1987

Tax Rebate Discounting in Canada: The Case for Abolition

Martha Milczynski

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Each year, as people begin to collect their receipts in preparation for the filing of their income tax returns, one cannot help but notice the proliferation of new store-front offices opening their doors for business. They not only offer to sell their expertise in preparing the forms, but are anxious to buy a customer's refund - at a discount.

Tax rebate discounting is not particularly new to the Canadian tax scene. However, it is only in the past decade and a half that the practice has become a widespread and lucrative business. Three out of every four taxpayers are entitled to a refund. This is a potentially huge market that is actively and aggressively sought out.

The tax rebate discounters that can afford large scale advertising, such as H&R Block and BenTax, entice those expecting a refund. Their campaigns focus on the alleged long delays in waiting for a cheque from Revenue Canada and promise instant "hassle free cash". The barrage includes radio and television commercials, print media advertisements, billboards and door to door leafletting. Naturally, the local enterprising entrepreneurs that operate as tax discounters seasonally, also benefit from the publicity.

It is the position of the author, however, that the business of tax rebate discounting is socially unacceptable; it is a practice that preys upon those who can least afford its services. Yet this practice has been legitimated by the federal government's own Tax Rebate Discounting Act S.C.

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* Martha Milczynski is currently in her final year of the L.L.B. program at Osgoode Hall Law School and wrote this paper for the intensive poverty law program at the law school while at Parkdale Community Legal Services in Toronto. Copyright © 1986 Martha Milczynski.

1 Consumer and Corporate Affairs Canada, Tax Rebate Discounting, A Discussion Paper, (June, 1985) at 1.
1978, c.25, a statute that imposes a 15% ceiling on the discount, but has, in many respects, made the situation worse. The only solution to the problem of tax discounting's intrinsic unconscionability and ineffective regulation is its complete and total ban.

The following discussion will offer an overview of the development of tax rebate discounting into a major industry, which in 1984, discounted refunds worth 275 million dollars and retained 41 million as its share. This overview will attempt to establish the historical context of tax discounting by beginning with a brief description of the situation before the enactment of the federal law in 1978 and continue through to the current debate surrounding the proposed initiatives and changes to the Act by the Minister of Consumer and Corporate Affairs, Michel Coté. It is hoped that this exercise will help clarify the many considerations and lead to what is suggested as the only rational and necessary conclusion.

PRE - 1978: AN HISTORICAL BACKGROUND

The early 1970's saw a dramatic increase, relative to previous years, in the frequency with which people were relying on tax discounting to obtain their refunds. The reasons for this trend were attributed partly to the general depressed state of the economy at that time. While in real terms the numbers were still quite low, the horror stories across Canada began to accumulate and attract media attention.

Yet the first victims of discounting were not taxpayers expecting a refund. In the late 1960's and early 1970's, particularly in Western Canada, discounting was available to anyone collecting unemployment insurance benefits. However, the practice of discounting unemployment insurance cheques was not tolerated for long. In 1972 the Unemployment Insurance Commission implemented regulations prohibiting the practice. In 1973 the idea was advanced in Parliament to take similar measures against the tax discounter and the evidence in support of such a step began to mount.

The average discount rate applied to income tax refunds during those years was approximately 50%, but the range ran anywhere from 40% to 90%. The "turn around" period, the time a discounter waited for the refund cheque from Revenue Canada was about two to three months. Tak-

2 Ibid.

3 Hansard, Question Period (7 March 1973).
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When those two factors into consideration, one could take the discount rate and express it in terms of an annual interest rate. Thus the tax rebate discounter was in effect charging at least 200%. Rates of 600-800% were not uncommon and even a rate of 1200% had been reported.\(^4\)

Along with the discount rate some tax discounters charged additional fees for preparation of the returns. Due to the lack of disclosure requirements, there were also incidents of fraud. Discounters would calculate an artificially low refund before acquiring the right to the full refund from the client and then, when filing, adjust the amount to the higher amount. Even if this miscalculation occurred inadvertently, more often than not, the discounter would pocket the difference.

Thus the image of the tax discounter as a "social vulture preying upon the poor" was quickly and easily established. Newspapers like the Toronto Star, in April 1977, ran series of articles investigating the problem and exposed the extent of the exploitation. Editorials on the subject also made the point clearly, as in the Cape Breton Post on April 9, 1978: "Calculated on a per annum basis, the astronomical interest rates would make a seasoned gangster blush". This kind of increasing media attention and consumer and community pressure soon brought general calls for legislative action.

