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New York State Income and Franchise Taxes (Book Review)

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BOOK REVIEWS

NEW YORK STATE INCOME AND FRANCHISE TAXES. By Benjamin Harrow. New York: Prentice-Hall, Inc., Second Edition, 1951. Pp. xviii, 778. \$12.50.

The preface to a recent tax publication¹ is launched with a phrase so pungent and true, yet so simple, that it must be the introduction to any book dealing with the collection of revenues, "taxation is a complicated business."

It is not surprising that a Government unit of the breadth of the United States, with foreign trade protrusions in every direction, is capable of generating an incredible mass of substantive problems of taxation. However, it is surprising that the State of New York is able to keep pace in this competition of complication. The income and franchise taxes levied by the State of New York bring to bear many of the problems of federal income taxation and at the same time introduce some new intrigues, as for instance, the treatment of interstate commerce, allocation formulae, and the like.

An interesting commentary on the entire situation is that the field of federal income taxation in its initial stages of development was occupied primarily by accountants. It has only been within relatively recent years that the legal brethren have succeeded in wresting a goodly portion of taxation endeavors from their industrious colleagues of the accounting profession. Somehow or other this emigration of professional talent has not extended, on a similar scale, to the area of taxation which has as its font, Albany, New York. New York State taxes are, similar to most state taxes, still for the most part stamping grounds of the accountants.

Unfortunately for the taxpayer-client, this failure has not been without adverse effects on the caliber of the tax planning done on the supposed federal level. The failure to appreciate the effect of state or local taxes may entirely vitiate the cunning of a particularly skillfully contrived arrangement for federal tax purposes. After all, savings in federal taxes which are completely neutralized in additional state or local taxes are not very satisfying. For instance, not a few advisers have recommended intercorporate transactions which obtained some slight federal tax advantage only to discover subsequently, with great embarrassment, that the utilization of such intercompany transactions meant a multiplication of New York City gross receipt taxes, thereby effectively cancelling any federal tax advantages. This is especially painful where a client adopts an inconvenient business arrangement purely because of promised tax savings.

The need for a text book explaining and analyzing the income and franchise tax laws of the State of New York is therefore obvious. Professor Harrow, noted tax scholar of St. John's University, has stepped squarely into

¹ ROBERTS, SCHULTZ AND MAYER, ANNOTATED FORMS FOR TAX PRACTICE (1951).

the breach with the second edition of his *New York State Income and Franchise Taxes*, published by Prentice-Hall. In terms of academic and professional experience and acquaintanceship with leading administrative officials, tax lawyers, and accountants, few men are as qualified as Professor Harrow to have written this book. It is by and large a simplified treatment of the New York laws in a form which is at the same time comprehensive.

Starting with a generalized treatment of the taxing power of the state, Professor Harrow then proceeds to discuss the organization taxes levied upon domestic corporations, as well as licensing taxes on foreign corporations doing business in New York State. Thereupon, he takes up the problems of annual franchise taxes on business corporations and real estate corporations. In New York, there are pertinent provisions for real estate corporations which bear special notice. The final half of the book is devoted to personal income taxes, with a closing reference to New York State unincorporated business income taxes.

In this connection it may be observed that Professor Harrow, in dealing with the franchise tax, steps forward perhaps a bit too blithely in promulgating the theory that the New York concept of entire net income is based upon an accounting concept of net income.² While this may be so, he makes reference to no authority and, in fact, there are grounds to believe that his statement is contrary to the statute. The statute³ states that the term "entire net income" means total net income which shall presumably be the same as the entire net income which the taxpayer is required to report to the United States Treasury Department. The New York State Regulations⁴ reiterate that net income is presumed to be the same as net income for federal purposes—with certain specific exceptions which are statutory technicalities and are not principally concerned with accounting practice as such. While arguments of tax accounting versus ordinary business accounting proliferate through the endless tomes of tax literature, it can scarcely be argued successfully that net income for federal tax purposes is the ordinary business accounting concept. However, because the items of income are pretty well specifically spelled out in the statute and in the interpretive authority and in Professor Harrow's book, no practical consequence attaches to this difference of opinion.

The book does have one fault—minor substantive inaccuracies occasionally appear. This is really quite understandable and is perhaps to be expected because of the nature of the project it undertakes. It is, after all, a simplification, and a lawyer or a student studying its contents may do well to research his problem carefully. This is not to say, however, that for finding that "quick answer" which all too often is demanded in the everyday practice of law the book is not invaluable.

An example of a minor inaccuracy as referred to in the paragraph above may be found at page 211, where Professor Harrow cites the case of *Norumbega Co. v. Bennett*⁵ dealing with the reclassification of a real estate corporation.

² P. 79 *et seq.*

³ N. Y. TAX LAW § 208(9).

⁴ REG., Art. 311.

⁵ 3 F. Supp. 500 (1933).

