid or payable to the Crown under a Crown lease. Well the 50 per cent is derived under a Crown lease and it is clearly payable to the Crown.

Now as you know, in interpretation of statutes, you look at the express words of the act. Those are the express words of section 7. You are not permitted those deductions. Now I don't see how you can go into subsection 2 and say by some indirect process you could be entitled to a deduction.

The only point I make in conclusion is this, and it is evident with respect to all of us. I think if we asked a lot of detailed questions that we could be here for another six months. What I think this demonstrates is that you have got a whole host of problems here yet unresolved, and it's unfortunate. Maybe under the circumstances it is understandable, but it really is unfortunate that an act of this variety has to come before the legislature with all of these questions which yet in my view, clearly remain to be answered. I wouldn't be at all surprised if over the next three or four years, we see the legislature being asked again and again and again to approve amendments to the act because, and frankly I weep for the people who have to administer it. As I say we are only scraping the surface in respect of all the difficulties that will arise.

Let me put to you another question under subsection (e), section 7. Will there be a deduction for the royalties or moneys currently being paid to the government by oil companies under The Mineral Resources Act? Now as you know, dating back to November 1975 you ceaions of The Mineral Resources Act, and that was in the nature

of a royalty. And again, subsection (e) of Section 7(1) would disallow that as an expense. Now surely to goodness these people are going to be permitted to claim as an expense the amount that they have paid under the provisions of The Mineral Resources Act from November 1976 to January '78.

Mr. Romanow: — Mr. Chairman, first of all, let me say this. With respect to the net royalty lease I grant the member for Regina south an argument. I think there is no way around that. But I do say that it's not such a grave argument as he would represent. I do believe that when you look at Section 7(2)(c) view the net royalty lease in the nature of something equivalent to a bonus bid, where you're bidding, a pre-production expense, you can accordingly cover it by regulations. I know the hon. member for Regina south will immediately say ah ha, but look it, it's called a net royalty lease and under (e) it's a royalty and you are not allowing any deduction on a royalty . . . what is it and he's going to get into an interpretation. We're going to have to take a look at that. But in any event, I don't view that as any insurmountable or difficult problem. Nor would I say, with all due respect to the hon. member for Regina South, I certainly am not going to pretend that I know the intricacies of the oil industry but I don't believe that this bill has got too many difficulties posed in it; even the net royalty lease situation vis-a-vis pre-production expense is something I argue as manageable. So I simply make that observation in passing.

However the question now is: what happens to the sums paid since November of 1976 under the so-called royalties under the mineral taxation, the other statutory provision? The situation is that under Section 7 they are not allowed as a deduction, as a cost of doing business, as an expense, by anything in Section 7 but they are allowed as a deduction from the amount of tax payable under this bill, under Section 12, which is something that comes up later on, a deduction from tax otherwise payable. We have a House amendment attached to that. So the answer to the specific question from the member for Regina South, not as a cost of doing business under Section 7 but yes, as an amount owing for the tax under Bill 47, a set-off or a credit.

Mr. Malone: — Well, I'm not sure why the member for Regina South is so kind tonight and is not pursuing this argument. I think it is ludicrous to suggest that this royalty is a pre-production expense. I'm sure the Attorney General in due course will be fixing and patching the Act up to clarify the situation.

Let's move on to another point. Subsection (2) which states no deductions whatsoever in these particular categories until permitted by regulation. I just can't for the life of me understand why you have administration in there, which is an expense that surely you are going to recognize as an expense of carrying on business and at this stage saying, no deduction shall be allowed for it until approved by regulations. What are you trying to get at here? Surely the section should read that any overhead or administrative expense permitted by normal accountancy practice is permitted, rather than just disallowing it holus-bolus. Now, what is the problem that your officials foresee by having this particular section there to cure it?

Mr. Romanow: — Well, Mr. Chairman, with respect to the overhead and administrative expenses portion that we are dealing with here, I think all members of the House would recognize that the nature of the industry is such that companies will have operations in more than one province very frequently and occasionally there is a question of what portion of the total cost should be allocated to Saskatchewan production. We say in order to achieve some administrative sense out of this, to achieve some administrative simplicity if you will, we're looking at practices currently

applying for unit operations for the determination of the appropriate overhead or, alternatively an allowance on a per well basis. Where such expenses are made within Saskatchewan for purposes of production in the province, actual and reasonable expenditures will be allowed. Now, what we need here by regulations is a degree of flexibility in order to attain this particular kind of sensitivity in allowing those expenses which are categorized as overhead or administrative. I have tried to pinpoint the kind of problem which is the most obvious, namely, where a company has an operation in more than one province and we're trying to determine the amount of the cost of the production which is directly actual and reasonable expenditure as applied to the province of Saskatchewan. The best way to go about that is to prohibit it in order to avoid a holus-bolus flooding of all kinds of claims for expenses in this area, prohibit it and then by regulation apply the normal and hopefully administratively simple practices which are currently in play.

Mr. Malone: — Surely you're just saying exactly what I said, is to do it that way. What do you anticipate? Are you going to set a per dollar figure for every taxpayer in the province as to what he will be allowed as an administrative or overhead expense as per his production in this province or is it going to be a percentage based on some scale? Surely this is not too much to ask at this stage as to what your plans are. In due course these companies are going to have to start trying to complete these returns.

Mr. Romanow: — The present thinking is that it will be done on a per well basis, dollars per well allowed for overhead or administrative expense.

Mr. Malone: — What you are saying is an arbitrary figure per well, $2, $20, I don't know what figures you're looking at. Is that what you are getting at, an arbitrary per dollar figure?

Mr. Romanow: — I think that it's most likely to be, rather than an arbitrary figure per well, computed in a sense on that basis but what probably will happen is averaging of all the current administrative and overhead expenses and applying that on an average basis.

Mr. Malone: — Well then, what you are doing is artificially setting an expense limit, having no consideration really for the actual administration or overhead, if you're going to do it on a per well basis. You're in effect saying, if you have got 20 wells, therefore we deem your administration or overhead to be X number of dollars, no matter what they have. Isn't that what you're telling me?

Mr. Romanow: — Well I think, Mr. Chairman, that our position is as I have indicated that we'll want to hear from the industry on this. They have already written to us particularly on this aspect of overhead or administrative expense. The only thing that I can do is to indicate to you that in our conversations with the industry they say this, they expressed concern on overhead or administrative expense. They say this, we foresee difficulties when the regulations are formulated if this wording persists. There are unit agreements in existence that provide contractually for overhead and administrative charges and we understand there is no intention to disallow the same. That's right, there are unit agreements in existence that provide contractually for overhead administrative charges and we don't intend to disallow the same. That is the only concern of the industry related to this particular section What we intend to do is to apply an overhead or administrative expense and tend not to disallow this as they have

indicated on the basis of the usual normal procedure. But there was no way we could that in legislation, we had to have that flexibility to do it by way of regulation.

Mr. Malone: — Let me move on to the next subsection on exploration, development or pre-production expense which we touched on earlier. Again, how are you going to set that by regulation? Surely, without knowing too much about the oil industry, but I would assume that some wells are very difficult to bring in, you have an extra expense because of the long hours on the rig; some wells are relatively easy to drill. What are you going to do? Are you again going to set an artificial figure to cover the entire province without any relation whatsoever to the actual expense incurred?

Mr. Romanow: — Mr. Chairman, I'm not so sure that the hon. member here is talking about a situation which pertains to overhead or administrative expense, as much as he's talking about exploration, development or pre-production expense. In this regard, Mr. Chairman, what we must keep in mind is that we have in effect, the pre-1974 and post-1974 period. What we will have to do is take into account, with respect to deductions, for exploration, development or pre-production expenses, those two different periods.

Mr. Malone: — This opens up a whole new can of worms, as far as I see it. What about exploration, development or pre-production expenses that have already been determined by a taxpayer prior to now, approved by the federal government in the tax he pays to the federal government. Are you going to re-open that whole can of worms and say that company X who has legitimately declared certain expenses up until now is going to have to go back and re-calculate the expenses on this artificial formula that you are suggesting?

Mr. Romanow: — Well, Mr. Chairman, the answer is no, we don't intend to do that. We don't think that will be the effect of the regulation that is passed here.

Mr. Malone: — They must though. The Act and the regulations are retroactive. How is the taxpayer to avoid going through this particular exercise?

Mr. Romanow: — Mr. Chairman, I just am not sure that I fully understand what the member is getting at because, well perhaps you could rephrase the question.

Mr. Malone: — Let me put it this way to way. These taxpayers no doubt have already filed federal income tax returns for the period that is going to be covered by the retroactivity sections of this Act. Now I suspect that some of them have carried on business strictly in Saskatchewan and that when they filed those returns they figures out certain expenses allowed to them pursuant to the Income Tax Act Canada expenses for exploration, development or pre-production in the province of Saskatchewan. They calculated those expenses, they showed them in their federal income tax return, they were allowed or disallowed as the case may be, tax was paid. Now what you are saying to this particular taxpayer is he has to go back and go through that entire exercise again to comply with the regulations that are going to be set under Bill 47 and indeed the expenses that he has already calculated and presumably were approved by the federal authority are now going to be somehow challenged or recalculated because of this provincial legislation.

Mr. Romanow: — No, Mr. Chairman, we don't intend that, we intend to follow the federal definition as closely as possible.

Mr. Malone: — Well, O.K., you say as closely as possible. Can I just take that to mean you are going to follow whatever was done on the federal return?

Mr. Romanow: — As best as we can.