**PROVINCIAL RESPONSE**

The response of the provinces to the problem varied both in scope and intent. It ranged from total inaction to the passing of quite restrictive measures limiting the practice of tax discounting to a bare minimum. Some provinces amended existing consumer protection legislation, others passed specific statutes addressing the tax rebate discounting issue.

Nova Scotia and Alberta instituted licencing and reporting measures and compelled full disclosure, but did not regulate the rate of the discount. Under its Consumer Protection Act, British Columbia required full disclosure and also legislated a minimum 85% "handback" to the taxpayer. Ontario, Manitoba and Saskatchewan went further and set the minimum handback at 95%. The then Minister of Consumer and Commercial Relations in Ontario, Larry Grossman, argued that the provisions were designed to be prohibitive and that he thought the tax discounter would "be put virtually out of business" by Ontario's Income Tax Discounter Act

S.O. 1977, c.55.5

Those intentions were not realized as the various schemes were difficult to enforce and tax discounters found numerous loopholes.

For example, they continued to charge for tax return preparation or simply held back an extra portion of the refund arbitrarily. After some time, the focus of the pressure demanding change shifted from the provinces to the federal government.6

FEDERAL LEGISLATIVE ACTION

THE PROPOSED BORROWERS AND DEPOSITORS PROTECTION ACT 1976

Despite the protests from tax discounters themselves, who prefer to characterize it as a sale transaction, the practice of tax rebate discounting has been generally viewed as a form of credit. The Borrowers and Depositors Protection Act, (BDPA), was a complex and comprehensive set of reforms which never progressed beyond first reading. The bill drew criticism from all sides of the House and was never actively pursued or supported. The proposals dealt with many issues, but with respect to tax discounting, the bill would have required full disclosure but did not set a maximum discount rate. Instead it defined what would be considered a criminal rate and "unwarranted credit rate charges".

It was intended that once the Act was passed, it would have the effect of encouraging traditional consumer lenders (banks, trust companies, credit unions) to service the market for tax discounting and approve loans on the strength of expected tax refunds at the rate of normal consumer loans.7 This hope for the participation of traditional financial institutions in extending credit on such terms has survived but, as will be discussed, remains an unrealistic aim.

THE TAX REBATE DISCOUNTING ACT S.C. 1978, C.25

The federal government's abandonment of the BDPA had the immediate effect of strengthening the calls for action with respect to tax rebate dis-

7 Ibid.
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counting. There were fears that there would only be more study, discussion and delay. The government had heard evidence from tax discounters themselves, through hearings concerning the repeal of the Small Loans Act. Attempting to take both the discounters' interests and those of their victims into consideration, on April 20, 1978, the Tax Rebate Discounting Act was proclaimed.  

The major emphasis to the Tax Rebate Discounting Act was on the minimum 85% hand back to the consumer and its stringent full disclosure requirements. In practice, the Act is adhered to as follows. A person must take all their tax information slips to the tax discounter. She or he must provide their social insurance number and written authorization to enable the discounter to contact Revenue Canada and check if there are any problems, such as taxes owing. The discounter then prepares the return and the customer signs an agreement or contract. This document is usually drafted in the form of a purchase and sale agreement and includes the assignment of power of attorney over to the discounter limited to the nature of the transaction.

Under the original legislation, the discounter was required to prepare a detailed written statement of each transaction in the body of a Schedule I form. A copy of Schedule I had to be provided to the taxpayer and another forwarded to the government. It also required that the discount rate be expressed as a per annum interest rate, usually expressed as 62.8%, a rate that exceeds the penal limit imposed by the Criminal Code, but enjoys exemption from its application.

The client then receives a cheque for at least 85% of the value of the full refund. The 15% share for the discounter is all inclusive; there cannot be any other additional charges for tax return preparation. The entire process can take as little as a few hours or up to two days.

The refund cheque remains payable to the taxpayer but is forwarded directly to the discounter. The discounter must advise the client in writing of its receipt by completing and mailing a Schedule II form. It must show the full amount of the actual refund cheque and any amount that the actual refund exceeds the original estimate. That difference must be paid back to the customer in full.

In addition, the tax discounter must maintain full records and provide access to authorized persons of the Ministry of Consumer and Corporate Af-

8 Ibid

9 Supra., note 9 at 2.
fairs, the Minister of the Crown of the Province and peace officers for the purposes of examination and making copies. Failure to adhere to any of the aforementioned requirements may make the discounter subject to liability upon summary conviction for a possible maximum fine of $25,000.00. The statutory limitation period for the commencement of prosecution under the Act was set at six months.

