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Cases and Materials on Taxation (Book Review)

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CASES AND MATERIALS ON TAXATION. By Paul W. Bruton. St. Paul: West Publishing Co., 1941, pp. xxiv, 1228.

Taxation today enjoys a steadily increasing prominence in the body politic. For almost a decade, ever-rising cost of government resulting from domestic economic crises and international turmoil have forced to the fore the vital problem of raising money through taxation. Older forms of taxation, like the income and estate taxes, have been more adequately utilized through increasing of rates and more efficient administration. Additional forms of taxation have been vigorously introduced. Mention might be made of the social security and unemployment insurance taxes, the unincorporated business income tax, chain store taxes, sales taxes, gross receipts taxes, use taxes, *etc.* Under such an avalanche of variegated tax laws, numerous legal problems have been raised by taxpayers and taxing authorities. As a result, the courts have been concerned with tax principles and precedents to a greater degree than ever before. This situation has made law schools more keenly aware of the necessity of preparing students to cope with tax problems. It has also made law students more anxious to explore this field of the law.

Twenty years ago the law of taxation was studied, if at all, as a part of the law of Conflicts of Law. Gradually as the importance of the law of taxation was being recognized, law schools began introducing courses dealing specifically with this branch of the law. At first there naturally was a paucity of materials dealing with taxation, and the professors who were making their researches and investigations in this field were feeling their way in the organization of the available material. During the past few years, although case books began to be more plentiful, court decisions involving principles of taxation became more numerous and some of the decisions played havoc with earlier precedents, thus necessitating constant revision and rewriting of available case books.

By far the best of the newer case books is Professor Bruton's *Cases and Materials on Taxation* (with a pocket for supplements). The arrangement of the material has been soundly organized for class study. As a background for the study of specific tax laws, the author first presents cases dealing with the general question of constitutional limitations. This section includes such important general problems as the taxing power under constitutional government; limitation on the taxing power; limitations regarding distribution of the tax burden; and limitations on taxation affecting interstate and foreign commerce. Under these various headings, the author presents material for the study of the purpose and nature of the tax, material for the investigation of the question of jurisdiction to tax, and the problem of equality and uniformity.

Earlier case books generally followed some such arrangement of material. Professor Bruton has, however, improved on earlier case books by emphasizing in a separate chapter the problem of the nature of the national taxing power and the federal system. The case of *United States v. Butler*¹ and the cases arising under the social security tax law² make necessary such special treat-

¹ 297 U. S. 1, 56 Sup. Ct. 312 (1935).

² *Chas. C. Steward Machine Co. v. Davis*, 301 U. S. 548, 57 Sup. Ct. 883 (1937); *Helvering v. Davis*, 301 U. S. 619, 57 Sup. Ct. 904 (1937).

ment. This author follows his analysis of the taxing power with a study of the problem of jurisdiction. Such sequence represents a shift of emphasis usually found in other case books which consider first the subject of the problem of exemptions and classifications before studying the problem of jurisdiction. There can, of course, be no quarrel with such an arrangement of material, but it is surprising that the author prefers not to give the important problem of exemptions any special prominence. To be sure, he does cover the ground in part by including cases on exemption in connection with the study of specific tax laws, *e.g.*, the property tax, the death tax and the income tax. The chapter on Classification is a vast improvement over earlier case books. This is due in part to the enrichment of material on this subject because of recent decisions on chain store taxes and gross receipts taxes, but more especially because of the author's organization of the material. In this section of the book the author devotes a separate chapter to special limitations on taxation affecting governmental instrumentalities and a portion of a chapter to the special problem of apportionment of direct taxes.

