

## The Federal Income Tax, A Guide to the Law (Book Review)

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or in its future. But to lean on it in order to create a negative metaphysics is simply an error of reasoning. We should not blame them for reasoning falsely when dealing with non-scientific matters, for that is not their field and the result can only harm themselves. But when they abuse the prestige that their purely technical work has given them and attempt to spread these ideas among the young, one is justified in criticizing their anti-scientific spirit and in deploring the fact that their arguments contain elements of passion that no more belong in the embryo of the mathematical scheme they defend than do the convictions they reproach others for having."<sup>5</sup>

This work has or could have a special appeal to lawyers or students in the law if they are of that glad school that is not too happy with the law as it is. Most sciences are inspiredly dissatisfied with things as they are. Their votaries are forever seeking new truth, new techniques, new learning. Not even theology is inimical to this and branches such as mathematics that seem so fixed to many are in reality eagerly alert to grow.

We of the law alone conceive it to be our duty to stand firm in a world of change and growth. Except in erudite volumes that few read we do not even evaluate our system.

The few who are articulately restless must appeal to subterfuge and sometimes to what is dangerously near deceit to build reform within our august sanctuary.

Invariably these innovators are accused of being objectionally radical and in too many cases in the past they have been. The fact is that whether they are or not we, as the super-conservatives of the world, would resent them. Familiarity with the kind of thinking portrayed in the *Road to Reason* may yet prove to be our salvation in jurisprudence.

RIGHT REV. MONSIGNOR WILLIAM T. DILLON.\*

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THE FEDERAL INCOME TAX, A GUIDE TO THE LAW. By Joyce Stanley and Richard Kilcullen. New York: The Tax Club Press, 1948. Pp. xv, 324, index. \$6.00.

Joyce Stanley and Richard Kilcullen have written what they have called a guide to the law, but they have added an approach which makes the book a most welcome addition to the practitioner's library. They take the Internal Revenue Code as a starting point and discuss each section chronologically, omitting those sections that do not have a general application. The statutory language of the Code is explained in a way that can be understood not only by

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<sup>5</sup> Pp. 233-234.

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the lawyer, but even by the layman. Only an able teacher fully the master of his subject matter could do that and the authors unmistakably know the law of taxation and how to convey the meaning of the statutory language of the law.

Nowhere, for example, has this reviewer read a clearer explanation of the reorganization provisions in the law.<sup>1</sup> The mystery of these provisions seemed to vanish as the authors revealed the meaning of Section 112(b)(3), involving exchanges by stockholders, or Section 112(b)(4), involving exchanges by corporations taking part in the reorganization. The six clauses of the definition of reorganization are fully explained. To the statutory requirements of reorganization, case law has added the concept of continuity of interest and the business purpose rule. The authors include an ample discussion of these concepts.

The basis provisions, Section 113, are adequately presented in fine pedagogic order. In discussing Section 113(a)(2), the basis for determining gain or loss on the sale of property acquired by gift after December 31, 1920, the authors not only explain the different basis rule for determining a gain and for determining a loss, but go behind the rule and explain the reason why Congress provided different rules. There is one situation where neither a gain nor a loss will result. That is where the donee's selling price is less than the donor's cost, but more than the value of the property at the date of gift. For some reason, the authors do not mention this situation, an inadvertence probably, since the analogous situation with respect to basis of property acquired prior to March 1, 1913,<sup>2</sup> is mentioned.

Even in explaining sections of the Code that have a general application, statutory language is often abstruse or inept, or even silly. For example, take Section 115(f), dealing with the taxability of stock dividends. In struggling for an adequate explanation of the language of the Code, the authors finally had to say that "the section states that all stock dividends are income except those that are not income."<sup>3</sup> The entire discussion on dividends is treated with a clear understanding of the problems that have troubled the courts for many years, for example, distributions equivalent to a taxable dividend,<sup>4</sup> earnings and profits<sup>5</sup> and the *Sansome* rule,<sup>6</sup> and dividends in kind and the *General Utilities & Operating Company* case.<sup>7</sup>

One can thumb the pages of the book at random and find some section of interest that can be read with profit. For example, in recent months Section 116(a) has been interpreted by the courts. The non-resident citizen may exclude from his gross income, income earned for services performed outside the United States, if the citizen is a bona fide resident of a foreign country for the entire taxable year. Litigation has evolved around the question of

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<sup>1</sup> INT. REV. CODE § 112.

<sup>2</sup> INT. REV. CODE § 113(a)(14).

<sup>3</sup> Pp. 203-204.

<sup>4</sup> INT. REV. CODE § 115(g).

<sup>5</sup> INT. REV. CODE § 115(h).

<sup>6</sup> *Commissioner v. Sansome*, 60 F. 2d 931 (C. C. A. 2d 1932).