THE JUDICIAL RESPONSE

It is not surprising that one of the first cases concerning the Tax Rebate Discounting Act to make its way through the courts centred on its constitutionality. *Krassman v. The Queen* (1979), 102 D.L.R. (3d) 262 (Fed.Ct.) dealt with an action brought by a discounter for a declaration that the statute was *ultra vires* the Parliament of Canada and therefore void and of no effect in law.

It was found that in pith and substance, the Act did not encroach upon provincial jurisdiction over property and civil rights in the Province (s.92(13) of the then *British North America Act, 1867*). Collier J. held that the law was a valid exercise of Parliament's criminal law power. He also noted that many provincial schemes existed and identified them and their differences in comparison to the federal law. However, it did not matter that they varied. He stated that "some of the provinces have enacted their own legislation in respect of so called 'tax refund discounting'... the fact that some of the Provinces have concurrently legislated in respect of tax refund discounting neither detracts from nor enhances the rights of the federal power, in its criminal aspect, to enter the field." He thus found that the *Tax Rebate Discounting Act* was *intra vires* and did not necessarily exclude the constitutional viability of independent provincial legislation.

THE PROVINCIAL RESPONSE II

The provinces' response to the federal Act was varied, but almost uniform was their willingness to allow the federal Ministry to carry the responsibility of enforcement. Eventually Manitoba and Saskatchewan adjusted their legislation to correspond with the Act. British Columbia, Alberta and Nova Scotia also adjusted the discount rate but maintained some regulatory mechanisms to govern the licencing and reporting of dis-
counters. Quebec eventually took the bold step and banned the discounting of provincial tax refunds altogether. Ontario and Newfoundland, however, repealed their legislation concerning tax discounters then in force. Ontario simply revoked its *Income Tax Discounters Act* and left nothing to allow licencing of tax discounters or the development of a cooperative arrangement with the federal Ministry for the reporting of abuses.

**THE JUDICIAL RESPONSE - ENFORCEMENT**

As of January 1, 1979, responsibility for prosecutions under the *Tax Rebate Discounting Act* lay with the Consumer Services Branch of the federal Ministry of Consumer and Corporate Affairs. Investigations and commencement of actions proceed in response to complaints and random spot checks. It seems to be quite difficult to bring abuses to the attention of the Consumer Services Branch. The case of Ms. K., a client with Parkdale Community Legal Services, illustrates this point.

Ms. K. had her return prepared and refund discounted through a local one-person business offering the service. This discounter failed to provide her either a proper Schedule I or II form. He showed her his calculations on the income tax return, indicating a refund of $1400, later revised to $400. Two months later, following her own suspicions, she learned from Revenue Canada that the tax discounter had in fact received her refund cheque in an amount over $2000. Ms. K. contacted the police; following their investigation, the tax discounter was charged with fraud under the Criminal Code. The police could only lay the one charge because he did not keep records of previous transactions. Ms. K. was concerned that he was carrying on his business and she called to complain to Revenue Canada.

When contacted by Parkdale C.L.S. some time later, the Consumer Services Branch had no knowledge of this case. Ms. K. could not help but wonder why they had not been made aware of the discounter's gross violations of virtually every section creating an offence in the *Act*. The police knew nothing of the special prosecutorial regime and it would seem neither did Revenue Canada. The obvious question is how is a consumer to enjoy the benefit of the minimum protection afforded by the *Act*? Most people would not think to go to the Consumer Services Branch of Consumer and Corporate Affairs, rather they would seek the assistance of the police or Revenue Canada.

The above example serves to illustrate the problems of pursuing less obvious infractions. When asked how many prosecutions had been commen-
ced under the statute since its enactment, an official with the Ministry replied that the number of prosecution cases was twenty three. This figure includes those who were prosecuted more than once. Thus the actual number of discounters brought to trial is significantly less than twenty three.\footnote{Conversation with Rick Wajewada, December, 1985; other conversations held with Ministry officials, Dora Koop and Marion Clark in November and December, 1985.}

This official also commented on the weakness of the Act. Many discounters do not report their Schedule I documents as they are required to by the Act, yet in the words of the official, "the ones that aren't reporting are the ones we can't monitor". He also noted that most of the abuses are committed by the smaller discounters operating within a particular market. For example, in the case of Ms. K., she does not speak English and entrusted her return to a local Polish speaking tax discounter whom she thought she could trust.