Mr. Malone: — Does that apply as well to items (a), (b), (c) and (d)?

Mr. Romanow: — I think with respect to items (a), (b) and (c), the answer is yes. With regard to the depletion we may have a small change there because the federal income tax depletion provisions there were — I think there has been a recent change — for a while they were perhaps a little more generous than we would be prepared to follow but in any event with respect to (a), (b) and (c) the answer is yes, we will try to follow it as closely as we can. On (d) depletion we have not yet decided, we're looking.

Mr. Malone: — Do you want to make a speech?

Mr. Bowerman: — No, you are doing fine.

Mr. Malone: — Well, just let me continue then. Let me say this to you then. I assume from what you have told me is that when the taxpayer completes the returns under Bill 47 that he will satisfy all the requirements of your government as far as the items covered in Section 7(2) are concerned by simply filing the same thing as he did with the federal government with the possible exception of the depletion allowance.

Mr. Romanow: — No, you're putting words in my mouth. What I said was what I shall say here again. With respect to the definitions for these deductions we will try to make them in the regulations correspond as closely as possible to the federal income tax definitions for deductions. We will try and make them in such a way so that there is as minimum a disruption to the taxpayer's return that he is required under Bill 47 and consistent with his federal income tax returns. That's the objective, I can't go the one step further and say that all we have to do is lift off the returns. There may be some differences, I've indicated that on the depletion one we're still looking.

Mr. Malone: — Before we get to the vote on the amendment, Mr. Chairman, just let me say this. Nothing has demonstrated more the necessity for having this clause stood and having these matters referred to the Law and Amendments Committee or to some committee to give them a proper hearing and a proper consideration. It's apparent that the Attorney General through the questioning of the member for Regina South has indicated at least one instance the matter as it is now set out in this Act is not covered properly. The answers may I suggest to you have been vague. It's been a matter of we're going to refer it to somebody to do this or we're going to follow that maybe. The government really doesn't know which way it's going to go in setting out the deductions that are so implicit to an income tax Act. And may I suggest to the Chair and to members of all parties that the amendment for that reason should be adopted. That if the government is concerned about passing a proper income tax Act that we can move to do the things that a legislature would normally do and set out the exemptions and deductions from the income tax Act by consideration by the legislature. I ask all members to support the amendment.

Amendment negatived.

Section 7 agreed to.

Section 8

Mr. Chairman: — Section 8 — Limitation on deduction of royalties.

Mr. Romanow: — I have an amendment, I am proposing a government amendment on Section 8.

Mr. Chairman: — Yes, that's true but we have two other amendments, Mr. Minister, that come prior to that.

Mr. Malone: — Mr. Chairman, the amendment that was tabled by the member for Wascana, do I understand the government is prepared to stand the section until the member for Wascana is going to be back? Well, I am standing it only for the purpose of considering his amendment and I am not saying to stand the section right through. I understood that some agreement had been made to permit that.

Mr. Chairman: — I am not aware of any. The amendment, if the member isn't here to move it we are not in a position to put the amendment. Then the next amendment is an amendment by the hon. member, Mr. Romanow, and it amends Section 8 of the printed bill . . .

Mr. Romanow: — Mr. Chairman, I wonder if I could just go back to this in the interest of my other hat, House Leader. The discussion we had today at 5 o'clock said this — the member for Wascana was not going to be here this evening and he wanted to move his amendment, he wanted the right to move the amendment and he wanted me and the Conservative caucus members to agree not to move this amendment tonight so he would have a chance to speak to it presumably tomorrow night. I indicated to him that I would consent to that if I had an assurance that this was, in fact, not prolonging this bit if, in fact, I had an assurance that what he said was right. Namely, what he said was that in any event we wouldn't get through with the bill tonight and that the Leader of the Liberal Party was going to indicate his intention to this effect in which case I was no further ahead in trying to ram it through and I would stand it. I don't want it to be represented that in that sense I foreclose any options of mine so if we're in that kind of a situation I would be prepared to go back to the member for Wascana and stand it and then deal with the Qu'Appelle motion and deal with my motion and we can come back to section 8 tomorrow. But if we are closing off tonight on this bill I sure don't want to be standing this section just out of some private agreement between the three members.

Mr. Malone: — I think I can give the minister the assurance that it is highly unlikely that this bill will be complete this evening and, indeed, if it is completed I can appreciate that the Attorney General doesn't want to bring it back tomorrow but on the understanding that we don't get through the bill this evening do I have the undertaking from the Attorney General that we will get to this amendment tomorrow?

Agreed.

Mr. Chairman: — The hon. member, Mr. Romanow, amends section 8 of the printed bill by:

By striking out 'the' where it appears for the first time in the seventh line and substituting 'an oil'.

Mr. Romanow: — Mr. Chairman, I so move this amendment. It is

consequential to the area amendment we passed changing it from a well by well basis to a taxpayer by taxpayer basis.

Mr. Malone: — Before the question comes if the Attorney General can just explain the effect of the section as amended or as proposed to be amended.

Mr. Romanow: — Well yes, Mr. Chairman, what this means is that all royalties other than those paid to the Crown will be deducted in the calculation of a taxpayer's oil well income. Such royalties though are taxable in the hands of the recipient under this Act. However, you have to read this in conjunction with section 37 because section 37 provides an exemption to small free-hold owners and farmers who receive royalty income. While these receipts are not taxable under this Act they are deductible from oil well income by the lessee and that's the effect of section 8 and what we are doing on the House amendment is making it consistent with — it doesn't affect the main thrust on section 8 as I have explained it we are making it consistent with the earlier change that we made which was calculating the income tax on a well-by-well basis and changing it to calculating the tax on a taxpayer-by-taxpayer basis. This is a consequential amendment to that earlier one under section 4. It does not, this House amendment, relate to the substantive aspects of section 8 which I have outlined.

Amendment agreed.

Mr. Lane: — Just a question on this, Mr. Chairman. That renumbering is consequential to the series of amendments that we have which come later in the bill. I would like to make the following suggestion to the chairman and to the government House leader, if it's in order, that if the subsequent substantive amendments are acceptable involving that change, we then have the leave to revert to Section 8 and make the change at that time. Is that in order with the House Leader?

Mr. Romanow: — It's fine by me.

Mr. Cameron: — Let me ask a couple of questions on section 8 before we get to the amendments. I'm confused about two aspects of this. Tell me how this applies to a company with the usual 12.5 per cent gross royalty lease on freehold land? Are they not entitled to deduct the 12.5 per cent that's paid to the farmer in view of the exception in subsection (b) that relates to Section 37? I'm confused as to how you do that. Can you explain that to me?

Mr. Romanow: — Well, Mr. Chairman, I don't know what you mean by 'how we do this'. How do we do this administratively or how do we do this under the law, under the act? Because in effect, this is a provision under section 8 that simply says that the taxpayer may deduct any freehold royalties that are paid by him in a taxation year if he has first included the amount of those royalties in his oil well income for the year, or if the person duly pays those royalties other than an exempted owner, also includes those royalties. And under section 37 there is an exemption to small freehold owners and farmers who do receive royalty income. While these receipts are not taxable they are nevertheless deductible from oil well income by the lessee.

Mr. Cameron: — What is the necessity for adding the exception in subclause (b) relating to Section 37? You can deduct your 12.5 per cent royalty normally, but it says 'only to the extent that the amount' and then it excepts the amount paid under Section 37 which are amounts that go to freehold owners. This is what I can't understand.

Mr. Romanow: — Well, Mr. Chairman, it's perhaps legalese in the extreme, but what one should do it take out the words after the word 'amount' in subsection (b) up to Section 37, and if you read that you will see that what the effect of it is that that amount which he has paid on freehold, the taxpayer may deduct in the taxation year but he must first have included it in his oil well income, and coming back to (b) striking out those words 'except' etc., and if that amount paid is received or receivable by the recipient thereof in the taxation year as an account of or in lieu of payment of, or in satisfaction of, any revenue derived from the production of oil, etc. That's what that means.

What one might have done, for better draftsmanship perhaps, is have a subsection (c) except that such amount paid or due payable is not applicable to any owners under Section 37 which is the 1,280 acre owner, so that read together, you see the provision is as I have explained it — the deduction may be made for an freehold payment if he puts it in his oil well income and if the person to whom he has made the payment puts in his payment with the exception of Section 37, in which case it doesn't apply because it is straight exemption to the explanation small freeholder, 1,280 acres. That's the that I gave in the sense. I think you may have put a finger on it. Maybe it shouldn't have been drafted quite that way but that's the effect.

Mr. Cameron: — Just one last . . . I think I understand that. Why in Section 8 do we there distinguish between a royalty payable to the Crown under a Crown lease and gross royalty payable under a freehold lease? Why is the difference between the two created in Section 8?

Mr. Romanow: — The difference here, I am advised, is because a royalty is treated as a tax credit, royalty paid to the Crown, and the royalty paid on the freehold is deducted as an expense.

Section 8 stood for further amendments.

Section 9

Mr. A.N. McMillan (Kindersley): — I have a couple of questions to the Attorney general that I hope aren't too technical in nature. In Section 3(a) it says that the operator of every oil well shall deliver written notice to the assessor of every discontinuance of active operation. I would like to know just how touchy you fellows are going to be about a discontinuance of operation. Now, obviously if a company has some problems with its production, say a well drops off from 12 barrels a day over a period of a couple of months to about 4 barrels a day, and they shut that well down perhaps to run some tests or to do some steam injection to see if they bring it

up, when do they determine or do they have to determine whether or not that well has been discontinued in service? There is obviously a situation where these people might have that well shut down for three weeks and not know at that time whether or not it will continue in active service. I would like to know what sort of information you are looking for. What do you consider a discontinuance?

