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Montgomery's Federal Taxes on Corporations (Book Review)

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MONTGOMERY'S FEDERAL TAXES ON CORPORATIONS. GROSS INCOME AND DEDUCTIONS, pp. 1056, TAX DETERMINATION AND RETURNS, pp. 981—two-volume set; FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS, pp. 769.

The Revenue Act of 1942 was a surprisingly favorable tax law for the taxpayer. Except for the tax rates which necessarily had to be high, it is replete with remedial and beneficial legislation. The effect of the *Higgins* decision¹ was overcome by permitting deductions in connection with the production of income and this provision may be applied retroactively to all open years. The effect of the decision in the *Enright* and companion cases² was overruled by permitting a decedent's accrued income, as that term was peculiarly interpreted by the Supreme Court, to be taxed to the Estate or the beneficiary receiving it. Not only that, but a portion of the Estate tax paid on such accrued income is allowed as a deduction to the Estate or beneficiary subject to income tax on such income. The tax benefit principle has now been sanctioned by Congress in the case of bad debts previously deducted in a loss year and subsequently recovered. The capital gain and loss provisions have been liberalized to a degree that should satisfy severest critics. Net capital losses may be carried over for five years until fully absorbed; short term and long term gains and losses may be offset one against the other; in some situations a taxpayer may consider a gain as a capital gain if it works out to his advantage and on the other hand, if the same transaction results in a loss it may be treated as an ordinary loss fully deductible; the maximum rate of tax of 25% is almost too good to be true. War losses are deductible in full. The technical provisions affecting personal holding companies have been modified to ease the hardships that plagued taxpayers under the earlier laws. Even excess profits tax law is full of provisions to cushion the effect of the high tax rates and provides amply for relief in cases of hardship. These instances are all taken at random and they can be multiplied manifold.

But the most remarkable provision in this law, one destined to have a most significant and salutary effect upon our economic system, is the net operating loss carry over and carry back. Section 122 permits a taxpayer who sustains an operating loss in his business to carry such loss forward for two successive years and such loss may be taken as a deduction against income. Not only that but the net operating loss of a business may be carried back for two preceding years and taken as a deduction against income in such years. This is highly significant in that the net income of a business man is now really taxed on the basis of a five year cycle instead of one year. This principle of equalizing normal and surtaxes on business on the basis of a five year period has been extended to unused excess profits credits, which also may be carried back two years and forward two years to equalize and minimize excess profits taxes.

In the light of such provisions, one would expect to find almost passionate approbation of the Revenue Act of 1942 in the prefaces to these volumes. Such, however, is not the case. The author continues his tirades against Congress and the administration. This apparently has now become a regular feature of the prefaces to otherwise excellent handbooks on the tax laws. This

¹ 312 U. S. 212.

² *Id.* at 636.

time there is at least one concession that the author himself makes. In the prefaces to the two volumes on federal taxes on corporations (unfortunately repeated verbatim in each volume) the author does admit that he writes with passion rather than with reasonableness. Fortunately once the prefaces are left behind, the more than 2,000 pages of solid reading matter reflect the old master in his ability to clarify the most abstruse provisions of the law. The law, the regulations, the adjudicated cases, and the author's own running commentaries are all set forth in an orderly and logical manner and give the reader a clear understanding not only of the general principles of the tax law but also of the helpful hints for minimizing taxes.

In the chapters devoted to consolidated excess profits tax returns, the author succeeds in clarifying some of the most technical and difficult sections of the law and the regulations. No other commentator has made an analysis of the consolidated excess profits tax law provisions comparable to this one in the excellence of its presentation, and no tax practitioner could do justice to a consolidated return without reading these chapters. The author's task was made more difficult because the regulations explaining the new law were not ready in time for the publication of the book. Nevertheless, with the aid of the old regulations and the author's keen understanding of what the new law meant, the consolidated provisions are satisfactorily explained and summarized. Outstanding also are the chapters on the personal holding company provisions.

Most tax practitioners are by this time familiar with the author's treatment of the tax law and have learned to rely on the author's interpretations, particularly of the finer points of the law. This year because of the numerous changes in the Internal Revenue Code, these volumes were especially welcomed. The previous huge one-volume text on corporations has this year been divided into two smaller volumes and this is a desirable change. These books might be even more useful if a way could be found to keep them up to date, either through monthly pocket supplements, similar to the McKinney volumes on New York Law, or through the publication of looseleaf volumes, similar to Rabkin & Johnson's recent book on income taxes.

In addition to the two volumes on corporations, the author has again revised his volume on federal taxes on Estates, Trusts and Gifts. While changes in the Revenue Act of 1942 relating to these taxes were few, the courts have been unusually busy in their interpretations and re-interpretations of the law. This revision was therefore necessary and appropriate. As usual, the chapter on Planning the Distribution of an Estate is most illuminating in its practical correlation of the gift, estate and income tax laws. All three volumes have indexes to the law, regulations and Treasury Department rulings, and also an index to Court cases and a workable general index.

No one in any way interested in the field of taxation can be without the complete series of Montgomery's volumes. It is on the must list for any tax library.

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