

Corporate Taxation--"The Franchise Tax" (Book Review)

Benjamin Harrow

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BOOK REVIEWS

CORPORATE TAXATION—"THE FRANCHISE TAX." By Henry M. Powell. Boyd Press, pp. viii, 547.

The statutes governing the various franchise taxes imposed on the different classes of corporations are remarkable chiefly for their lack of clarity. Sections of the law are often a welter of words, the provisions seemingly without rhyme or reason, a patchwork of ostensibly unrelated provisions. It would seem an almost impossible task to find in the statutes the unifying basis that undoubtedly welds the different provisions into a whole. And yet, the startling fact that impresses itself upon the reader of this book is that there is a definite plan, and surprising as it may seem, a coherent significance to the various sections of the law. Only one who has made a painstaking study of the law and who has worked with it intimately could pierce the legislative verbiage and reveal the sense behind it. Readers of this book will rejoice and be grateful that the author has done just that.

In the introductory chapter the author presents an excellent historical background to the franchise tax law. Step by step he traces the important changes in the law that were introduced from time to time in response to the problems that arose as the State Tax Commission attempted to administer the franchise tax law efficiently. The author at the outset states the two important problems of franchise taxation, the definition of net income and the problem of allocating the net income to be taxed so that interstate business is properly segregated from intrastate business. The book contains a good discussion of the meaning of entire net income although the author does not accept the accounting concept of income as necessarily the best concept. Numerous illustrations of the computation of tax help to clarify the law.

The book emphasizes the legal approach and the author is at his best in the historical and legal analyses. The problem of doing business and the constitutional limitations on the power to tax are adequately presented and help to understand the reasons for so many of the provisions of the law that seem unrelated to a sound tax system. References to adjudicated cases are plentiful and excellently correlated with the discussion in the text.

Until the decision in *Western Union Telegraph Co. v. Kansas*¹ it was thought that a state could tax a foreign corporation on its authorized capital stock. The Supreme Court held in that case that such a tax was unconstitutional. The author is of the opinion that because of the decision in *Atlantic Refining v. Virginia*,² this is no longer the law. This reviewer hesitates to accept the conclusion that the latter case goes so far as to permit the taxation of foreign corporations on its entire authorized or issued stock except in special circumstances.

The author, of course, limits his discussion to the different franchise taxes on corporations. Under the New York law, corporations are classi-

¹ 216 U. S. 1 (1910); see also *Airway Electric Appliance Corp. v. Day*, 266 U. S. 71 (1924); discussion in Harrow & Sack, *New York Income and Franchise Taxes*, pages 6 and 18.

² 302 U. S. 25 (1937).

fied for purposes of franchise taxation and state and national banks are taxed separately under Article 9B. Throughout the book the author points out the reasons underlying the basis for special taxes on different classes of corporation. The tax on banks resembles the personal income tax more closely than any of the other franchise taxes. In fact, it is a franchise tax only in name and this probably for the purpose of subjecting to tax interest on federal and state obligations that otherwise would be exempt. The author does not include in his book a discussion of the franchise tax on banks, although it could properly be considered in any discussion of corporate taxes. The discussion of consolidations seemed meagre although the analysis of the leading cases and the discussions of the experience of Wisconsin and Pennsylvania in dealing with affiliated companies is helpful. It seems that New York has leaned heavily on Pennsylvania for much of its own franchise tax laws.

In addition to a clarification of the franchise tax laws themselves, the author devotes several chapters to administrative aspects, the collection of the tax, remedial procedures before the commission and in the courts and the powers of the tax commission. A complete set of forms adds to the practical value of the book. There is also a valuable table of cases and a good general index. The latter is a topical arrangement with references not only to the text but to the tax law as well.

Not much has been written in this field of taxation perhaps because of the difficulties in presenting the uninviting material into something the tax practitioner can understand. The author has succeeded amply in writing a text book on the subject of franchise taxes that will prove of immeasurable help to the lawyer, student and even the layman.

BENJAMIN HARROW.

FEDERAL, ESTATE AND GIFT TAXATION. By Randolph E. Paul. Little, Brown and Co., two volumes, pp. 1 to 1615, v to x, v to xx.

When Congress in 1916 imposed the first of the current series of estate tax laws, lawyers had a field day in circumventing the full impact of this law and succeeding laws through varied plans of tax avoidance, often obvious and always based upon valid legal concepts traditionally proper and sanctioned by time and precedent. Until a transfer of property by gift was made subject to a special gift tax in 1932,¹ it was obviously possible to avoid an estate tax at death by means of completed gifts during life. Where for one reason or another a completed *inter vivos* gift was not expedient, recourse could be had to the ingenious device of a transfer in trust with strings retained by the grantor, as numerous as the harp, on which the grantor could continue playing with his property as his democratic heart desired.

To be at all effective a death tax had to encompass *inter vivos* transfers of a testamentary nature; hence the inclusion in the gross estate of transfers defi-

¹A gift tax law was passed in 1925 but repealed by the Revenue Act of 1926.