<sup>7</sup> *General Utilities & Operating Company v. Helvering*, 296 U. S. 200, 80 L. ed. 154 (1935).

the meaning of bona fide resident of a foreign country. The authors give a fine summary of the meaning of non-resident. Then the authors remind the reader that under Section 116(a) (2), if the citizen has been a bona fide resident of the foreign country for at least two years prior to his return to the United States, amounts received after his return for the services previously performed outside the United States are excluded from gross income.

The taxation of estates and trusts<sup>8</sup> has been replete with difficulties and uncertainties. Only recently Lloyd Kennedy wrote a volume on *Federal Income Taxation of Trusts and Estates*.<sup>9</sup> It is rather interesting that it is only within the past five to ten years that many phases of the taxability of trusts have been clarified by the courts. The pages devoted to this phase of the law make the present rules readily understandable. This reviewer was particularly impressed with the clarification of Section 162(b), on income currently distributable. The authors discuss this provision sentence by sentence and consider in the discussion the effect of Section 162(d), the "sixty-five day rule." They, of course, avoid the complicated situations connected with the sixty-five day rule, contenting themselves with the statement that "The sixty-five day rule and the twelve-month rule are far more complicated than the foregoing statement would suggest and that statement should be understood as merely an indication of the purpose and meaning of the rules."<sup>10</sup> The reader will be amply repaid after reading the discussion on revocable trusts,<sup>11</sup> income for benefit of grantor,<sup>12</sup> and, of course, the two pages devoted to Clifford trusts, which are discussed at this point, though such trusts are taxed under Section 22(a).

While partnerships as such are not taxable entities, the partnership relationship creates special tax problems. There is, for example, the effect of a transfer of assets by a partner to a partnership. While no gain is realized by such transfer, the basis of the assets to the partnership is the transferor's basis.<sup>13</sup> The effect of a distribution of assets in kind by a partnership to a partner likewise does not result in a realization of gain or loss, unlike the situation in the case of a corporation. The determination of the basis of the assets in the hands of the distributee partner is related to the partner's partnership interest.<sup>14</sup> The computation of the basis becomes an intriguing procedure. But it is the death of a partner that creates difficult questions, particularly with respect to income earned after the death of the partner and payments made to the deceased partner's estate. Are such payments income to the estate, or do they represent payments towards the purchase of the deceased partner's interest, in which latter case they are taxable as income to the surviving partners? Recent cases have been struggling with this question. The authors state the problem succinctly and indicate the trend of the court decisions.

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<sup>8</sup> INT. REV. CODE §§ 161-172.

<sup>9</sup> Benjamin Harrow, Book Review, 23 ST. JOHN'S L. REV. 201 (1948).

<sup>10</sup> P. 261.

<sup>11</sup> INT. REV. CODE § 166.

<sup>12</sup> INT. REV. CODE § 167.

<sup>13</sup> INT. REV. CODE § 113(a) (13).

<sup>14</sup> *Ibid.*

One chapter in the book is devoted to some of the procedural sections of the Code—assessment and collection of deficiencies, interest and penalties and overpayments.

There is, too, a chapter on personal holding companies, which apparently the authors think should be discussed in a book of this kind as being of general application.

There is no doubt that the authors give the reader a general familiarity with the tax law. They point out all the problems that are presently engaging the attention of tax practitioners and the courts. Twenty-three years ago this reviewer was given the task of instructing a group of students interested in income taxation. There were no "tax courses" available at that time, so this reviewer wrote something he called *A Guide to the Revenue Act of 1926*, for use in his classes. It perhaps served the purpose for which it was written. However, the book this reviewer would have wanted to write is this one, so well and ably done by Joyce Stanley and Richard Kilcullen.

The practitioner who shies away from this book because it may seem elementary, in that it is "only" a guide and discusses only matters of general interest, is missing something.

BENJAMIN HARROW.\*

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WE HOLD THESE TRUTHS. Second Edition by Stuart Gerry Brown. New York: Harper & Brothers, 1948. Pp. xi, 396, index. \$2.75.

In these days of seminars on semantics, it is interesting to find an attempt to bring together the basic documents for the study of the meaning and implication of a word. As Mr. Stuart Gerry Brown points out in his thoughtful introduction to this casebook on the American idea of democracy, it is too easy to use a word for its effect on the hearer, instead of as a means of communication, or definition of ideas.

Semanticists would call democracy a rather high order abstraction; if they are right, the dictionary definitions will be of little help towards understanding the meaning of the word. The express purpose of this little book is to collect the materials for a more extended study of the American idea of "democracy," beginning, in fact, with the Mayflower Declaration. We are given the documents setting up the government machinery designed to ensure democracy and its continuance (or prevent its undue extension), including not only the Constitution,<sup>1</sup> but the Articles of Confederation,<sup>2</sup> the Massachusetts Bill of Rights,<sup>3</sup>

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<sup>1</sup> P. 76.

<sup>2</sup> P. 58.

<sup>3</sup> P. 52.