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Book Review. Federal Taxation for the Lawyer by Houstin Shockey

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The purpose and scope of this book are quite accurately represented by its title. It is legalistic in its point of view, and is not for the layman. At the same time, it is for the average lawyer, who is not a tax specialist; although, as will presently appear, even the specialist will find it often suggestive and helpful. Accordingly, the author seeks to point out the important principles of the more important federal taxes, without making any attempt to go into details. The idea is to warn the average lawyer of some of the more important pitfalls which federal taxation has dug for the unwary, and to suggest some ways around such pitfalls. Obviously the primary purpose is to create a general attitude of awareness and caution, rather than to deal with all or even a substantial portion of the problems. The hypothetical cases which are put and discussed, and which cover the bulk of the text, seem to be well chosen from this standpoint.

The preface expresses the opinion that the principles of federal taxes “are as stable as those in other fields of law.” Perhaps this is a bit optimistic. At any rate, the book was somewhat out of date even before the Revenue Act of 1942, since it harks back to the comparatively peaceful days of the defense tax of 1940. More unfortunate still are the changes of the 1942 Act, which more or less invalidate, or at least modify, many of the examples in this book. These are not merely the provisions changing the rates of tax and the basis of capital gains, but such fundamental changes in the income tax as those respecting pension trusts and income to lessors through improvements by tenants; and in the estate tax, the broadening of taxable powers of appointment, the removal of the special insurance exemption, and the provision giving a deduction for contracts to make charitable gifts. With all these and many other changes, not to speak of the fundamental changes in the excess profits tax, which the author hopefully suggests is really less complicated than it looks, one does have some doubts as to whether many stable principles remain.

As already suggested, the author has not entirely resisted the tendency to oversimplification, which the plan of his book almost compels; though it should be stated that he has been more successful in avoiding this difficulty than might have been expected. But it seems that he does not adequately portray the difficulty of distinguishing and applying the cash and accrual methods of reporting income, though he does admit the uncertainty of the accrual concept. The distinction between capital expenditures and repairs also looks less difficult in this book than it actually is; and the same is true of partnership problems. More
troublesome still is the handling of the relation between inheritance and income taxes. The bland statement that all state taxes are on the right to receive is certainly unjustified. The same is true of the statement that no legacy or inheritance is subject to income tax. This may be literally true, but the distinction which the courts have made on this point are not those which would seem obvious, even to the lawyer.

Finally, the author’s position that dividends paid in the same class of stock on which they are declared are non-taxable, while dividends paid in a different class of stock are taxable, is at least doubtful. Indeed, it now appears not improbable that the Supreme Court may entirely reverse its 1920 position and hold all stock dividends taxable. But no doubt it would be somewhat unreasonable to expect anyone to anticipate this even two or three years ago, and the position of the author must be regarded as rather conservative.

This conservative viewpoint is generally taken, and adds to the value of the book, especially from the standpoint of the lawyer who wishes to keep as far away from difficulty as possible. There are several warnings of possible unfavorable changes in the law. To be sure the author did not envisage the sad sight which we have seen recently of the Treasury Department seeking to wipe out exemptions on existing tax-exempt bonds; but certainly no one could have been expected to foresee such an apparent breach of faith, from which Congress has rescued us, at least for the time being.

There are a number of other points where the author has avowedly taken the more unfavorable of possible constructions. For instance, he has somewhat narrowly defined the scope of non-taxable exchanges, and particularly has denied the possibility of three-party reorganizations. Similarly, he may be too severe with respect to trust income which may be used to pay obligations of a grantor; and he certainly gives too much scope in some places to the administrative discretion of the Commissioner, which even now has some limits. And his views as to valuation of stocks, and especially the blockage rule, may well be too favorable to the government.

