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Federal Tax Handbook 1940-1941; Federal Tax Handbook Supplement 1941-1942; Federal Taxes on Estates, Trusts and Gifts; Excess Profits and Other Taxes on Corporation; Auditing (Book Review)

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perform,¹⁸ when, in fact, he undertakes to *perform* if the principal does not; and when the student is permitted to think of a surety's obligation as ever being a secondary liability,¹⁹ more than misleading is involved.²⁰

DAVID S. EDGAR, JR.*

FEDERAL TAX HANDBOOK 1940-1941. By Robert H. Montgomery. Vol. 1, pp. i to xii, 1 to 1178; Vol. 2, pp. i to iv, 1179 to 2331. \$17.50.

FEDERAL TAX HANDBOOK SUPPLEMENT 1941-1942. By Robert H. Montgomery. Pp. iv, 498. \$3.00.

FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS. By Robert H. Montgomery. Pp. vi, 761. \$7.50.

EXCESS PROFITS AND OTHER TAXES ON CORPORATION. By Robert H. Montgomery. Pp. x, 710. \$7.50.

AUDITING. By Robert H. Montgomery. Pp. 692. \$6.00.
New York: Ronald Press.

An avalanche of books has come from the pen of Robert H. Montgomery during the past year. Five of the books are in the field of federal income, estate and gift taxation and one is in the field of auditing, theory and practice. Following the enactment of the Revenue Acts of 1940 which, among other things, launched the new excess profits tax on corporations, the author was obliged to bring up to date his now familiar Handbooks on federal taxes,¹ which have been appearing regularly for over twenty years. Normally the author would not have considered a revision of this material for several years in order to give the courts an opportunity to confirm or revise his opinions on mooted points. However, close upon the heels of the 1940 Revenue Act, Con-

¹⁸ This is true no matter how many times one explains to them the contents of *Comment e* and the rest of the contents of *Comment f*, so that once again we are faced with need to ask if a choice of an ambiguous term with a warning definition is educationally safe.

¹⁹ Cf. RESTATEMENT, SECURITY (1941) § 82, *Comments f* and *h*; § 137, *Comment a*; § 146, *Comments a* and *b*.

²⁰ Your reviewer would recommend that the word "secondary" be wholly dropped; that the only use made of "primary" be in the Hohfeldian sense; that in the Hohfeldian sense use be made of "remedial" instead of "secondary"; that adjectives describing a supposed "order of" obligation or liability be not used at all, but instead that we refer to the "principal debtor" and the "security party," calling the latter "surety" or "guarantor," as the case may be, when the generic phrase will not do. If adjectives ever do prove necessary, we can invent new ones. Until better ones are given to hand, "principal" and "accessorial" will serve. It is submitted that "conditional" should be used instead of "secondary" in the last of the senses of that word.

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¹ FEDERAL TAX HANDBOOK 1940-1941, Vol. 1; FEDERAL TAX HANDBOOK 1940-1941, Vol. 2.

gress was obliged to enact the 1941 Revenue Act, a measure intended primarily to increase the raising of revenue to staggering heights. Robert Montgomery was not to be daunted. Without giving himself any respite from his labors, he countered with three additional volumes.² The first of the new volumes is a supplement to Volume 1 of the 1940-1941 Handbooks, bringing this volume up to date, incorporating the changes and revisions brought about by the new Revenue Act of 1941 and by court decisions, Board of Tax Appeals opinions, etc., promulgated over a period of a year. The second of the new volumes is a complete revision of that part of last year's Handbook dealing with Excess Profits Taxes and other Federal Taxes on corporations. This is quite important since all the tax material relating to corporations is now contained in a compact volume of about 700 pages instead of being part of a volume of over 1152 pages. The third volume is a complete revision of that portion of the earlier volume dealing with all Federal Taxes on Estates, Trusts and Gifts, this revision being necessary, the author tells us, because of the numerous changes in these laws that have occurred in the period of only one year.