While Professor Harrow cites the case as holding that a change of reclassification takes place when the Tax Commission reclassifies the corporation, there is at least some authority⁶ to the contrary, which should be mentioned to give the correct perspective. Again, at page 213, Professor Harrow, dealing with the valuation of gross assets of real estate corporations under Section 182 of the New York Tax Law, points out that the tax is based on a "full value" of gross assets. However, he states it to be clear that full value is "obviously" the larger of average gross full value or assessed value. It is not too obvious why this is so obvious, especially since Form 42-CT, dealing with the valuation, calls for valuation as of the last day of the year, thereby seemingly forestalling an "average" valuation. It may be more correct to say that the State Tax Commission assesses on the basis of book or assessed value as of the valuation date, whichever is higher. Another instance of discrepancy is found, on page 525, dealing with the deductible expenses of farmers. Professor Harrow indicates that New York allows an option during the developmental period of farms for farmers to either capitalize or deduct as current expenses the current farm maintenance and operating expenses. Regulations, Article 122, however, states that the amounts expended in the development of farms prior to the time the productive state is reached *are* investments of capital. It may be that Professor Harrow did not have reference to the October 22, 1947 revision of the New York Tax Law which substituted the word "are" for the phrase "may be regarded as" investments of capital. On the other hand, it may be that Professor Harrow is entirely correct but that the Regulations are unclear and the intent of the New York Legislature is to follow the federal tax law in this regard. In any event, the point is made too briefly and misleadingly.

On the whole, however, such inaccuracies, while perhaps annoying to one confronted with a relevant problem, must be subservient to the major function of organizing and explaining in outlines of sterling quality, the principal New York State tax laws. The book, furthermore, serves a valuable purpose in pointing out the differences which exist between the federal and state income tax laws. This perhaps is one of the leading portions of the book and shows intelligent preparation. The differences in the personal income taxes of New York State and the Federal Government, such as the treatment of capital gains, are important tax features which bear close study.

The pity of it all is that this book had to be written. The book is good but the subject should be nonexistent. The existence of approximately four dozen systems of income taxation along with the gigantic federal structure makes the problems of revenue collection, administration, and understanding almost prodigious. It seems more sensible to adopt the Canadian system⁷ which, generally speaking, allows the Federal Government to collect the income taxes through its own laws and administration and remit to the provincial government its share of the income taxes. Or possibly, it would be easier to put into effect a system based entirely upon the use of federal net income with adjustments, if any, only for constitutional reasons. Either of these approaches

⁶ See authority collected in P-H N. Y. TAX SERV. ¶ 25,480.10.

⁷ See The Dominion-Provincial Tax Rental Agreements Act of 1947, c. 58, Statutes of 1947.

would eliminate the painful dichotomies which are perpetuated in our system and would tend to minimize not only the administrative burdens, but also the most important, yet most forgotten consideration, the ultimate cost to the taxpayers.

The underlying irony of it all is the apathy of the taxpayers who should be the ones most aroused at this duplication of revenue collection costs. Yet let a member of the bar or a certified public accountant or other tax expert come forth with such a suggestion, and the average taxpayer is likely to stifle a yawn, or more likely barely stifle a yawn and relegate the subject to the technical men. It is really those who have the vested interest in the confusion, the tax experts, who point out the need for reform, yet the subject, being fraught with little sensationalism, never quite touches off the great emotion of reform in the ordinary taxpayer.

The reviewer's compliments, however, to Professor Harrow. In all fairness to his book, I would say with true, contrite fervor that no law office should be without one.

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PRASHKER ON NEW YORK PRACTICE. By Louis Prashker. Brooklyn, Second Edition, 1951. Pp. xxxiv, 828. \$12.00.

The active practitioner is very much concerned with procedure whereby substantive rights are developed. Unlike substantive law, the law and rules of procedure do not readily fall into a logical pattern. One, therefore, cannot be certain at all times of the appropriate procedure. A comprehensive and incisive text on practice and procedure is consequently a necessity in the active practice of the law. *Prashker on New York Practice* is precisely what a practitioner requires for it is the product of an inexhaustible and profound knowledge of the law of practice and procedure tempered by the flames of innumerable court skirmishes.

It was the writer's privilege to review the original edition published in 1947.¹ The present book follows the general pattern of the prior edition. Many topics not treated therein are treated here, such as *lis pendens*, pre-trial practice, satisfaction and cancellation of judgment, arbitration and costs. Many provisions of the Civil Practice Act and rules of Civil Practice added or amended since the last publication are also dealt with.

In its general aspect the book is a work of art by a very skillful lawyer and legal writer. The sequence and content of the subject matter are in complete accord with and perfectly keyed to the point of view and approach of the busy practitioner. So much so, that to a large extent the excellent index and tables are unnecessary. All too often valuable content eludes the active prac-

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¹ McNally, Book Review, 22 ST. JOHN'S L. REV. 187 (1947).