Two of the few reported decisions considering the \textit{Tax Rebate Discounting Act } are especially interesting to note with respect to the Act's unenforceability and lack of deterrence. In \textit{R. v. Takiff} (1983), 49 N.B.R. (2d) 203 (N.B. Q.B.) a discounter was accused of seventeen offences. Each charge was the same, that he withheld the excess amount of actual refund over and above the estimate he had calculated. The discounter was found guilty and sentenced as follows. On twelve counts, a fine was imposed of $75 or seven days in jail, plus restitution; on four counts, a fine of $25 or two days in jail, plus restitution and on one count he was given an absolute discharge. The Crown appealed the sentence and the accused cross-appealed on the conviction.

The Crown argued in favour of a higher fine in the basis of the need for punishment of this defendant and the deterrence of others. This tax discounter had been fined $25 on six similar charges in 1979 and $15 each on fifty seven charges in 1980. However, Mr. Justice Meldrum thought it more relevant, and noted with some sympathy, that this discounter was seventy two years old, of Lithuanian extraction and ran a small grocery store in a poorer area of Moncton. Meldrum J. dismissed both the appeal and cross-appeal.

In \textit{R. v. Bowes} (1983), 5 W.W.R. 374 (Alta. Q.B.), the tax discounter came under investigation by the R.C.M.P. and had 250 files seized. Once some discrepancies were revealed, she made full restitution and pleaded guilty to the six charges made against her under the Act. Those six
counts totalled $3,114 owed among six clients, but there were additional instances of possible violations that were not put into issue, that totalled $10,458, but which she also paid out. This tax discounter was fined $15,000 on the six counts but she appealed her sentence. It was held on appeal that the trial judge erred because he considered more than the six charges before him. On appeal, the fact that she made restitution, cooperated with the police and had an excellent reputation in the community weighed more in her favour and the fine was reduced to $3,000.

In the Bowes case the judge made a point of likening the offence of violating the Tax Rebate Discounting Act, not to theft or fraud, but to tax evasion, without giving sound reasons for the rationale of such an analogy. The comparison suggests that tax evasion is not serious or offensive in itself. It is difficult to comprehend the basis for the comparison at all, and this confusion is perhaps a further indication of how legislative action and the judiciary have failed to adequately deal with offences committed by businesses.

It was perhaps fortunate then, that in the case of Ms. K., the police did not turn the matter over to the Consumer Services Branch. The point being that criminal prosecution could, at the very least, influence a change in the perception of tax discounters' abuses; unfortunately this was not put to the test.

The defendant had not adhered to any of the full disclosure requirements of the Act. The income tax return he presented to Ms. K. was not the same as the one he filed with Revenue Canada. The discrepancies involved the final amount and the way the refund was calculated. For example, since Ms. K. is a sole support mother, he had the option of using the dependent child deduction or the marriage equivalent schedule. He used the latter on the return to Revenue Canada as it yielded a higher refund which he retained. Ms. K. later requested some proof of the actual refund he received, but he made excuses. Only when she learned for herself what the refund was and confronted him did he, reluctantly, finally pay the balance.

Despite all this, on the day of the trial, the Crown attorney withdrew the charge of fraud on the ground that there was no intent to defraud. The Crown took into consideration that this tax discounter was elderly, had a language problem (his first language was Polish) and that he seemed to have made a mistake, which he corrected. The indication from this end result is, however, that there is little promise in holding the tax discounter accountable through either the Tax Rebate Discounting Act or even the Criminal Code.
USING THE TAX DISCOUNTER - THE CURRENT SITUATION

When the statute was enacted in 1978, the reaction from the discounters was swift. They claimed that they needed at least a 30% share of the refund to break even and that the effect of the Act would be to force them out of business. This has not proved to be the case. In fact, the exact opposite became the reality; tax discounting became a booming growth industry.

In 1979 the number of reported discounting transactions was 7000. In 1981 that number rose to 61,500 and in 1984 it grew to 385,000. The share taken by discounters also kept pace, in 1981, discounters grossed 6.5 million dollars; in 1984 their share was 41 million dollars.12

There are two major businesses discounting. The largest, H&R Block, is an American owned company that entered the discounting market only three years ago. In 1983, it had 29 offices across Canada; it now boasts 800.13 In 1984 over half the discounting transactions were completed by H&R Block. Another third of the business was taken by BenTax, a division of a Canadian subsidiary of another American firm, Beneficial Finance. It is interesting to note that the United States itself banned the practice of tax discounting in 1976.

