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Book Review. Federal Taxation for the Lawyer by Houstin Shockey

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plete an analysis of the Confederate judicial system and its operation is now available. The format of the book is excellent; the general index is supplemented by an index of courts and an index of cases; and, though the reviewer observed one minor error (William G. Brownlow was an opponent, rather than a “disciple” of Andrew Johnson, p. 270), the research is prodigious and the product embodies the highest type of scholarship.

David M. Potter.


The purpose of this book is to convince the lawyer with the ordinary run-of-the-mill practice that federal taxation impinges very decidedly on many of the problems which he is accustomed to handle for his clients, and unless such a lawyer analyzes, on his own volition, the tax consequences of such transactions, he is derelict in his professional duty. Mr. Shockey argues his case very convincingly in the first chapter and then, by way of illustrating and buttressing his argument, devotes the rest of his book to some 147 hypothetical but common-place instances where an analysis of the results from the standpoint of taxation should be made as a matter of routine. Throughout the book runs the corollary theme that lawyers should always be on the alert to preserve or “create” evidence which will later be useful in convincing the Commissioner that “unnecessary or fictitious taxes” should not be imposed.

I am entirely in accord with this main thesis and am pleased to have such a persuasive statement of the position at hand. In fact, I would like to see a reading of Chapter I (or something similar) made compulsory for all law students before they decide upon their program for their final year.

The book is definitely not written for “taxperts,” but for the ordinary lawyer, who seldom deals directly with the federal tax authorities. Nevertheless, there are passages in it which should prove to be very interesting to any one. The author displays both imagination and originality in describing several methods of tax avoidance. These methods might not occur even to an expert in the field. They alone may well repay the purchase price of the book several times.

The style of the book is, in general, clear and readable, and any lawyer should be able to digest the book much more rapidly than he could most law texts. The author’s method of presentation, in addition to being unique in its use of hypothetical cases, sustains one’s interest throughout. The cases should also prove very helpful to those who

1See especially Chapters VIII and IX.
have difficulty in bridging the gap between legal principles and concrete facts. The 147 summaries which are repetitions of the general principles illustrated by and discussed in the cases are, however, a time-consuming insult to the intelligence of any reader trained under the case system. It may be that Mr. Shockey thought that some readers might want to rely on the summaries alone. Such readers would be well-advised to look elsewhere for more accurate and complete treatments of federal taxation.

A tax lawyer does not always have the pleasant duty of pointing out to his client methods by which his tax bill may be reduced. His duty is to see that the correct tax, not the lowest possible tax, is levied. Only two pages are devoted to this recurrent and troublesome problem.

The book, as might be expected, is written exclusively from the viewpoint of the taxpayer. More objective treatments of the principles of federal taxation exist.

Mr. Shockey is unduly sanguine in many places about the possibilities of tax avoidance. It is possible that such recent cases as Helvering v. Clifford, Helvering v. Hammel, and Helvering v. Horst will be given a much broader application than Mr. Shockey apparently expects. Not only is Mr. Shockey optimistic about the course of future decisions, but he is also hopeful about the course of legislation. Underlying many of the methods of income-tax avoidance is the supposed desirability of splitting a large single item of income into smaller items to be received over several years for the purpose of avoiding the higher surtax brackets. This may not be advantageous if there is a possibility of a substantial increase in the rates. Such an increase appears to be in the offing, at least for the medium income groups. Postponing the payment of a tax to a later time in the hopes of having an offsetting loss belongs in somewhat the same category.

Mr. Shockey, to judge from his preface, assumes that the basic principles and rules of federal tax law are as stable as those in other fields of law and that, therefore, a lawyer can acquire the necessary tax background without undue difficulty. I believe, he underestimates the difficulty but not the importance of the question. The drastic revolution that has taken place in federal law since 1937 has had its repercussions in the field of taxation. This period of change has not yet run its course. Of even greater import is the legislation which is constantly changing the tax law.

I can, however, assure any law student who does not take federal taxation, or any lawyer in general practice, that the time consumed in reading the book will be well spent.

R. G. Davis.

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2309 U.S. 331 (1940).
3311 U.S. 504 (1941).
4311 U.S. 112 (1940).
5Mr. Shockey does not, however, entirely neglect this possibility. See p. 174.