

The Lawyers' Tax Manual--Procedure-- Transactions--Forms (Book Review)

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Recommended Citation

Harrow, Benjamin (1950) "The Lawyers' Tax Manual--Procedure--Transactions--Forms (Book Review)," *St. John's Law Review*: Vol. 24 : No. 2, Article 18.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol24/iss2/18>

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BOOK REVIEWS

THE LAWYERS' TAX MANUAL—PROCEDURE—TRANSACTIONS—FORMS. By Alfred S. Pellard. New York: Clark Boardman Company, Ltd., 1949. Pp. xxiii, 582. \$12.00.

Lawyers are by this time keenly aware of the tax impact on most of the transactions with which they are concerned. To be sure, most lawyers are not tax specialists, but yet they must have more than a working familiarity with the law of taxation if they are to advise clients properly. It is not enough for lawyers to know tax law. They must also acquire a facility in drawing documents with a consciousness that the tax aspect of the transaction complies with the latest rulings of the Commissioner of Internal Revenue, as well as the almost daily court decisions.

This book attempts to formulate the tax problems that confront the lawyer in the more common transactions in his law practice. In addition, each chapter contains illustrative forms that incorporate the proper tax treatment of the transactions so that the taxpayer may receive the maximum tax benefit. Usually it is the tax aspect of a problem that primarily concerns the taxpayer. Even if it did not, a proper understanding of the tax law and its application can prevent an unnecessary tax burden.

To say that the author succeeds in what he sets out to do is an understatement. He not only has given the lawyer a working tool for his daily practice, but he has presented the material simply and clearly in language the lawyer can understand. The reader is soon aware that the author speaks from a wealth of knowledge and practical experience, and with an ability to convey this knowledge and experience to the reader.

The first three chapters of the book are devoted to practice before the Treasury Department, and tax procedure generally, including petitions to the Tax Court and appellate courts. The emphasis is on such matters as closing agreements, compromises, voluntary disclosures, deficiencies and claims for refund. The author makes a good practical point in suggesting the advisability of signing a waiver of restrictions on assessment¹ after an agreement is reached with a revenue agent subject to an approval of a final closing agreement. The trial of a case in the Tax Court is based in great part on some stipulation of the facts. A discussion of this aspect of a Tax Court trial would be of immeasurable help to tax attorneys and this reviewer would suggest the inclusion of some discussion on stipulations in the next edition of the book.

High taxes starting with the war years and restrictive legislation encouraged some fraud in relation to the tax laws. A voluntary disclosure of the fraud will avoid criminal prosecution but not the civil penalties. It is, therefore, important to know what the Bureau of Internal Revenue considers to

¹ Form 870.

be a voluntary disclosure. Such a disclosure must be made before the government initiates an investigation through any of its officers or agents with respect to the filing of a return or the payment of the tax. The author is of the opinion that the best method of making a voluntary disclosure is to file an amended return and, if possible, accompany the amended return with a payment of the tax. However, a disclosure may be voluntary if the taxpayer informs any official of the Bureau of Internal Revenue of the fraud.

Nine actual petitions to the Tax Court are included in Chapter Three, including three on Section 722 cases.

Thirteen chapters are devoted to as many tax problems inherent in the more common transactions that are of almost daily concern to the lawyer. These cover wills, inter vivos trusts, estate and gift tax problems, life insurance, business insurance, real estate transactions, the sale of a business by a sole proprietor, partnerships and the sale of a partnership, purchase of corporate stock versus purchase of the business, corporations, installment sales, and alimony payments.

The chapters on life insurance and business insurance are especially valuable, not only because the tax problems are adequately presented, but because of the two business trust agreements, one for a corporation and the other for a partnership, that illustrate the method of incorporating the tax principles in the documents that will ultimately be scrutinized by the tax authorities.

The chapter on real estate transactions should be required reading for an attorney. It is in this area that the tax administrator has often sought interpretations of the law that are in conflict with accounting principles and realities. One thinks of the treatment of improvements by a lessee, which had a long administrative and court history, ending with the case of *Helvering v. Bruun*,² a case that finally had to be overruled by Congress. The taxation of advance rentals paid to a landlord is still a bone of contention with the accountant. The treatment of mortgage foreclosures is sometimes quite weird. The author does not discuss the *Crane* case,³ which in our opinion merited some extended treatment. In this case the United States Supreme Court in a divided opinion upheld the contention of the Commissioner that the basis for determining gain on the sale of real estate is the full value of the property adjusted for allowed or allowable depreciation, even though the owner of the property was not personally liable on the mortgage. The taxpayer had argued that the basis for gain should be the taxpayer's equity in the property. The legal profession found the final decision in conflict with its conception of legal principles and property rights.

In a sale of a business by a sole proprietor, an agreement not to compete has different tax consequences for the seller and the purchaser. The seller must treat payments in consideration of such an agreement as ordinary income. The purchaser is interested in a high allocation for such an agreement, since he will write off the payment over the period of the restriction. This situation is well treated by the author. In this chapter there is an illustrative

² 309 U. S. 461 (1940).

³ *Crane v. Commissioner*, 331 U. S. 1 (1947).

form for allocating in an agreement a purchase price among classes of assets sold.

One of the best chapters, and there are many of much merit, is on corporations. The author discusses the problem of the transfer of property to a corporation, non-taxable exchanges, reorganizations, liquidations, redemptions of stock, dividends and distributions. In a later edition of this book this reviewer would like to read the author's comments on involuntary conversions. The meaning of earnings and profits is significant in considering the taxability of corporate distributions. There is a good discussion in this chapter on the meaning of "Earnings and Profits."

The author probably had valid reasons for not discussing the personal holding company provisions in the law. One aspect of the problem of the personal holding company arises where a corporation rents its property to a partnership consisting of its stockholders. Such a situation invariably raises the question of the status of the corporation as a personal holding company. This is a pitfall of which stockholders should be aware. The author will undoubtedly wish to treat this situation in the next edition of the book.

The forms illustrated in the chapter on corporations include minutes in case of dissolution, minutes and plan in case of dissolution of subsidiary corporation, and the resolution for declaring a dividend in property.

This reviewer has not attempted to mention all the excellent material to be found in this important tool for the average legal practitioner. Undoubtedly the book fills a need that the lawyer will be quick to see.

BENJAMIN HARROW.*

RELIGION AND EDUCATION UNDER THE CONSTITUTION. By James M. O'Neill. New York: Harper & Brothers, 1949. Pp. xii, 338, index. \$4.00.

Professor O'Neill's scholarly and well documented book bitterly condemns and refutes the interpretation by the present United States Supreme Court of the phrase, "an establishment of religion," as contained in the First Amendment to the United States Constitution. His attack is leveled upon the recent controversial cases of *Everson v. Board of Education*¹ and *Illinois ex rel. McCollum v. Board of Education*,² wherein the Supreme Court construed this prohibition of an establishment of religion as in effect creating a complete separation of church and state. Hence, in the language of the Court, "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called. . . ."³

Professor O'Neill contends that such a construction is patently erroneous and historically false. He critically analyzes and dissects the individual opin-

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¹ 330 U. S. 1 (1947).

² 333 U. S. 203 (1948).

³ *Everson v. Board of Education*, 330 U. S. 1, 16, 723 (1947).