The Montgomery Handbooks, now in their twentieth edition, are familiar and welcome volumes on the active shelves of attorneys and tax practitioners, who would not think of solving a tax problem without referring to what Montgomery had to say about it. What he does say has the wisdom, directness and thoroughness that comes with years of scholarship, teaching, and practical experience in the fields of taxation, general law and accounting. It is difficult to reconcile the admirable treatment of tax problems in the Handbooks with the spirit of the prefaces to the books. It seems to this reviewer that the prefaces are perhaps written with unwarranted vehemence and partisanship, not quite worthy of the scholar and eminent authority that is associated with the name of Montgomery.

In addition to the valuable Handbooks on taxation, the author has recently completed a sixth revision of his book on Auditing. For three decades the accounting profession has regarded this book as something in the nature of a final authority on auditing, theory and practice. The recent revision was necessitated by the explosion following the McKesson-Robbins scandal and the unmerited attempt to fix some responsibility for the machinations of a group of scoundrels upon the accounting profession. The American Institute of Accountants in their study of extensions of auditing procedure, the Security Exchanges Commission in setting forth its requirements for the preparation and filing of financial statements, have enlarged the scope of auditing practice, and the legal as well as moral responsibilities of auditors. This book on Auditing incorporates the latest thought and development of accounting and auditing principles and practice. Because of the increased legal responsibilities of the accountant, this book should be read carefully by those practitioners who are not yet aware of the rapid developments and changes in accounting and auditing standards.

Recent developments in the business world have compelled a closer cooperation between the lawyer and accountant. The attorney, therefore, should

² FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS; FEDERAL TAX HANDBOOK SUPPLEMENT; EXCESS PROFITS AND OTHER TAXES ON CORPORATIONS.

have at least a reading knowledge of the present status and significance of accounting principles and auditing standards. No book better summarizes for the attorney, as well as for the accountant, the interpretation of business in its modern setting. Numerous situations involving principles of accounting and auditing find their way into the courtroom and these principles tend to become principles of law. Many problems arising out of the present war effort will require solutions by the Government in the light of recent developments in accounting and auditing thought. Undoubtedly attorneys in the coming years will have a closer contact with these problems and they should bring to their work a better understanding of modern business from the accountant's and auditor's point of view. They will undoubtedly find in Montgomery's Sixth Edition of *Auditing, Theory and Practice*, the material they need for an intelligent understanding of modern business.

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NEW YORK STATE INCOME AND FRANCHISE TAXES. By Harrow and Sack.
New York: Alexander Publishing Co., Inc., 862 pp., \$10.

In their preface to *New York State Income and Franchise Taxes*, the authors have stated their object to furnish taxpayers and their advisers with a guide to a clearer understanding of the law and its administration. This they have accomplished to a very marked degree by drawing on their own practical experiences without stint. Their product is a text supplying not only the fundamentals, but also the technical aspects of New York State taxation, and filling a long sought need, particularly on the part of tax practitioners.

In arrangement, franchise taxes on corporations are considered in Part One and personal income tax on individuals in Part Two. Part Three is devoted to the text of law and regulations, followed by an appendix containing a table of the cited cases.

The volume is replete with excellent chapters on the various subjects that are covered. Chapter 6, dealing with conditions *Where Federal Net Income Is Not True Net Income*, is exceptionally enlightening. So is Chapter 11 on *Allocation and Segregation*, and Chapter 21, dealing with the *Tax on Banks and Financial Corporations*. The discussion in Chapter 11 of the Tax Commission's practice under subdivision 7(a) of Section 214 dealing with its broad powers equitably to adjust the tax on the basis of corporate activity is one that should be of interest to corporations conducting part of their business outside of New York, and may prove to be rather novel to them and their representatives. To the same effect is the discussion in connection with the application for equitable adjustment of the tax under subdivision 7(a) in Chapter 13.

In the absence of regulations dealing with franchise taxes and the limited field covered by the few rulings that have been published from time to time