Mr. Romanow: — I am advised by the Mineral Resources people that under the circumstances you have described, this takes place on a monthly basis now. This kind of a reporting mechanism takes place on a monthly basis and presumably, accordingly, we would give them that same month for that kind of an operation in your present situation under this present bill, perhaps even an extension on that, depending on the circumstances. I don't think one can be too hard and fast about this.

Mr. McMillan: — Well, the one thing it brings to mind is something I wasn't aware of. It may be that I have never considered it but you seem, in this bill and particularly this section and I suspect in your general day-to-day operations of the Department of Mineral Resources, to be quite interested in determining exactly which wells are operating and for what specific lengths of time. Now I can only assume when you go to these lengths to try and determine this that you are curious to know exactly how much oil is being produced at the wellhead site. It would have been my assumption that you would have some good idea, some better method of checking. I suspect that's why this section is here, so that you people can actually determine how much oil is being produced so that no one . . . say they cemented in a well and the next thing you know six months down the road, you find out that it's actually been in operation for the past six months.

Do you not have a better way of determining the amount of oil that is being produced and from which companies it is being sold, than to have a wellhead to wellhead check or a mandatory written notice?

Mr. Romanow: — Mr. Chairman, again the people have advised me in Minerals Resources, that it's done by a well by well basis at the present time now so that this is not an unfamiliar procedure. I think as a general comment one can say that much of the information I think we have probably on file now in the Department of Mineral Resources and part of the discussions which we will be having with the industry will be an attempt to try and avoid duplication or reapplication of paper, etc., under this bill in order to give information in some areas that we have. But in order to make and in order to have the legislative authority to compute the information of production and in order upon which to determine the assessment of the income and the tax and so forth we need to have this on a statutory base. So again, it is a question of the black and white of the law, coupled with, hopefully, the reasonable application of that black and white through information that we have and discussions which will be ongoing with the industry to avoid the difficulties you mention.

The point that I wish to make is the boys tells me this kind of a mechanism now is something that they do.

Mr. McMillan: — I don't doubt that, but satiate my curiosity a bit. The

sole reason for this type of reporting, as I understand it then, is so that you have some accurate way to determine how much oil is actually being produced in Saskatchewan? I tried to say earlier, I am surprised, I would have thought there was some easier mechanism to do that, either taking nominations for example on a provincial basis in determining how much oil is sold on that basis, etc., but you say that it's only because this is the best way for you to decide how much oil is being produced.

Mr. Romanow: — Well, the people in DMR (Department of Mineral Resources) say that this is something which the companies are familiar with, they know it, this well-by-well basis and they have not complained to me in the correspondence as a result of Bill 47 on this. I know this is not quite meeting your question, which is: is there not some other way other than well-by-well? There may very well be some other way and I readily acknowledge that I don't satisfy you when I say that right now perhaps I am not inclined to look at some other way if this is the way that the industry seems to be generally familiar with and generally acceptable to them.

Mr. McMillan: — I am sure that if there was an easier method that someone would have come up with it with before now, but as I say, it was my surprise that I want satisfied.

One other question about this method of determining by written notice — now the assessor (as I read the bill) is apparently responsible for this information. He is obviously the person who, while not compiling the production levels on each wellhead, at least has to check them. What procedures do they now, under present legislation, go through to verify that those submissions by the companies or producers or operators are accurate and is there to be any change in this bill brought in? For example, Imperial Oil at Smiley submits a list of their Eagle Lake field — which wells are cemented in and which ones are operating; the number of barrels they are producing each day, does the assessor run a check on that?

Mr. Romanow: — Mr. Chairman, again I am advised by the officials at DMR that what happens here is that there are field personnel of DMR who do some field checks and there is also an audit and accounts branch or whatever they call it in DMR which occasionally will carry out an audit to make sure that the reporting is accurate. That's the mechanism of checking now.

Mr. McMillan: — Is this role of assessor currently being operated today under present legislation the same way as you envisage it operating once this bill receives proclamation if in fact it does?

Mr. Romanow: — No, not really. I think the assessor under our bill here is something a little different and I don't want to quantify these things but he does have, I think, more responsibility (or different kinds of responsibility) rather than saying more, different kinds. He has the responsibility, of course, of checking the taxpayer's return and finalizing the assessment or modifying the assessment and so forth. This is a little bit different than a pure audit function or a field check function. There are kinds of checks in the present mechanism of auditing of which the assessor has similar characteristics, but in essence there is an expanded role and a different role for the assessor who

is in effect an income tax assessor rather than an auditor.

Mr. Cameron: — Well, if I had a brief with the oil companies, I would levy a great complaint against you as a taxpayer under this Act because the information you are here requesting is stuff that they have filed every month since 1974 and years prior. A producer has to file with the Department of Mineral Resources a monthly production return and he has to show in his return how many barrels of oil he produced this month from that well. If the well was shut in he has to show it was shut in. If it was shut in for a given period or periods he has to show them and he has to explain why the well was shut in. Now they have been required for the last four years to file those monthly production returns and they have done that. The Department of Mineral Resources has those returns in respect of every well. Now he has to go back (you are asking him to go back) to the first part of January, 1974 and somehow sort of recalculate all of that and re-file. Why don't you simply send the assessor over the Department of Mineral Resources and he can check the records that are there, that have been filed in respect of every month for the last four or five years?

Mr. Romanow: — Well, Mr. Chairman, at fear of provoking the opposition into making a great speech about what I say, the fact of the matter is that as I indicated in response to the question of the member for Kindersley, we have one of two ways that we can view this Section 9 obviously, and that is to say to the industry, 'look, by law you are going to be required to give us all this information all over again,' in which case the sense of grievance that the member for Regina South says some taxpayers may feel, I think would be fully a proper one. Perhaps under circumstances where the taxpayer refuses to comply with the bill we may very well have to do that if there is a pure black and white legalistic interpretation. But in reality the CPA and the IPAC have not complained about this business because in our first discussions with them I think that are reasonably assured that it is to their advantage and to our advantage to avoid duplication of material and information that's on now and I think it will be a fairly simple method of checking in effect the returns under Section 9(1) with the returns that have been filed in the past and as I have said, discussions are under way with the industry to avoid this kind of duplication of paperwork and the like.

So I don't see that kind of problem which would lend itself to the sense of grievance that has been expressed here.

Section 9 agreed.

Section 10

Mr. Chairman: — We have a House amendment on Section 10. It is moved by the hon. minister, Mr. Romanow, amendment Section 10 of the printed bill by adding after subsection (2) the following subsection:

> (3) Notwithstanding subsections (1) and (2) the assessor may upon application by an operator or a taxpayer permit books and records to be kept at a location outside the province, provided that the operator or taxpayer undertakes to make such books and records available to the assessor upon terms and conditions satisfactory to the assessor.

Does the member so move?

Mr. Romanow: — Well, Mr. Chairman, I so move this amendment. A brief word of explanation.

This amendment basically comes about in attempt to at least part way meet some of the concerns raised by the CPA and IPAC. They requested that books and records be permitted to be kept outside of Saskatchewan and we've attempted to accommodate this somewhat by this particular subsection (3) which would permit the books and records be kept in a location outside the province, provided that the operator or taxpayer undertook to make such books and records available to the assessor upon terms and conditions that are satisfactory to the assessor.

So it is our attempt to try to accommodate the situation and the recommendations made here by the oil industry.

Mr. R.H. Bailey (Rosetown-Elrose): — Mr. Chairman, I am assuming that the Attorney General is saying in Section 10 (and I am including the amendment that he has) what this department as this falls to the Department of Mineral Resources is they are prescribing the form such as the Department of Municipal Affairs prescribes a form that you now have the same form for submission to the department as prescribed by the Department of Mineral Resources and that in Section 10 you see the beginning of some sort of standardization in reporting. Is that what I read in that particular subsection?

Mr. Romanow: — I don't think that you are reading it quite accurately there, but I may be misreading it myself. You are reading the words 'as may be prescribed' and you are interpreting them as the form may be prescribed. That's not the motion here. What we are saying is that every operator shall keep the following — books, records, information, and particulars as may be prescribed. It is a different operation here. I am simply saying that your assumption that we are trying to standardize everybody's books of account, that does not follow. What we may be doing by regulations as prescribed is having them maintain here in this province books, records, information and other particulars as required.

Mr. Cameron: — Why did you think this particular section should be retroactive?

Mr. Romanow: — Well, Mr. Chairman, we are looking here at again a situation which is trying to determine the tax payable from 1974 and in determining the income tax here we have to, obviously, in the deductions which are supposed to be allowed under Section 7, we'll have to look at the provisions that we have talked about. There are some questions about unreasonable and so forth, it seemed only logical that the section would apply in that regard as well.

Mr. Cameron: — Well, it's pretty hard to comply with this section retroactively isn't it? The only reason I raised the question is that it shows some of you of the absurdities that flow from making some of these sections retroactive. Now Section 10 says you have to keep certain books that are prescribed. Now if you haven't done it in the last four years how are you going to retrieve that retroactivity and yet technically the Act makes that an offence.