The chapter on Limitations on Taxation Affecting Interstate Commerce, while properly a study in constitutional law, may today be considered a vital part of the law of taxation because of the effect of interstate commerce on such taxes as franchise, license or excise taxes, gross receipts and compensating use taxes. In this section of the book, the reader will find the case of *McGoldrich v. Berwind White Coal Mining Co.*,³ in which case the Court enlarged the power of the states to levy a non-discriminatory sales tax on interstate commerce. The case of *State of Minnesota v. Blasins*⁴ is included in the chapter on Interstate Commerce, the author apparently preferring to emphasize this aspect of the case rather than the jurisdictional question which is usually emphasized by other authors.

In the study of specific tax laws, the author gives full and adequate treatment to the death tax and income tax. This reviewer would have preferred a separate treatment of the gift tax which the author covers not too adequately as part of the subject of death taxes. It is true that gift taxes have developed in recent years as an adjunct to estate taxes and the author emphasizes this fact in an appropriate introduction of his own to the subject of death and gift taxes.

In the field of death taxes, the law and precedents have changed so rapidly that a student is handicapped in his study of this law unless he has before him the most recent case book. The author's treatment of the subject of irrevocable transfers with reservation of an interest is particularly well developed and, of course, the case of *Helvering v. Hallock*,⁵ the latest pronouncement on the subject, is included among the cases. Whether life insurance is part of a gross estate or not has always been a difficult and uncertain problem. The author is immeasurably helpful in his treatment of the subject by his own introductory comments and his further comment on the case of *Bailey v. United States*.⁶ After this decision and the denial of certiorari⁷ the Treasury Department on

³ 309 U. S. 33, 60 Sup. Ct. 388 (1940).

⁴ 200 U. S. 1, 26 Sup. Ct. 229 (1933).

⁵ 309 U. S. 106, 60 Sup. Ct. 444 (1940).

⁶ 27 F. Supp. 617 (Ct. Cl. 1939).

⁷ 31 U. S. 721, 60 Sup. Ct. 1106 (1940).

January 10th, 1941, amended Article 27 of the Regulation, virtually making it questionable whether a taxpayer could make a gift of insurance after the above date and thus succeed in eliminating the proceeds at death from the gross estate. It would seem also that the effect of this Treasury decision, even where the gift of insurance was made prior to this date, is to include some portion of the insurance proceeds in the taxable estate at death. This still leaves the situation with respect to insurance in considerable doubt and students should therefore be familiar with the above Treasury decision in order to complete the analysis that the author makes on the subject of insurance.

The chapter on Income Taxes is also effectively organized. The vital question, "What is income?" is considered by the author first from the point of view of taxability as affected by the source of income and, second, from the point of view of taxability as affected by the form of the income. The author's own introduction to the subject of income taxes, including a reproduction of a tax return, is quite helpful and the insertion of a lengthy note reproduced from a law review article on the important problem of income derived from the discharge of an obligation at less than face value will give students a real understanding of the present scope of income taxation.

This reviewer is impressed by the thoroughness of the case material offered for study in the course on taxation. In spite of the 1228 pages of cases adequately annotated, it seems that there might have been included a chapter treating specifically the franchise tax on corporations, particularly the problem of allocations and segregation. Several cases are given in different sections of the book but the subject as a whole merits as much attention as the property tax which is surely not as important today as the franchise tax. There is no doubt, however, that the author is offering an excellent case book on the law of taxation.

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CASES ON MORTGAGES OF REAL PROPERTY. Second Edition. By Morton C. Campbell.¹ St. Paul: West Publishing Co., pp. xxii, 794.

This book is considerably larger than the first edition.² More and later cases dealing with mortgages of income and the methods of seizure through receiverships, future advances and fixtures are especially noticeable among the new case material. Also the hypothetical problem cases, which distinguished the first edition, have been increased, and citations of cases from which the problems were taken have been added. But the most striking change is in the enlarged and revised footnotes. By excerpts and references to pertinent law review articles, and other legal literature the student has been directed to a vast amount of valuable reading in a very effective manner. The additions not only

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² MORTON C. CAMPBELL, CASES ON MORTGAGES OF REAL PROPERTY (published by the author; Langdell Hall, 1925).