Moreover, it seems clear that his position that a lessor whose tenant is bound to keep the premises in repair is not entitled to depreciation, is unsound. Likewise, the acceptance of the position that either a corporation or stockholders may be subject to a gift tax, though supported by the regulations, is nevertheless rather clearly contrary to the statute. But in all these and perhaps other cases it may be said that if the author is mistaken, his mistake is in the right direction. He is quite right in resolving all disputes against the taxpayer since he is primarily writing for the benefit of those who wish to avoid controversies.
Even so, there are a few cases where advice directed to avoiding taxes is questionable. One such instance is that the book gives only one reference to constructive receipt, and this does not emphasize the danger to the taxpayer from this doctrine. Another is the failure to point out that bad debts arising from income transactions are not deductible at all unless the income has been accrued and taxed. In two other cases, where the author suggests a demolition of an old building for the purpose of establishing a deductible loss before the property is sold, and that stockholders should sell their stock prior to the adoption of a plan of liquidation, there might be some possible question of good faith.

But this is unusual. Far more typical of the book as a whole is the brief but excellent discussion of the Hallock case and its possible unfortunate implications, the statement of the unfortunate results from the transfer of securities to a related taxpayer, and the excellent warning concerning the necessity of a business purpose in reorganizations, in order to sustain non-taxability.

In addition to all this, the book contains some interesting practical suggestions, not a few of which might not occur even to the tax specialist. An example is the showing of the possible advantage in deliberately taking a gain on wash sales, where a loss would of course not be deductible. Another is the desirability of allocating a nominal price for an agreement not to compete, on the sale of a business. There are also valuable suggestions with respect to turning over property on which there is an accrued gain to a partner, and the danger of assuming mortgages in a non-corporate exchange. Finally may be mentioned the author's statement of the advantage of establishing a fiscal year beginning late in the calendar year. This means that the annual Revenue Act ought to have been passed not long after the beginning of the fiscal year; though the author's statement that it is the practice to pass revenue acts before the end of the year may be regarded as somewhat optimistic.

The mechanical features of the book are excellent. The printing is clear, and no errors of proofreading were discovered. One rather annoying feature is that all of the notes are at the end of the book. But perhaps this is not so serious, as most of the notes are merely references to the Prentice-Hall Service, and they need not be consulted except by a person who is making a somewhat exhaustive study of the particular point involved. Most users of the book will be content to ignore the notes, for the most part.

As has been said, the purpose of this book is a rather narrow one and its scope is correspondingly restricted. Nevertheless, the purpose is a worthwhile one, and the scope is broad enough for that purpose. On
the whole it is excellently done and it should be very useful. Its most serious defect is that it is already out of date. A new edition seems to be called for, a project which would indeed be worth while.

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With this translation the author of Eulogy of Judges makes his first appearance in English. One of the translators came to know him by sitting in one of his law classes in Italy. As he grew to know and appreciate the author he determined to translate Eulogy of Judges.

The book does not lend itself readily to review. Words of praise or condemnation could be spoken about it, of course. But any attempt to give a true picture of the contents will almost certainly fail.

Broadly speaking, the subject of the book can be said to be lawyers and judges. That, however, portrays nothing, for that is a broad subject with many facets. To give an adequate picture of the contents of a book one should ordinarily be specific. Yet any attempt to be specific in this case—to say that the writer has treated of such and such a corner of the general subject matter—would render the review incomplete, for in the 121 pages of this volume the author has managed to touch on many facets of the general subject of lawyers and judges. This can best be illustrated by a glimpse at the chapter headings. They are as follows: On Faith in Judges; On Etiquette in Court; On Certain Similarities and Differences Between Judge and Lawyer; On Forensic Oratory; On a Certain Immobility of Judges on the Bench; On the Relationship Between the Lawyer and the Truth, or On the Necessary Partisanship of the Lawyer; On Certain Aberrations of Clients, for Which the Judge Should Excuse the Lawyer; On Litigiousness; On the Predilection of Judges and Lawyers for Questions of Law or for Questions of Fact; On Sentiment and Logic in Judicial Decisions; On the Lawyer's Love for the Judge and Vice Versa; On the Sorrows and Sacrifices in the Life of the Judge; On the Sorrows and Sacrifices in the Life of the Lawyer; On the Common Destiny of Judge and Lawyer.

Although each of these subjects is sufficiently broad to merit a volume by itself, when one has read one of Calamandrei's chapters he has the feeling that the subject has been thoroughly covered. Perhaps this is due to the manner in which the book is written. The author has used an epigrammatic style. Each thought is set out in a paragraph;