BenTax began operating in Canada in 1979 and Mr. Wallace Harrigan, assistant tax director for Beneficial Canada has said that his firm will only discount the simplest returns and not the more complicated ones.14 This gives a very clear indication of the market they are seeking to service. Two out of every three people who discounted had incomes of below $8,000. Over half of the people who discounted were recipients of the Child Tax Credit, a figure which represents about 15-20 million dollars for the tax discounter.15

Tax returns have become a means of delivery for a variety of social programs. In addition to the Child Tax Credit, people may be eligible to take advantage of Provincial Tax Credits, Sales Tax and Renters’s Tax Credits. It should be appreciated as a simple matter of principle that this money and any refund due through overpayment of taxes ought to be paid in full to the person so entitled.16

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12 *Hansard*, Question Period (22 December 1982).
13 *Supra*, note 1 at 3.
practice, the need for discounting is questionable. Revenue Canada has issued simpler forms for less complicated returns and processing has been greatly speeded up.

It would seem that the legislation passed in 1978 to fight the situation of rampant profiteering, has had the effect of not only legitimating the practice of tax discounting, but has encouraged its expansion. From the time of its enactment, the *Tax Rebate Discounting Act* has attracted criticism. Media attention continued to focus on the exploitation and inherent injustice of the practice, in particular with respect to the discounting of the Child Tax Credit. Clearly a portion of the money was going into the wrong hands. In addition, there were the continuing problems of abuse and enforcement. As the attention remained on tax discounting, it became clearer that government created the problem and something needed to be done.

**CONSULTATION**

The Ministry of Consumer and Corporate Affairs released its discussion paper on tax rebate discounting in June, 1985. It gave a brief historical overview of discounting in Canada and presented the many options open for consideration. According to Marion Clark of the Ministry of Consumer and Corporate Affairs, by fall the Ministry received close to seventy submissions from organizations and private individuals. The range of opinion, however, was not that great and the following discussion of two briefs is representative of the entire debate that essentially fell within the two camps.

**THE CANADIAN TAX REFUND DISCOUNTERS ASSOCIATION**

The formation of the Association in 1985 seems to have been a defensive move on the part of tax discounters in reaction to the increasing negative publicity to their business. Their president is Mr. Thomas Caporale, Vice President of Beneficial Finance Canada. Their rather lengthy brief is a defence of the *Tax Rebate Discounting Act* and justification for the current practice. The few changes they do propose only serve to further legitimate the status quo.

The Association's argument is based on the assumption that tax refund discounting is a necessary public service for those with an urgent need for cash, particularly for those unable to obtain financial assistance elsewhere. The brief explains that to meet this need, tax discounters are willing to risk the start up cost and engage in "substantial preparation". Yet in reality it is not that difficult to set up operations. For almost all
of the smaller tax discounters, the practice is merely a profitable side-
line. In Ontario, a discounter need only have the proper schedule forms
printed, arrange financing and obtain a discounter registration number.
The brief, however, goes so far as to claim that “discounters are in fact
using their good credit rating... to borrow money from financial institu-
tions and to, in turn, provide cash to people that the financial institu-
tions would not even consider for a loan... or a credit card”.17

Other reasons they offer in support of tax discounting that, in their eyes,
also explain its popularity are the following:

- For those desiring the highest possible return, the tax dis-
counter is a trained tax preparer,
- People fear and wish to avoid postal delays and delays
from Revenue Canada,
- People fear Revenue Canada and are intimidated by any
contact with the department,
- In particular, new immigrants fear deportations or jail for
errors on their returns,
- Some people experience difficulty in cashing government re-
fund cheques,
- Others have a transient lifestyle and don't know where
they will be when the cheque is issued,
- People consider the “utility cost” of money and use the dis-
counter to obtain their refund for R.R.S.P. and R.H.O.S.P. con-
tributions,
- Some people are simply unable to prepare the returns them-
selves, a point to which the brief adds that one third of all
Canadian are functionally illiterate.

In addition to making some inherently offensive statements and allu-
sions, the Association's brief and the preceding list make numerous factu-
ally suspect assertions. First the government and postal delays, that
discounters wish to protect the public from, are greatly exaggerated. The
processing, issuance and delivery of refund cheques has been greatly ex-
pe dit ed in recent years. Second, it is unconscionable that discounters be
permitted to rely on and promote misinformation and fear to attract cus-

17 The Canadian Tax Refund Discounters Association, "Position Paper on Tax
Rebate Discounting" (May 1985) at 8.
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...customers from immigrant communities. The discounter and government silence about the truth on this point leads only to a reinforcement of those fears. Third, rather than being exploited, those unable to complete the forms, should be provided with a greater availability of free and accessible assistance. Furthermore, the data concerning the income level of people turning to tax discounters does not support their claim about middle class individuals saving for their first home or golden years. Such individuals are able to obtain short term loans from traditional lending institutions for such expenditures. Finally the brief also states that there is an active illegal black market of tax discounters in Quebec and in the United States, a statement for which they offer no proof.18

Their suggestions for change to the Act are minimal. It would seem tax discounters have adjusted quite well to the requirements they once so vehemently protested. They proposed to maintain the current 15% discount rate but allow the collection of more than 85% in the event of shortages not paid originally by the taxpayer. The discounters would also have liked to see the elimination of the expression of the discount rate as a per annum interest rate and requested that they only be compelled to forward any excess refund received from Revenue Canada if the amount exceeds $10.