Mr. Romanow: — Well, Mr. Chairman, the question of keeping the books in the province retroactively, there is no doubt about that, that can't be done retroactivity because the period obviously has gone by. By here we are looking at, under Section 10, the purpose of this thing, of course, is to make sure that the books of accounts of the taxpayer for the period of taxation from 1974 to the future are such that they can be made subject to review or some form of inspection and while physically we can't roll back the clock., there is no doubt about that, the fact is that during this period from 1974 to the future this section certainly has validity especially in the case of any dispute that may arise in certain circumstances between the taxpayer and the assessor.

Mr. R. Katzman (Rosthern): — Well, not being a lawyer but I remember during the potash debate there was a statement that you can't get to the books of a corporation that don't have their books in the province. Is that correct? During the potash debate the statement was made if a corporation did not keep its books within the province you could not force them to show their books. Is that correct?

Mr. Romanow: — You are asking me whether that statement was made, I don't know if that statement was made or not, I can't recall right now.

Mr. Katzman: — I am asking if the contents of that statement is correct.

Mr. Romanow: — Well the question really comes down to this that from a legalistic or constitutional point of view the province, of course, has power to pass laws which pertain to its jurisdiction over its citizens and the like and to the extent that we would pass a law in Saskatchewan which presumably a taxpayer or somebody who is peripherally involved in the province of Saskatchewan would not want to obey, there would be a difficulty in making that section comply in another province. I mean if the taxpayer moves out of the jurisdiction our remedies are tougher.

Mr. Katzman: — With that in mind if you put in this (c) clause which says they keep their books elsewhere but they must endeavour to make sure that they are available to you, are they not agreeing to no matter what you are looking for to allow you in to look at their books on any part of their operation, not only their Saskatchewan portion but their

United States portion or their Australian portion or anything else even though it has nothing to do with your accounting?

Mr. Romanow: — No, I don't see that. I see this situation which simply says, look it, if you keep your books and records under this House amendment, say in Calgary, which is generally thought to be one of the key oil centres in the country, O.K., the assessor might say, let's keep that, that's the way your books are and the records are there but we would like to have some conditions, we would like to set a condition out saying that if we give you a notice for 30 days pertaining to the Saskatchewan portion of your production of your company's activities and we would like to see those books. Things of that nature, he can set out those kinds of terms and conditions which are satisfactory to him and are necessary to doing his job, namely, determining what the revenue and the income is from the production of oil in the province of Saskatchewan.

Mr. Katzman: — Well, to get into my point now . . . In other words this will give you rights to look at the operation based within Saskatchewan and not to look at any of their oil business that they were doing elsewhere.

Mr. Romanow: — Well, I don't know if I can answer that because I suppose a lot will depend on the kinds of bookkeeping that go on. I am not familiar with that, I don't know how they bookkeep but I assume that they obviously relate only — they have it broken down to their provincial productions and presumably that would be the situation. I don't see any real purpose in us looking at other fields of activity in other jurisdictions unless it was open to the belief that somehow there was a shell game going on, if you will pardon the expression, which would be perhaps something that could be looked at. That's a hypothetical situation I suppose maybe to an extreme point. I am saying simply here we are talking about books for the assessor to do his job.

Mr. Katzman: — What I am saying to you is exactly — what you just indicated, the shell game, where your assessor could say, I think the equipment that you've shown as an expense in Saskatchewan is being used elsewhere or vice versa and under that argument going in further to their books, say their Alberta division, their Texas division or wherever they may operate and I am just wondering if you would be tempted to say limit it to Saskatchewan.

Now the other part of it will be if they may use their other expenses in another province to back up an argument that they are having with you under Section 7 on the expenses legitimate.

Mr. Romanow: — Well, I think that there will be a, I'm hopeful in any event, fairly free and easy exchange of information. Again keep in mind that what happens under this bill is that the assessor will make an assessment and, if the company objects to the assessment made, presumably one of the things which he will be off with are his books and he'll say, look it, you are not giving us enough for administrative or overhead expenses or whatever and similarly presumably we would have the same access under other powers; this is designed to supplement those other powers.

Amendment agreed.

Section 10 as amended agreed.

Section 11

Mr. Chairman: — We have a House amendment and the first one again in order on the section is moved by the member for Regina Wascana.

Mr. Malone: — The same consideration on that amendment.

Mr. Chairman: — Stand that amendment then. We go to the amendment moved by the Attorney General to amend Section 11 of the printed bill, clause (a) by:

> By inserting after 'force' in the second line of subsection (1) or within such longer period as may be prescribed and (b) by striking out '180 days' in the first line of subsection (2) and substituting six months.

Mr. Romanow: — Mr. Chairman, I so move both of these House amendments. Both of these amendments come again as a result of representations to us by the industry. The industry requested that the 90-day period after proclamation be extended to 180 days. The government did not accept this request since the time period can be extended if necessary under Section 41. However, to make it clear that the time period can be extended by regulation if necessary, it is a specific reference to a long period, as prescribed, has been included by this proposed first House amendment.

On the second House amendment the CPA and IPAC people wanted a change from 180 days to six months and this would correspond — this would allow the annual tax return to correspond with the fiscal half year end and we have agreed to this request which is implemented in the second House amendment. So I move those amendments.

Mr. Malone: — Just on the first one, a question. Have you had any indication from the industry as to how long they anticipate it will take them to comply with the filing of records as Section 11 insists that they do. I would suspect that some of the smaller companies could do it in a very short period of time but it may be very difficult for some of the majors to do it within 90 days or even within double that period of time.

Mr. Romanow: — I'll just check to see if there is anything. Well I think it would be fair to summarize the industry concern this way, they feel that 90 days is too short, 180 days would be more realistic. So to answer your question presumably their idea would be up to 180 days but they do say that if you can amend it to make it absolutely clear that administerial discretion is permitted to extend the period that that seems to be O.K. by them and that's precisely what we are doing in the first amendment.

Mr. Malone: — Let me just ask you a couple of questions, one of some concern to me and the other perhaps of a minor nature. The section refers to a verification by a certificate and I am not quite sure what that involves or why it's really necessary. I am sure you have to have something saying the operator verifies that what he says is true but what are you getting at with the certificate business?

Mr. Romanow: — I guess the best explanation I can get from the boys here is that by this mechanism we are getting somebody who is verifying it, taking responsible for the return.

Mr. Malone: — If there is some doubt as to the certificate will those that are verifying be called in to meet with the assessor, like we have in the election returns going on right now to explain and question some of the things they say?

However, I have another question. In subsection (3) there is a provision that causes me

some concern. It says the assessor or any officer of the department — not a special assessor or assistant assessor — may do certain things. What is of concern to me is he may demand the writing from any other person believed to have knowledge relevant to the proper assessment of taxes under this Act, that a return be filed.

I wonder if the Attorney General could tell me what other "person" is contemplated by this particular subsection and what you are trying to get at by that particular provision?

Mr. Romanow: — Mr. Chairman, first of all I would like to say that there is precedent for 11(3). The Mining Tax Act of Ontario has a provision similar. It is a great Act, believe me. We have learned lots of things from Ontario. Secondly, an example of the kind of person who might be asked of information — the best example would be an operator who is not a taxpayer. That is possible, you know, it could be beneficial an owner who is not a taxpayer but has information and knowledge which is of relevance to the return. He could, perhaps, be the kind of person the assessor would want to go to.

Mr. Malone: — May I suggest to you the way it is worded is so wide that it catches people such as chartered accountants, lawyers, people who have a confidential arrangement recognized in law. Whether we agree with that recognition or not it is still recognized and indeed it permits, as I read the Act, a departmental official or the assessors, as the case may be, to demand of a particular law firm to file a return involving the knowledge they have as to the taxpayer's business. Indeed, the same situation applies to a chartered accountant where there is a degree of confidentiality between the accountant and the client that he services; the accountant could, under this particular provision of the Act, be required to file the return that is mentioned. Would the Attorney General agree with those comments that that is a correct assessment?

Mr. Romanow: — I think that almost any legislation can be, if one wants to, viewed with other interpretation. All that I can say is — I come back to the Ontario Mining Tax Act because it is important, it is a statute which has been judicially improved and, therefore, it would be wise for us, where possible, to use that judicially approved statute for our intentions here. I think that is the reason for putting it in. One could draw a pretty wide circle, I suppose, in theory of the legislation and whom it could catch.

I wouldn't agree with the lawyer example, particularly. It has been some time since I have been practising law, actively practising law, but I would guess that under the circumstances that you state, the lawyer would simply say, look here I have a privilege, this isn't a client privilege and he is just not getting it and I'm taking it to court to see what applies. At least that would be my judgement that it would apply. I don't want to get into that necessarily with the hon. member because my point is that his fear that the section is so wide that it could embrace all kinds of circumstances, although I don't agree with specific circumstances, is not valid mainly because you could read almost any legislation that way and more importantly because this section has already been judicially approved elsewhere.

Mr. Malone: — I don't really care whether it is judicially approved elsewhere and I really don't want to get into the arguments about the privilege that it attaches to solicitors on income tax matters. I have some thoughts about the applicability of such a privilege on matters of that nature. I ask the question, and I point out the danger. The Attorney General, in this particular Act as in other Acts, has always said, well, it doesn't really matter because we never use that power anyway and it is designed to catch somebody else. That doesn't take anything away from my criticism that you have given

yourself power that you don't need. You've given to yourselves and to departmental officials power that I think is unnecessary. It may well be that as time goes by, you won't be sitting over there in government, there will be some other government that will not treat the power in such a restrictive way as you, that you indicate you will. And I suggest to you that it's the role of any opposition to bring these matters to the attention of the government and to complain about them. And we do complain about them and take exception to them because they're unnecessary for the proper working of the Act.

