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1930 Supplement to Federal Income Taxation (Book Review)

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Volume Two deals with the "commencement, abatement, continuance and discontinuance of actions." It covers the statute of limitations, parties, the preliminaries to a suit, the forms and service of process, appearance, abatement, continuance and discontinuance.

Under the chapter, "Prerequisites to Service in Particular Cases," are treated certain matters of substantive law, such as the necessity for preliminary demand, tender or notice, which are quite appropriate to a treatise on practice.

One of the difficulties of the lawyer has been that he has had to examine too many books to learn to manage his case. For example, if desiring to sue the City of New York on a claim for property damage he needed to examine the Charter (Section 261) to learn the nature of the preliminary notice he was compelled to serve; if desiring to sue for personal injuries he was compelled to serve a different notice in a different manner, necessitating the examination of Laws of 1886, Ch. 572, to ascertain the proper procedure. These matters are fully explained in the second book.

Each volume is well indexed and, as a well-known teacher of the law is reported as once saying, "Show me the index and I will appraise the value of the book." The forms are numerous and helpful. The notes show from what reported case each form is adopted. This is of advantage especially to the young practitioner, since from an examination of the complete record of the cause, many suggestions as to the management of his own case may result.

CHARLES E. RUSSELL.

New York City.

1930 SUPPLEMENT TO FEDERAL INCOME TAXATION. By Dr. Joseph J. Klein. New York: John Wiley & Sons, 1929, pp. 311.

The advent of any work on income taxation is eagerly awaited by an ever-growing group of lawyers, accountants, and tax specialists. The reception awarded Dr. Klein's major work on the subject a year ago gave evidence of the need of a scholarly and authoritative treatment of the subject which this book supplied. After a decade or so of fumbling on the part of administrative officials, and even of the courts, with the problems let loose by the introduction of income taxation as a part of the regular fiscal policy of the government, definite principles of law are now shaping themselves into well-defined precedents.

Some of the basic principles of law were concerned with the problem of the nature of income. The Treasury Department and the courts were repeatedly asked to determine what is income and when is it income for the purpose of taxation. There is some evidence today of an ultimate satisfactory solution of these questions. The solution has been materially aided by the tendency of courts to accept sound accounting principles in relation to these problems. It is not surprising, therefore, that accountants have been in the vanguard of progress in the development of the law of taxation.

One of the first outstanding writers on the subject among the accountants was Robert H. Montgomery, whose annual commentaries on the Revenue Acts were noteworthy. Others, of course, wrote spasmodically in the various periodicals that concerned themselves with the subject of taxation. Those who were

at all familiar with Dr. Klein's work as teacher and accountant felt that sooner or later he would crystalize his own thoughts on the subject of income taxation and make an outstanding contribution on the subject. The result was the meritorious volume published in 1929, encyclopedic in scope, scholarly in method and achievement, and unquestionably destined to become part of any good income tax library.¹

The present supplement to the basic text is an attempt to bring down to date the daily contribution to tax lore of the Federal Courts, the Board of Tax Appeals, and the Treasury Department. Courts have a way of modifying the law almost every day. Not long ago the Supreme Court decided that income from royalties derived from patents and copyrights could not be taxed by the state inasmuch as this would in effect be taxing an instrumentality of the Federal Government.² More recently the Court held that the profit from the sale of municipal bonds could not be taxed by the Federal Government.³ In the much discussed Macallen case⁴ it held that a tax on business corporations measured by income is, in substance, a tax on income and cannot be assessed against such portion of the income of the corporation which is received from obligations of the United States bonds. In *Farmer's Loan & Trust Company v. The State of Minnesota*⁵ the Court flatly overruled *Blackstone v. Miller*⁶ and held that bonds and certificates of a New York decedent had acquired a permanent *situs* for taxation at the place of domicile and their testamentary transfer was properly taxable in New York, but not in Minnesota. This is only part of the vast material that has been organized and classified in the Supplement for efficient use on the part of those interested in income tax problems. The effect is to make the basic text a more practical work of reference and it is difficult to see how the author can refrain from making the 1930 supplement the forerunner of an annual supplement. The writer feels that the reception given to the major work is an indication to the author that he is under the obligation to continue the issuance of an annual supplement.

The topics of the Supplement are arranged in the same order as they appear in the basic text and the unique method of indexing each paragraph is, of course, continued. Appendix F contains the bibliography for each chapter in the supplement, from which it would appear that the *National Income Tax Magazine* offers a most fertile contribution to the best thought on the subject of income taxation. The index of Board of Tax Appeals Decisions, showing separately, decisions not accepted by the Treasury Department is especially valuable, as is also the table of Court Cases. For the rest, one can but repeat splendid words of appreciation of Dr. Klein's efforts in producing a worthy work and express a hope that he will feel encouraged to continue the task of producing an annual supplement.

BENJAMIN HARROW.

¹ See review of Federal Income Taxation in (1930) 4 St. John's L. Rev. 147.

² *Long v. Rockwood*, 277 U. S. 142, 48 Sup. Ct. Rep. 463 (1928).

³ *Willcutts v. Bunn*, 35 F. (2d) 29 (C. C. A. 8th, 1929), *aff'd* 29 F. (2d) 132 (D. C. Minn., 1928).

⁴ *Macallen v. Massachusetts*, 279 U. S. 620, 49 Sup. Ct. Rep. 432 (1929); see (1930) 4 St. John's L. Rev.

⁵ 280 U. S. 204, 50 Sup. Ct. Rep. 98 (1930); see (1930) 4 St. John's L. Rev. 322.

⁶ 188 U. S. 189, 23 Sup. Ct. Rep. 277 (1903).