Despite all the arguments and observations, it is neither a convincing nor logical conclusion that because people use tax discounting there is a genuine need for its continued existence, particularly when that percentage in reality stems from fear and misinformation. The exploitation of people who can ill afford to have their few resources diminished cannot and must not be justified by a thinly veiled appeal to freedom of choice and a free market economy.

NATIONAL ANTI POVERTY ORGANIZATION

The National Anti Poverty Organization (NAPO) is made up of approximately 160 community based groups. It is a non-profit, voluntary, charitable organization that represents the interests of the poor in Canada. NAPO recognized tax rebate discounting as a problem, and in 1982 began to concentrate its efforts for change. Their submission to the Minister is only the most recent endeavor in this regard. The following is a summary

18 Recent government statistics have shown, however, a dramatic increase in the number of discounting transactions in Quebec, reinforcing the need for uniform federal action.
of NAPO's position on tax discounting, a position with which this paper concurs.19

The Tax Rebate Discounting Act was not enacted in response to the demands by consumers to have access to such a service. The "demand" came later, after the Act had the effect of establishing and officially sanctioning tax discounting as a form of financial service. The Act was originally designed to dispense with the scattered "fly by night" operations charging astronomical rates. It was only after 1979 that the large companies with substantial advertising budgets entered into and effectively took over the market. Thus it was the passage of the Tax Rebate Discounting Act that fuelled the growth of tax discounting and essentially caused many of the problems.

NAPO describes tax discounting as a form of exploitation without any redeeming attributes or benefits. Its customers are among the most poor and vulnerable in our society. It is a business that not only benefits from others' financial problems, it truly thrives on them.

Tax discounting does nothing to assist those in need; it only offers them less than what is due them at a charge that is usurious. This charge, expressed even at its minimum, usually exceeds the per annum limit in the Criminal Code, which but for the Tax Rebate Discounting Act would be subject to criminal prosecution.

As mentioned previously, tax discounting takes money from what are in effect social programs. Almost half of tax discounters' incomes came from the Child Tax Credit alone. And not taken into account in the discussion paper, are the many Provincial Tax Credits that should also be considered. NAPO's point is that those programs are being subverted by tax discounting and that the government has an obligation to ensure that all the money makes its way to the intended recipients.

In its brief, NAPO proposed a total prohibition of tax discounting and rejected the consideration of "half measures" such as lowering the cost of discounting. Such alternatives would not solve the problem but remain contrary to the fundamental notion that the practice is inherently unjust and undesirable.

Recommendations that paralleled NAPO's proposal came from within the machinery of government itself. Representatives of all three parties who sat on the House Standing Committee on Health, Welfare and So-

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cial Affairs were clear in their report tabled in April, 1985, on the issue of tax rebate discounting:

"... the Child Tax Credit has encouraged the growth of tax discounters. Pursuant to the Tax Rebate Discounting Act discounters are allowed to charge 15% for their services. We do not want money which helps provide for the needs of families diverted to tax discounters. We feel that 15% is an exorbitant rate of return for the risks discounters take in advancing refunds to low income families. We strongly urge that the federal government in consultation with the provincial governments outlaw tax rebate discounting." 20

In light of the arguments and concerns that NAPO, the Standing Committee, the media and other organizations had raised, it was a great disappointment, when after his "consultation", on November 21, 1985, the Hon. Michel Côté announced his proposed changes to the Tax Rebate Discounting Act. For months, up until that date, the Minister had deflected questions in the House concerning his plans.

REFORM OR CAPITULATION?

The Minister refused to implement an outright ban of tax discounting arguing that although the practice was indeed costly to the poor, it was necessary to protect freedom of choice for those individuals who wanted to use the service. Instead, he presented a five point package of "initiatives" to reform the system.

The "reforms" do little to address the injustices of tax rebate discounting. To appreciate their true lack of concern for the issues, it is necessary to look closer at each and discover the extent of the government's commitment to change and analyze the shortcomings.

1) "Discounters will retain the 15% rate on the first $300 of a refund. The maximum allowable rates will be reduced to 5% on any payment over $300. The discount rate will continue to include the preparation cost of a return."