Let me take it a step further. Really what this section provides is that employees of a taxpayer, whether they're currently employed or whether they've been fired and are disgruntled and perhaps have something in for the taxpayer could be required under this particular section to divulge their knowledge as well as to the operations of a particular taxpayer. So I say to you that the section is far too wide to accomplish the purpose that you want to accomplish and I say to you that it should be changed. Now, I have an amendment, Mr. Chairman, I believe on this particular section which I'd like to move now unless anybody else wants to get in on it.

Mr. Chairman: — An amendment by Mr. Malone to amend Section 11 of the printed bill (a) by adding the following subsection . . .

Mr. Malone: — I believe the member has some questions on the earlier subsection.

Mr. McMillan: — I have one question. This is sort of connected to the question I had about the assessor. I'd like to know . . . you have oil under your fingernails, Roy. I'd like to know under what circumstances an operator and I assume by this someone that a taxpayer or an oil well owner has contracted to operate a well for him, under what circumstances he would have information which would be valuable in terms of this Act which the government could not obtain through the regular role of the assessor?

Mr. Romanow: — Well, it's hard for me to answer this but I'm advised again by the Department of Mineral Resources people that the operator could be in any kind of a variety of operation circumstances where there are repairs being conducted to the well and to the operation of the well site which would be very pertinent to the taxpayers. The taxpayer may be claiming too much of the expense or overestimating the expense in the course of deriving at his income. And the only way you could get at that, perhaps, is to go right straight to the operator and ask what kind of repairs or what kind of improvements did you actually make?

Mr. McMillan: — He's submitting the income tax form in the first place, is he not?

Mr. Romanow: — No, not necessarily.

Mr. McMillan: — Well, all right let's take the instance where the taxpayer isn't the operator but only receives the revenue. The operator is the one, under those circumstances, who's responsible for filling out that tax form, is he not? He's the one who calculates the extent of deductions, etc. There's a connection there I'm not sure I've got at this moment.

Mr. Romanow: — Well, let me perhaps give you this kind of a rough hand understanding of the situation. You may have a pooled field and as I understand it, there is a kind of an agreement or an arrangement by operators with respect to this field. You may have one taxpayer within this unit area, the same guy who does all this sort of collecting and all the payments out and all of the expenses and the like. It's kind

of an administrative arrangement. In the course of deducting expenses from this fairly extensive field, there may be somebody out in some other north quarter or section who, in effect, has some repairs or whatever the situation happens to an expense which the assessor does not agree to. The assessor summons that operator and says, look, and tells what the story is.

Mr. Chairman: — We have a motion by Mr. Malone to amend Section 11 of the printed bill, (a) by adding the following subsection:

> (4) Notwithstanding anything hereon contained, the taxpayer may elect within 60 days after the date this Act is proclaimed in force to advise the assessor in writing that all sums paid by the taxpayer pursuant to the Oil and Gas Conservation Stabilization and Development Act 1974, and amendments thereto and the regulations thereunder may be applied in full payment of any amount the taxpayer is liable to pay pursuant to this Act, upon the taxpayer so advising the assessor and upon entering into a written agreement satisfactory to the assessor not to seek recovery of any sums paid by the taxpayer pursuant to the said Oil and Gas Conservation Stabilization and Development Act 1973, and amendments thereto, the regulations thereunder, the taxpayer shall be relieved of any obligation of filing returns hereunder up to the period ending December 31, 1977, of making any further payment or payments for the said period up to December 31, 1977.

Does the member so move?

Mr. Malone: — Yes, I so move, Mr. Chairman. Let me again . . . if the Attorney General can gag the bionic mouth for a moment, repeat our position on this and indicate to members what we what we think this amendment would accomplish. We believe frankly, that it would clear up the past; that one of the alleged purposes of Bill 47 is to assure for the people of Saskatchewan that we retain the $580 million illegally collected under the previously bad Bill 42. What we are saying by this amendment is that we are putting the oil companies and the oil industry in the position where they have to weight in their own mind, the cost of preparing all of the documentation referred to in the earlier sections in this particular part of the Act against the possibility of waiving a future right that they may or may not have or a right that they may have now. We say that most companies would be eager to avoid the expense and bother and concern of complying with the earlier sections of the Act if they could find some device to get away from doing so. We say as well that this particular amendment would give to those companies the avenue by which they could overcome the difficulties that would be involved in filing the forms that are required. We don't think that they should be allowed to get off scot free just by writing to the minister and saying, apply the taxes you've already collected. We do say that they should be prepared to give up something and that something is the right to go back and sue this government under the provisions of Bill 42 to recover taxes that they have already paid. We believe as well, that it would save the government a great deal of trouble. It is certainly apparent from the debates and comments tonight by the Attorney General that the assessor and the legion of advisors and special assessors and administrator assistant assessors that are going to be necessitated by the Act are going to be probably working for months and months going over the returns that are filed to bring the oil industry up to date.

We can really see no point in putting the taxpayers of Saskatchewan to that bother and to that expense. The Attorney General has indicated time after time in these debates and on Committee of the Whole that the amount that's going to be collected under Bill 47 is going to be roughly the same as collected under Bill 42. And indeed, he went to great lengths the other night describing the so-called administrative process that's going to be gone through to ensure that the money that's been collected under Bill 42 will be applied to any tax indebtedness under Bill 47. Indeed what he is suggesting is not as strong as the proposed amendment. What he is suggesting is that the companies and the civil servants get into this exercise of calculating these so-called taxes that are owing and once they do so and once the returns are checked, the government is just going to say forget about them anyway. I don't see really where we are going to have the situation that I can foresee where any particular company from 1973 to the present time is going to be in a position to pay any more or any less tax, if we follow the words of the Attorney General in Committee of the Whole. Indeed, the whole exercise of completing these returns is really going to be a farce because the government is going to gain little from the information that's offered. They are going to have some obligation to go through the returns as filed to check them for their accuracy and really the information is going to be meaningless in any event, because the government has already indicated that the taxes that were paid already are roughly the same as are going to be collected under Bill 47. So where are we going? Why are we having this exercise completed? Surely the information that the government requires to gain for the future administration of the Act is going to come anyway, it's going to come in due course once the Act is proclaimed. So to say that the industry and the civil servants have to be preoccupied for, I would say months, checking the records for really no apparent purpose, is really just nonsense.

So I say to the government, that you can clear up the past or most of the problems of the past if you adopt this amendment or a variation of it. I say that you will be able to readily identify those companies that may indeed be seeking to seek redress in the courts for the money they paid under Bill 42. And that at least we'll get to the situation as to identifying the enemy, if I can put it that way. I believe that most companies, in fact, the vast majority would pick the option that's being offered by this particular amendment, get away from the bother and the harassment of going through this exercise, that most of them would be willing to waive any rights that they may have, in the legal term, stopping themselves from any right that they may have and to get on with the future. We have heard on several occasions in this House, we've heard statements from the industry that they are not particularly concerned about the past, they are concerned about the future. I say that an amendment of this nature would clear up the past for all intents and purposes and we could get on with the future.

Now the Attorney General quite properly points out that this type of provision would make the Act more colourable than it already is. It is very interesting the choice of words that he uses because it indicates an admission that there is some colourability already attaching to Bill 47. We concede that. We concede that that is a problem but we say it's a lesser problem than we are already facing right now. We say that if this amendment is adopted, or a variation of it, we would be able to be in a position to have some certainty to be able to tell the people of this province that we do not have to worry about this potential catastrophe and that the whole matter of 1973 until the present time can be ignored and forgotten about really for all intents and purposes.

Now I urge on the government a consideration of this amendment. Indeed if the Attorney General indicates that we can't put such an amendment in this particular Act, we will be more than willing to introduce a separate statute if that would serve the

purpose of clearing up the colourability argument that the Attorney General will no doubt get up and make once again. So I say, Mr. Chairman, that this particular amendment will go a long way to ensure that one of the two aims of Bill 47 is accomplished and that is, that the money that has been collected that is in jeopardy right now will be assured and will stay with the people of Saskatchewan.

Mr. Romanow: — Mr. Chairman, I would like to say a few words with respect to this amendment. I want to say, Mr. Chairman, that there are two amendments which in my judgement, amendments, one by the Liberal Party, this is one and another one by the Progressive Conservative Party, which we will get to later today or tomorrow, that I think are probably the most serious attempts to colour this bill and to make it unconstitutional. I want to deal with this amendment that is before us right now, as an example. I'll deal with the Conservative one when we come to the Conservative one, the one on Section 37. Apart from its constitutionality aspect, there are other aspects about the Conservative amendment which I think makes it as equally dangerous to the entire bill. But for the time being, with respect to Section 11, Mr. Chairman, people should be absolutely clear that if there is any way that you wanted to go about setting an attack on this legislation, this is the way to do it, by adopting the motion of the Leader of the Liberal Party to amend this particular bill. Mr. Chairman, I say that if this amendment were adopted, it would be a clear indication on the face of the legislation that a colourable attempt was being made by the people of Saskatchewan to preserve the taxes collected under Bill 42, to do again exactly what the Supreme Court of Canada said that it could not do. Now there would be no surer way of rendering Bill 47 unconstitutional, the very thing the Liberals say they are trying to protect us from. Whether you split it into two bills doesn't help the situation any because the court obviously would look at the two bills in totality and come to that kind of a conclusion. In practice, Mr. Chairman, individual taxpayers may adopt an attitude toward the government with respect to some of the legislation and their proposals and the government may wish or may not wish to consider those proposals in practice by the individual companies. That is on a case by case basis. We have no policy set out in that regard, although we have statutory authority under The Department of Revenue Act to look at it, but that's another issue.

The amendment which is before us, if we adopted that, would simply in effect destroy what Bill 47 is. Bill 47 is a tax, it's a new tax under a new bill, it bears no relationship to a tax under Bill 42 and nothing like this amendment should be allowed to colour this particular Act. Now, Mr. Chairman, I say the Liberals are attempting to introduce this amendment as the Tories are attempting to introduce an amendment in Section 37, which we'll deal with at the time, purposely designed to leave a mine field for the people of the province of Saskatchewan. It is purposely designed there so that the people of Saskatchewan would step on the mine field and cause a terrific potential loss of money, the very kind of thing the Liberals and Conservatives say they're defending and standing up for. Mr. Chairman, to adopt this amendment would in effect jeopardize the province of Saskatchewan by making the bill colourable. I'm saying to this House, Mr. Chairman, that if there is anything which indicates exactly where the true intentions of the Liberal Party lie, it's this very proposed amendment that the Leader of the Liberal party now recommends. And if there is anything which reveals where the true intention of the PC Party lies, it's with respect to amendment to Clause 37 with which we're going to deal at a later time. And so, Mr. Chairman, I urge the people of this House and the people of the province of Saskatchewan to know exactly what's being contemplated by this. And this is the way to make a bill colourable if you want to go about making a bill colourable. Let's not be fooled by what the Liberals are about here. It's to protect their corporate friends in the oil industry and, Mr. Chairman, we've got to defeat this amendment put forward by the Leader of the Liberal Party.

Mr. Malone: — Mr. Chairman, you always know when you've got your point hold to the government opposite because we don't know what to say when they can't get up and agree that we've made a good suggestion. They get into their multinational friends attack. I'm surprised the Attorney General has restrained himself so long from bringing about this attack that's so familiar to us all on this side of the legislature. I predicated my remarks, Mr. Chairman, by acknowledging that there is a danger of the colourability being enhanced of the Act. The Attorney general has admitted that the Act is colourable. The Attorney General has admitted that there'll be problems with the Act and indeed I say to the Attorney General, what's the difference between this type of an amendment and the powers that you're taking unto yourself about administrative arrangements, of saying to us at length the other evening as to these arrangements that you're going to go through to ensure that the money collected under Bill 42 will be applied to Bill 47. If that doesn't make this Act colourable, I don't know what does. Furthermore, Mr. Chairman, we have to go back to remarks by the Premier on this Act. He talks about royalties, he talks about this not being an income tax, it being a royalty Act. What sort of admission is that as to what the validity of this Act is? The Attorney General knows full well there's going to be an attack on this Act. He knows full well that it's just a matter of time before somebody in the industry takes up the legal action once again, puts this whole business back into doubt and has the people of Saskatchewan facing this tragic situation. What we're trying to do, Mr. Chairman, is to solve the problem once and for all. We're trying to get before this legislature a device to get ourselves away from the mess that this government got ourselves into through the introduction of Bill 42. All the rhetoric in the world from the Attorney General about friends of the multinationals just won't wash, Mr. Chairman. I say that we're the only party in this legislature that has a genuine concern for the people of Saskatchewan. In this debate for the past weeks we've been attempting to get the government to come to its senses and realize just how bad Bill 47 is, to realize that there is going to be an inevitable attack on this bill, we don't know by whom. I suggest to you the remarks from the senior spokesman for Husky Oil as reported to the newspaper certainly hit at some sort of an attack from that particular company if they don't get their way as to future royalties. I say, Mr. Chairman, that the government opposite has been derelict in their duty with this Act. They come in here, the Attorney General usually can't answer the questions we've been asking about Section 7, about Section 3, about all the guts of the Act that we've been talking about and then he has the gall to get up and say that we're the ones that are trying to have this Act fall down, we're the ones that are trying to ensure that the oil company is able to retain this money that they collected. I say to you, Mr. Attorney General, that's nonsense. You know it's not true. You know the people of Saskatchewan know it's not true. Now you're trying to desperately recreate your old arguments about the Liberal Party and multinational corporations, arguments that you may have been able to get across at one time, Mr. Attorney General, but I say to you now, they won't be successful in this day and age. I say to all members in this legislature that if they're genuinely concerned about the money that has been collected, they will consider this amendment, they will vote for it, and if they're really concerned about the future of this province and the money that it has collected in the past, and what it's going to collect in the future, they will give proper consideration to the amendment as proposed, they will support it and we can get on with the further business of this House.

Mr. Romanow: — Mr. Chairman, make no mistake about what the Leader of the Liberal Party is trying to do by this amendment. He in as much says so. He says the argument for splitting it up into the past and into the future is very clear. He says you go to the oil industry and you say protect the past revenues under Bill 42, and what he's asking in effect is, we'll give you a future tax break with respect to the revenues that

you're going to pay under Bill 47. Mr. Chairman, that amounts to intimidation by legislation. That's what it amounts to. That is in effect putting a gun at somebody's head and saying you do this and if you do in exchange we're going to do that and then the . . .

Mr. Cameron: — Whose head?

Mr. Romanow: — Oh sure, defending of the oil companies and then the Leader of the Liberal Party says that that's not colourable. He says that somehow that kind of an action is not colourable. Where in the world has the Liberal Party been? Look at all of the cases that are before the Supreme Court, the authorities, I cited one or two of them the other day in this area. Where in the world has he been? If there's any way that he wants to make this bill colourable, it's the way that he's going about it. That's exactly what he's doing and he surely must know that. He surely must know that to have that kind of a mechanism where someone can say it's intimidation by legislation where it's trying to go back under Bill 42 to recoup under Bill 42, that's the very thing that you guys have been railing against me and the government for, for the last four or five weeks. That's the whole substance of your argument. Now all of a sudden, you're incorporating the argument in here and to argue somehow that that shows a concern for the welfare of the province of Saskatchewan as opposed to a concern for the welfare of the oil companies escapes me. And I don't care whether it is cliché in your judgement or an old socialist bogeyman about the Liberals and their corporate friends, that's the only possible motivation that one could attach to this. The only possible motivation, because anybody who would take a look at this thing legally would say that's exactly and precisely what you're trying to do by this amendment. Forget about Bill 42. This is a new tax, this is a new bill, this is the law that is going to be applied with the regulations in due course. Don't put a situation into this bill, don't put a hooker into this bill by way of this amendment, the effect of which would be to bring down the entire legislation. I can only assume, Mr. Chairman, that by so suggesting, the Liberal Party clearly has but one thing in mind, that this inevitable attack on Bill 47 that the Leader of the Liberal party keeps on reminding me about, this inevitable new legal challenge, the only thing that they've got in mind is that this inevitable legal challenge will indeed add some legal basis upon which to base the challenge — something that they don't have now — and the Leader of the Liberal Party is asking the province of Saskatchewan to accept a pig in a poke by this amendment. He's asking the people of the province of Saskatchewan and the members of this House to accept something which will definitely be a legal basis for challenge, something that up to now this bill does not have, something which we've got to protect. And I say, Mr. Chairman, and make no mistake about it, whether it's under this Section 11 or under Section 37, that the Tories are advocating, which is exactly the same thing in a different operation, that's exactly what the two old line parties are up to, exactly what they want to do and the people of this House, members of this Legislative Assembly should not buy that kind of an approach. And that's why, I say again, without political speechmaking, this section, this amendment is placing the entire bill in a colourable situation, something which the bill does not have now. It must be rejected by the members of this House.

Mr. Malone: — Not just yet, Mr. Chairman. Now I think that I can say that I've seen everything. I've seen everything. The Attorney General is up in this House saying we don't want to intimidate the oil industry, we want to get along with they oil industry, they're our friends. I never thought I'd see the day that the Attorney General would get up and defend the oil industry. Mr. Chairman, when has this government ever been afraid of intimidating anybody? They kicked the potash industry out of this province, they're doing their darnedest to kick the oil industry out of this province, they have tried to kick every private operator in the resource sector out of this province by intimidation, by taxation, by regulation, by all of the tools of government, to intimidate everybody that comes into connection with them if they don't go along with their socialist programs, their socialist plans as to how those people over there think this province should be run. Let's just review what the Attorney General has said over the past few days. He says this will make the bill colourable. And I conceded that. Make perhaps an already colourable bill a little more colourable. But what do we gain from it. We get something back if this amendment is adopted. We get the oil industry that seeks to take this option of stopping themselves from making any attack on Bill 42 or this bill. Now what's the government's alternative? We've heard time and time again in this legislature that the tax rates in Bill 47 are going to get about the same amount of money as the tax rates under Bill 42. What's the difference? What's the difference in effect of Bill 47 as far as the past is concerned? Mr. Chairman, the Attorney General has told us time and time again there is no difference. There is no difference at all. Now if that isn't making the bill colourable, I don't know what is. Now I say to the Attorney General at least we offer you one thing with this amendment. We offer you a device whereby the oil industries or some of them will have stopped themselves from taking any further legal action. What your device suggests is that they are going to pay the same amount of money, they are going to be in the same position after this bill passes, and they're still going to have the same right to take you to court once again if you don't come up with some favourable rates or tax rates under Section 3.