This proposal does not solve the problem of usurious interest rates that will continue to be applied and expressed by the discount rate. They far exceed that normally charged for loans negotiated through traditional lending institutions and with respect to the clients of tax discounters, the

poor will continue to be exploited. Lowering the cost slightly for those expecting refunds in excess of $300 is not a solution and can hardly be considered a compromise reached in the best interests of all parties concerned.

2) "Procedures for administering the Act will be improved."

The statutory limitation period for prosecutions under the *Tax Rebate Discounting Act* will be extended from six months to two years. There will also be specific provisions in the Act to prohibit the discounter from giving false or misleading information. The discounter will have to provide the customer with the notice of assessment from Revenue Canada and a true copy of the return upon request. Revenue Canada's own role is to be expanded to permit the reporting of the mailing of many refund cheques to a single address. This would be followed through with a cross check to see if there was a discounting number registered for that address.

There are no proposed improvements to facilitate the enforcement of the Act nor are there plans to establish channels to report abuses or complaints. While any direct regulatory or licensing scheme might be beyond the jurisdiction of Parliament, it could be suggested to provinces like Ontario who have been remiss in this regard. Alternatively, some campaign to inform consumers of the existence of the Consumer Services Branch might have been appropriate.

3) "The government plans to implement periodic payment of the Child Tax Credit, thereby eliminating the need and opportunity to discount it. The Ministers of Finance, Revenue and Health and Welfare are reviewing the technical issues."

On the face of it, this appears to be a thoughtful reform and a major concession to tax discounting's critics. However, it means that the government has had to formulate and implement a new administrative and bureaucratic system of payment. As of this year, the bulk of the Child Tax Credit will be paid in a lump sum in the fall of each year thereby removing it from the income tax return and the discounters' grasp. However, aside from encumbering an already complex system, the proposal raised an important question that brings into focus the farce of the consultation process and its half-hearted attempt at compromise.

If the Minister is willing to accept there is something wrong or unjust with discounting the Child Tax Credit, why does he not recognize the logical inconsistency in permitting the discounting of other tax credits or in the over payment of taxes as a whole? Was it from some sense of decency or only for appearance's sake that, because the Child Tax Credit
represented so large a portion of the discounters' income, M. Coté conceded and opted for a politically expedient solution?

4) "Simplified procedures will make it easier for financial institutions to advance loans at normal rates on the strength of anticipated income tax refunds."

The government has written to banks, trust companies and credit unions offering them the same access to Revenue Canada's files as the tax dis countered. Presumably this would allow those institutions to conduct a check of a taxpayer to determine whether or not to issue the loan. It assumes of course that these institutions would be interested in doing so—which they are not. Some credit unions have indicated an interest, but trust compaies and banks in particular have resisted the government's invitation for years. Ms. Dora Koop of the Ministry has admitted that this latest effort did not find them any more receptive now than in the past. The banks simply do not want to get involved. In fact, to her knowledge, Ms. Koops knows of only one branch of a bank in all of Canada that has done so. A Royal Bank branch in Winnipeg, Manitoba has negotiated loans on such terms. This branch made its decision in response to heavy local pressures and it was the decision of the branch manager alone. It is difficult then to understand what effect, if any, this "initiative" will have.

5) "Information on the true costs of discounting and its alternatives will be provided to taxpayers."

The true cost of discounting will, however, be obscured; the Schedule I form need not express the usual 62.8% per annum interest rate. Due to the varying number of weeks for refund processing and the 15%-5% discount split, that figure is no longer accurate, (in fact it may be too low). In its place, H&R Block for example has provided an almost incomprehensible formula by which the consumer is to calculate his/her own per annum interest rate.

As for information on discounting's alternatives, Ms. Koop explained that Revenue Canada and Supply and Services have improved their record in processing returns in the past few years; there is less delay and they hope to make this fact more well known. Thus, according to the Ministry, the alternative to discounting is waiting, a fact that most likely did not escape the minds of those people currently using tax discounting services.

Ms. Koop also hopes that there would be more public awareness of the availability of free tax preparation in many areas, but did not specify if the Ministry of Consumer and Corporate Affairs intended some action in
this regard.

It was within federal competence to prohibit tax rebate discounting by making it an offence to do so. It continues to be the best course of action, but one M. Coté chose not to consider seriously. Rather, it is submitted that his suggestions show a callousness and lack of concern. His initiatives will not bring about meaningful change, but protect an industry that should not exist at all. He has shown that he prefers to spend more of the taxpayers' money and time in trying to devise an alternative mode of delivery for the Child Tax Credit payment to the exclusion of other tax credits and the refund overpayments. All of this is money that the government should be seeking to ensure reaches its proper place in full.

CONCLUSION AND RECOMMENDATIONS

It is the position of the author that the practice of tax rebate discounting is socially unacceptable. The industry creates its own demand, it exploits the poor and it exploits fear. There are no benefits, social or economic, to be gained from discounting, except for those who profit from it. Discounting takes money from those who need it, by charging usurious rates and diverting money from social programs. By taking their customers' money, tax discounters do not perform them a service, they only reinforce their impoverishment and powerlessness.

If the above position is accepted, there can be only one conclusion and that is the necessity for the total prohibition of tax discounting. Alternatives and compromises are ineffective, difficult to enforce and, ultimately, do not begin to address the fundamental injustice of the practice. The Minister's justification for discounting's continued existence, under the guise of freedom of choice in the market, is only an insult that ignores the history and development of discounting in Canada. M. Coté may view his initiatives as reforms but closer examination reveals their true nature, a defence of ongoing state legitimation of institutionalized loan sharking.

Despite the announcements, pressure must be maintained on the federal government to revise its position. These energies directed to the federal level should not, however, be to the exclusion of the Provincial Legislatures. In particular, more concerted effort is needed to lobby the Ontario Legislature to take action. The current political climate there is more sympathetic and recently Queen's Park passed a resolution unanimously condemning the practice of tax discounting. Thus the Minister of Consumer and Corporate Relations, Monte Kwinter, should be persuaded to take a more active role in calling upon the federal government to institute a ban.
The other option is, of course, that Ontario follow Quebec in legislating its own prohibition. Although possible, province by province legislation is not the most desirable course of action. It might prove costly and not be as effective as an outright federal ban.

Unfortunately, M. Coté's "reforms" pose something of a setback and they are the current reality to be addressed. It may be some time before the federal government is moved to act again, and then only following more study and further consultation. The Conservative government most likely feels that it has done its job and will withdraw to take a more complacent posture.

Thus a province by province approach may be the only solution and in light of Ontario's recent overtures, may be the one that is readily available. Given that the federal government has removed the Child Tax Credit from the income tax return, the Legislatures' prohibition of the discounting of provincial tax credits would have the resulting effect of a de facto ban on all discounting, by making it financially unviable.

The abolition of private, profit oriented tax discounting, by either Parliament or the Legislature is only a first step. It is also necessary to come to terms with discounting's popularity and the fact that its clientele may need and want their expected refund immediately. It is particularly important for those with no other or few resources and lack of credit.

Recognizing the apparent demand and need for a speedy refund is not, as the discounters and M. Coté would have us believe, a justification for the current system. Rather, one can accept its repugnant nature and move on to the more rational and logical solution. It is common sense that since it is the government that has withheld an overpayment of taxes or made a decision on the delivery scheme of certain entitlements, it is incumbent on the government to ensure its effective and just realization.

Those people expecting a refund who fall below a pre-determined level of income should be accommodated. There is no reason why the state should not take over the discounters' function and provide quick "hassle free" cash by honouring 100% of their debt to the individuals or families concerned. Either level of government could fill in the gap left by the departure of existing tax discounters, at a minimal cost.

The location of such services does not pose a problem. Existing public offices such as the U.I.C. and Employment offices and even the Post Office would serve the purpose. There are also provincial welfare, community, and social services offices that could participate in a program that would involve them for only two or three months per year. The exact nature of the service provided could be a strict cheque writing scheme or in-
volve assistance in the preparation of income tax returns. The latter would not prove onerous, as most returns meeting the eligibility criteria are uncomplicated.

The proposal is a modest and simple one. It would meet current demand without the current injustice and would lay to rest any fears of black market discounting that might exist if a ban were to be effected without the implementation of the necessary alternative that is the duty of the state to provide.

The question of which level of government ought to provide this service is not a contentious one at this time. It is only too clear that Parliament and in particular the Conservative Cabinet will not change its position. The task thus falls to the provinces and in the case of Ontario, the current opportunities to successfully mobilize and work for qualitative change should not be ignored.

The argument is straightforward. Tax rebate discounting in its current form, for profit, is an unconscionable practice. The minimum standard prescribed by the Tax Rebate Discounting Act does not provide any meaningful remedy or change that inherent character. The statute and M. Coté's reforms are inadequate and unenforceable. They have, and continue to, legitimate and encourage a parasitic industry. In the absence of concern and political will in Ottawa, the focus for reform lies with the Provincial Legislatures to prohibit tax discounting in the private sector and in its place implement programs to provide the service themselves.