You keep saying that the tax rates are going to be about the same. I suggest to you, Mr. Attorney General, that you know darn well you are going to back off those tax rates. You are going to make the tax rates more agreeable to the industry so that you will attract some of the industry back to this province. And what you are desperately hoping for is that you can set a rate that is of such a nature that the industry will be afraid to challenge that rate. You want the industry back in here as much as anybody else in the province, you just won't admit it. So what you are going to do is exactly what we have suggested you do except that you are not going far enough. You are not getting anything from the industry to prevent a future attack on Bill 47, an attack to collect moneys that were paid under Bill 42. So don't get up holier than thou in this House and tell us that you are defending the rights of the people of this province. We suggest to you that you are doing an abominable job of it if that's what your concern is. We are suggesting to you a layout of the situation, a mess that you got yourself into under Bill 42 and a mess that is going to be even worse we predict under Bill 47.

Mr. Romanow: — Mr. Chairman, I invite the members of the House to examine the logic for a moment of the Liberal Party as articulated by the Leader of the Liberal Party. He says that this bill is a little bit colourable the way it is now, perhaps even a whole lot colourable the way it is now, something I do not subscribe to and then he says — and this amendment which I propose I acknowledge to you is going to make it even more

colourable and then the logic is but somehow this is going to help you out in your position with the oil companies.

Mr. Chairman, I ask the members of the House to consider that for a moment. What would be the effect if that Liberal amendment were adopted? The effect of the amendment would be on his logic — on his logic why in the world would any corporation on an already colourable bill, adding onto it some colourability, but you admit yourself that is what the amendment does — why would any oil company make any payment under Bill 47? You would only add to the legal challenges that you had before it. You would only provoke non-payment and — you would for certain guarantee a lawsuit, certainly guarantee a lawsuit because if you got colourability, what kind of an inducement is that to the oil companies not to go ahead and sue, what kind of an inducement is that to the oil companies to settle? You are giving the oil companies the kind of ammunition not to settle, the very kind of thing you are saying we should be doing. You are giving the oil companies the very kind of legal and political ammunition to simply say the heck with you boys, we are not moving at all because your legislation is colourable. But where does the logic get you, Mr. Chairman, on that kind of an approach by the Liberal Party?

I'm simply saying to this House, I don't care whether the people in the oil industry view me as their friend or not, but what I do care about is that we as legislators passed the best bill that we constitutionally can pass in order to do the job. I think we've got that in Bill 47. You may not agree, but one thing that you and I do agree is that by Section 11 amendment you are going to put the bill into a colourable situation. You agree with that and I agree with that because that's my position with respect to Section 11.

I'm saying this to the Leader of the Liberal Party that if we are going to be challenged, for goodness sakes let's make sure that we don't give more ammunition to the oil companies in which to challenge this bill. Let's not make the bullets for them to shoot them at us and that's exactly what you are doing with respect to this proposed amendment and surely you can't do that in conscience. It does not matter whether you make two separate bills or whatever that is clearly the very thing that you have been arguing against for the last four or five weeks or longer in this legislature.

I can only repeat again, Mr. Chairman, I close on this that I cannot understand why it is that the Liberal Party that represents itself as having told us about the constitutional predicament of Bill 42, that represents itself now as telling us what's wrong with Bill 47 and proposes constitutional amendments, why in the world would they be proposing this amendment which is so patently an amendment which would allow a challenge to somebody? Why? And you can say, oh well it's because I'm going back into my political motivations again. Well, I just don't think that you people, notwithstanding the fact that we are all politicians primarily and then lawyers, I suppose in a second way, I don't even believe that you people don't know what the constitutional mine field here is with respect to that amendment. You must know, you must know with respect to that amendment and the reason that you know and the reason that you are advocating it is I say a public policy point of view for one reason and one reason only. You want that in there so that the oil companies can seize on it and beat the people of Saskatchewan over the head with it if it were ever taken to court on the very loss that you say and that's precisely the same situation with respect to Section 37. I'm going to deal with Section 37 in a little more detail because in some ways it is even more odious in Section 37 for that same purpose. Liberals and Tories, Tories and Liberals, Mr. Chairman, make no mistake about it, they are at Edom with respect to the oil industry and their concern in this area.

Mr. Cameron: — Let me ask the Attorney General a question. Suppose Imperial Oil had paid you under Bill 42 $87 million in various taxes, royalties and mineral income tax. Now suppose Imperial Oil comes to you tomorrow and says, now look, you fellows want to retain the bulk of the money collected under Bill 42; I'll tell you what, we'll give you the $87 million we collected, we'll waive any right in respect to it and don't charge us any tax under Bill 47. Would you be prepared to accept that?

Mr. Romanow: — Mr. Chairman, the obvious answer to that is that this is a tax under Bill 47 which applies for a period from January 1, 1971 to 1974 perspective for who know how long. The tax rates that are set there for the retroactive portion or the perspective portion are due and owing as according to the regulations in the law by the taxpayer. That's the answer I give. I'm not prepared to say to the member now that that's the situation that we would adopt, of course we would say to the taxpayer, you must follow along the regulations.

Mr. Cameron: — Let me comment this again to you. There is an oil company that owed, let us say, $50 million and paid you $50 million under Bill 42 for the period January 1, 1974 to January 11, 1978. They have paid you $50 million under Bill 42. They came to you and said, now look, under Bill 47, we will release you in respect of any claim of the $50 million we have already paid and will you accept that as full payment of any taxes we may owe for that period, the retroactive period under Bill 47? Do you know what your answer would be? You answer would be — certainly we will accept that arrangement and that's the very purpose of your Section 39. Section 39 gives you power to compromise your claims and that is the reason you've got it there. It says where it is considered by the government in the public interest not to demand payment of the whole amount of any taxes, interest or penalties imposed under this Act, then the government can compromise and settle the matter. It could accept any amount of taxes it considers proper and with the t axes et cetera you could refund some portion of it, you can collect it all. You have full powers of compromise under Section 39.

You have said and your Premier has said consistently that the principal purpose of this bill is to retain for the people the money you have collected under Bill 42 in whole or large part. If a company came to you under the Section 11 that is proposed, if all the companies came to you and said look, all the money you have collected, the $540 million we have paid under Bill 42, we will treat that as past money paid to you; write it off, we will make no claim in respect of it; we ask you to chalk that up against the taxes we owe for that period under Bill 47; of course you would say, certainly we will accept that. Wouldn't you? You are in no position to say no, because that is the purpose of the retroactive provisions that this bill is to collect, is to retain what you have already collected. So if they allowed you to retain what you have already collected by way of an agreement and some compromise under Section 39, you would agree to it.

One of the interesting things here is that I agree with you. This Section 11 would make this bill definitely very colourable and in my view this section would make the bill open to attack in no uncertain terms. I believe the bill as it stands wants to do this very thing. It may not say it in the bill but you have said it, the Premier has said it — your purpose with Bill 42 insofar as it's retroactive is to retain the money you have collected. That is exactly what this amended Section 11 tries to do. The interesting thing here is that we smoked you out if nothing else, with respect to this amendment, yes we have.

It is interesting to observe some of your words. You said the effect of this would be to

bring this whole bill down. Those were your words. The effect of this amendment would be to bring this whole bill down. You made the argument. You said, now my friend, you have said that you insert this Section 11 in this bill and you said this bill would come down. You said the effect of accepting this amendment would be to bring down the whole of this bill. That's what you said and I agree with you that that is correct. But the bill insofar as it's retroactive is doing exactly what Section 11 explicitly would do. Only you are trying to do it implicitly. Well you say no — what are you trying to do, are you trying to collect with your retroactive provisions which you got in Bill 42 or aren't you? Now you can't have it both ways. If you intend in your retroactive sections of Bill 47 to collect or to retain what you have collected under Bill 42 you are then doing exactly what Section 11 says. The important part of it is that the argument we have been trying to make to you now for four weeks plus is finally got home to you because you are now understanding, now understanding that insofar as this bill is retaining the money you collected under Bill 42 is not valid. That's the difficulty you have got. The interesting thing about the amendment to Section 11 is that it finally smokes you out in respect to that argument and I see now more clearly your own concern. You are very much aware of this colourability problem that you have got. If you take Section 11 as this amendment suggests, you said it would definitely be a basis for legal challenge and there is no question it would be.

Now I can tell you I had some reservations about bringing forward this amendment. I was persuaded in my own view by someone who said that at least we'll bring this problem to a head and we'll get some admissions perhaps from the Attorney General about the difficulty he's got with the retroactive provisions of the bill and the reason why the bill ought to be split into two parts as we earlier suggested. I don't think I have to belabour the point. I think it's clear to the members who paid some attention to what you said, that you have finally accepted an argument that we've been making to you for the past four weeks and that is that insofar as the retroactive sections of this Bill 47 are intended to recover the money you paid under Bill 42, it's open to attack and likely unconstitutional and by your own admission tonight you admitted that as far as I'm concerned.

Mr. Romanow: — Mr. Chairman, I simply cannot allow this clause to be voted on by sitting passively, especially in response to the last member's remarks, let it be interpreted that by my silence there would be some acquiescence to the submission that he makes. Because to the contrary, I do not believe that Bill 47 as it is worded, even with it's retroactive features, is unconstitutional. I do not believe that; I have not said that. I have said however that in my judgement this amendment to Section 11 which the Liberals have proposed, which you and your caucus have proposed could make Bill 47 unconstitutional . . . (interjection) . . .

No, not a back up, well okay I don't know whether what the count, I'm only giving you on the best advice I have and my own common sense and experience on this thing that that would be the situation and that's a position that I take and nothing at all of the amendments that you have proposed, although this perhaps now is an overstatement I shouldn't be saying it, but I'll say it. This amendment is probably the most visible of the series of amendments designed to put this bill into something which it is not now and that is to put it into an unconstitutional state. Now let me close by simply saying if an individual company comes with that kind of a proposal as you outlined to us under Bill 47, clearly we'd look at that. Yes, but that's totally different than putting it into legislation. If a company on its own voluntarily wants to sit down with the tax assessor and say, look it, let's have a set offer, whatever kind of a situation, any kind of a tax authority to look at it, that's one thing, but to put it in an amendment is in effect to say that that is the purpose of the legislation and that is the objective and the intent of the operation. I'm saying legally and constitutionally you couldn't do anything more which would give without major bullets to the oil companies, you've said that yourself, you agreed with that proposition yourself. So my only point more is getting up and I've said it far wordily than I intended to, I do not believe that Bill 47 as it is before us is unconstitutional. I am confident that Bill 47 is, with retroactive provisions a direct tax being an income tax within the exclusive power of the province of Saskatchewan. That's my view.

Mr. Cameron: — Let me ask you one simple question. Is Bill 47 insofar as it's retroactive to January 1, 1974, intended to give you the legal power to retain what you collected in Bill 42?

Mr. Romanow: — Mr. Chairman, the member uses the word to retain what we've collected under Bill 42. We have said that Bill 47 will collect a sum under the Income Tax Act, which will approximate the sum collected under Bill 42. You keep on saying that it's intended to retain. You've asked us many questions in question period and otherwise and we've said wherever there is a legal obligation there will be that honouring of legal obligations, we've talked about the set-offs and all of that. And that is a very important distinction. This is a new tax, it's an income tax. The incidence of the tax on individual taxpayers may very well be different. I fully suspect that it will be different. Totally unlike Bill 42 which is not an income tax in any e vent, the Supreme Court told us that. So that the kind of an argument that says that it is to retain is an argument which does not simply go deep enough.

Mr. Cameron: — You collected from the oil industry in the four years January 1, 1974 to January 1, 1978, you collected taxes under Bill 42 first of all, starting November, 1976 you began to collect under The Mineral Resources Act, right? All right. I ask you a question earlier this evening about whether or not a person would get a deduction for the taxes he paid under The Mineral Resources Act in calculating his tax payable under this Act. Your answer was generally yes, your answer was yes. In other words you assess, just take a look at this, what you do under Bill 47 is you assess your income tax for the four-year period of January 1, 1974 to January 1, 1978. Then you say to the company this is how much tax you owe, then you say now we'll give you a deduction, you don't have to pay twice, we'll give you a deduction for what you've paid under The Mineral Resources Act since November 1976. In other words what you are wanting to get under this Act is the difference between what you've collected under The Mineral

Resources Act and what you've collected under Bill 42, that's the difference that you want to get from the oil companies under Bill 47. That's why I say to you that you have said throughout, that your Premier has said, one purpose of this bill apart from it's prospective application is to retain for the province the $500 million you've already collected. Well you shake your head at the use of the expression retaining. What kind of silly little semantics are these we're getting into? You collected 500 and some odd million dollars under Bill 42 in part. Bill 42 is now wiped out, you have no base, no lawful base, to retain any portion of that money with the exception of what you collected under The Mineral Resources Act. The purpose of this bill insofar as it's retroactive is to tax back what you missed on Bill 42 because it went down the tube. That's clearly what we're doing with Bill 47, insofar as it's retroactive, that's what we have said throughout that you're likely to run into constitutional problems because you are attempting to do by way of a different route what you've failed to do under Bill 42. The interesting part of the argument that we're having tonight now is in my view, you have clearly indicated that that's the fact. The only difference between the amendment is it's explicit and what you want to do is implicit in the Act but the Premier in his words and you in your words have been every bit as explicit as the provisions of Section 11 as amended.

Mr. Chairman: — Order!

Amendment negatived.

Section 12

Mr. Chairman: — Deduction from tax otherwise payable and we have one amendment on 12. It's been moved by the Attorney General that we amend Section 12 of the printed bill by inserting after "in" in the second line of subsection (1) "respect of". Does the member so move?

Amendment agreed.

Section 12 as amended agreed.

Section 13

Mr. Merchant: — Mr. Chairman, the purpose of this amendment is that the legislation proposed by the government kept on with the tendency almost towards a war on business by this government.

An Hon. Member: — Oh, no!

Mr. Merchant: — Yes, well it's true. This, Mr. Chairman, is the only government in Canada as far as I know, that persists . . .

Interjection

You were going to say something on your way to the diner, no doubt . . . that persists in . . . he's been to the diner, has he? I can tell . . . that persists, Mr. Chairman, in bringing forth legislation which imposes criminal sanctions upon . . . well, that's what it does. It imposes criminal sanctions on directors of companies. It imposes sanctions in areas that should ordinarily be civil areas, and that's the area that we are faced with here.

Mr. Chairman, if the original proposal is voted down, I will then be moving an amendment which will make it, I suppose, more difficult to obtain a criminal conviction. That is the simplest way to put it.

Mr. Mostoway: — Will you be moving it by jet or what?

Mr. Merchant: — Oh, I'll always move by jetstar, but I appreciate the member's encouragement in this regard.

Mr. Chairman, seriously, it is most improper for this government always to demonstrate its sort of anti-business bias and I don't want to press that flavour of my argument, but the fact is that there is no need in a debt collection area to always move to criminal sanctions, and that's what this government does with this section in a very aggressive way and I say to the members of the House that if you treat directors and you treat companies as though they are a group that has to be castigated and treated in a separate and critical way, then the result is that they approach their dealing with you in a competitive way as well. The only kinds of legislation that I know that allow for criminal sanctions against directors of companies are the combines legislation, and in that area you have to establish that the directors involved wilfully and deliberately knew what they were doing and participated in a personal way. This section doesn't provide for that, and the way this section reads it would be possible for directors to be subject to criminal sanctions because of the actions of their subordinates, and that's improper. I suggest to the Attorney General who is himself a person who deals in legal matters, that clearly this is a wrong section and it is a matter that the Attorney General should consider.

The amendment to Section 13, the amendment to Section 30, and again the amendment proposed as an alternative in Section 13, all of those things deal with the same problem — that the government is going to subject people to criminal sanctions when it is improper to do so, particularly in the oil industry because it's such a complicated industry.

Now, I don't know whether the mini-conference called by the Attorney General indicates that he is considering the things that I have said, but it approaches 10:00 o'clock and it may be, Mr. Chairman, that the Attorney General would be good enough to consider the position.

Mr. Romanow: — Mr. Chairman, I think there is an argument which can be used to say we don't need the amendment — the argument of mens rea. You have to show mens rea on the statute whether it's there or not. That is the provision with other provincial statutes and other statutes. So to argue that we should have the word in here in the alternative, the wilfully word is, I think, perhaps stating the obvious. However, it seems to me that the hon. member might feel a little bit better in yet supporting this bill in third reading. I am assuming that he has moved the amendments of re-numbering and I would urge the members of the House to defeat the sections on re-numbering. If you want, I'll give him the honour of doing it, if he would amend Section 13(8) by inserting after the word "who" in the first line, the word "knowingly" rather than "wilfully." I think it's better. We'll accept knowingly as an amendment. It goes to show you that we do listen to the opposition from time to time.

Mr. Merchant: — Mr. Chairman, I knew that knocking on all those doors tonight would accomplish something. I appreciate the minister's thinking and I move then the alternative and withdraw the amendment to Section 13 which the government indicates we would vote down. I say in substance and I don't want to look a gift horse in the mouth but I say in substance that the Attorney General will know that in a criminal prosecution the argument of mens rea though it always applies in doubly difficult where wilfully is included. When you are dealing with a corporation, if a criminal charge is laid against the corporation, and you can show that the corporation has been

criminally libel. There are authorities that then allow a conviction to be entered against the directors in a personal way. While, with the inclusion of the word "willfully" I am satisfied that the directors will . . . knowingly as opposed to wilfully?

An Hon. Member: — Half a loaf, Tony!

Mr. Merchant: — Half a loaf is it?

Pause in the proceedings

Mr. Merchant: — Mr. Chairman, it being 10:00 o'clock.

Mr. Romanow: — Mr. Chairman, I move the committee report progress on this bill.

Mr. Chairman: — It has been moved by the Attorney General that we report progress on Bill 47. Is that agreed?

Mr. Malone: — Mr. Chairman, I wonder . . .

Mr. Romanow: — I was going to move the committee rise and report progress and ask for leave to sit again, and I so move, Mr. Chairman.

Mr. Chairman: — It has been moved now that the committee rise and report progress and ask for leave to sit again. Is leave granted?

Mr. Malone: — Mr. Chairman, while we are waiting for Mr. Speaker, then if I could ask the Attorney General a question about the proceedings of tomorrow. The Attorney General indicated earlier in the day that as House Leader it was his position and if necessary he would bring in a resolution dealing with the matter that has become known as the Berntson affair. I am now asking the Attorney General, is it your intention tomorrow before orders of the day to bring in such a resolution? I believe that all members would be interested in giving some consideration over the evening hours as to their position on such a resolution. Are you bringing one in tomorrow?

Mr. Romanow: — Mr. Chairman, I am sorry I just can't tell because I have not had an opportunity to consider. The remarks were made at 2:30 today and you know we went right into Bill 47 and I only had the supper hour or dinner hour to consider it and frankly I didn't have much time to do it then either. So I have just not had a chance to do it. All I can say to the members of the House is 'stay tuned.'

The committee reported progress.

The Assembly adjourned at 10:05 o'clock p.m.