

Taxable Income (Book Review)

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details." Therefore, the author has included extended notes on many topics, of which the following are illustrative: "Jurisdiction; Service by Publication; Service on Motorists; Federal Interpleader Legislation; Limitation of Actions." Quite uniformly, throughout the book, there are interspersed introductory notes and running comment. This is the feature of the work which gives it its character as a lecturer's notebook, for much of this material is not mere "detail," but comment, analysis, and exposition, which characterize the usual law school lecture. The material is valuable, but imparts a text-book character to much of the case book—which, at least, creates a doubt as to whether the student who has carefully studied his book, will not be deprived of something of that classroom stimulation which comes from first impressions, incident to classroom discussion, and whether the instructor has not, too early in the process, given the student the answer book to many of the problems which, for his own good, should perplex him for a considerable time.

On the subject of forms, the author has made contribution only to the extent of illustration of the usual and simple papers. As a means of aiding comprehension, they have been well selected and carefully presented.

Throughout the book, there is repeated evidence of authorship which is keenly alive to newer developments. The usual treatment of joinder of causes of action and interposition of counterclaims, is omitted, by reason of recent changes in our procedure. The treatment of the problems of vouching in parties, under Subdivision 2 of Section 193 of the Civil Practice Act, is impressively up to the minute. There is a presentation of the recent legislation on injunctions and labor disputes. In connection with the discussion of the summons, there is reference to the case of *People v. Globe Jewelers, Inc.*, 249 App. Div. 122, 291 N. Y. Supp. 362 (1936), holding that it is a violation of the Penal Law to use a summons for merely commercial purposes, which introduces an ethical element well worth impressing upon the student. There is an adequate treatment of the subject of declaratory judgments and proceedings supplementary to judgment, as well as of the special proceedings. While the discussion of appellate practice is very sketchy, nevertheless it is sufficient as an introduction to the beginner.

When everything is said and done, Mr. Prashker's work is so deserving of praise, that, what little criticism there may be, is of no material consequence. As far as the reviewer is concerned, if he were teaching pleading and practice, and faced with the necessity of selecting a case book, he would have no hesitation in choosing Mr. Prashker's book as the best current book now available on the subject.

JAY LEO ROTHSCHILD.*

TAXABLE INCOME. By Roswell Magill. New York: The Ronald Press, 1936, pp. ix, 437.

The income tax law presents two fundamental problems. The first is concerned with the question, "What is income"; the second, with the determination of when income is taxable.

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This book takes the reader on a sightseeing tour—through the maze of income tax laws, income tax regulations, Board of Tax Appeals cases and court decisions—to point out the progress that has been made towards a concept of taxable income. Such a journey might well prove a tedious one, were it not for the eminently able and scholarly director who has succeeded in making this tour an intellectual treat, even thrilling at times. In spite of the scholarly and well documented presentation, the book is quite readable. The material is expertly arranged and classified.

The introductory chapter starts the journey with the court's definition of income, as stated in *Eisner v. Macomber*,¹ and sets it against a background of an economist's conception of income, a conception much broader and more inclusive than the tax concept. Income must be realized before it will be taxed, and such realization is accomplished through a completed transaction in the form of a sale or exchange.

Since corporate distributions have presented the major occasions for a development of a concept of income, the author proceeds with a discussion of problems relating to cash dividends, stock dividends, and corporate reorganizations. In view of the emphasis placed upon dividends in connection with the surtax on undistributed income, appearing for the first time in the Revenue Act of 1936, the discussion on the *Koshland* case² is timely.

The realization of income is affected by the method a taxpayer employs in reporting his income. He may use the cash basis, or the accrual basis. The earlier laws placed the emphasis for realization of income on the cash basis. This was the only basis with which the average man and the courts were familiar before accounting principles impressed themselves upon the minds of judges. It would appear that where income is to be taxed on an annual basis, the accountant's concept of accrual basis is the more accurate and fairer method of taxing income. Indeed, Colonel Montgomery is an ardent advocate of the accrual basis for taxing all income. Lest it be thought that this method would simplify the administration of the income tax law, Professor Magill points out a number of problems that have perplexed courts in their attempt to assimilate the accountant's view of income. The author discusses the following problems: the receipt in one year of income earned in several past years; the receipt in one year of income to be earned in several future years; bond premium and discount; the receipt of income subject to claims; income from contracts of sale.

Since courts have been unwilling to eliminate the cash basis of reporting income, and perhaps rightly so, the Treasury Department has been obliged to resort to the doctrine of the constructive receipt of income in order to prevent taxpayers from determining for themselves the year in which they might report income for taxation. Unfortunately, the author has not given the reader as complete a discussion of the concept of constructive receipt as might be expected from a study of taxable income such as this.

The average man thinks of the realization of income as taking the form of cash, and yet the tax law emphasizes the equivalent of cash equally with cash as resulting in realizable income. Part II of the book is thus devoted to char-

¹ 252 U. S. 189, 40 Sup. Ct. 189 (1919).

² *Koshland v. Helvering*, 297 U. S. 702, 56 Sup. Ct. 385 (1936).

acteristics of income. The various chapter headings—money and property; benefits through the discharge of obligations; elements of control—indicate some of the problems resulting from the principle of taxing the equivalent of cash.

It has long been a moot question whether Congress may tax gross income. Chapter 9 is the most complete analysis, in fact the only real study of this question. It would appear from the author's dissection of the cases, that while gross income has in a number of cases been taxed, and while gross income could constitutionally be taxed, that the courts require some provision for deductions of cost of goods, or of investment, and in such cases require taxation of net income. Furthermore, since Congress has generally allowed those deductions which business practice and accounting principles dictate, the question whether gross income could be taxed has not really been put to the test.

Chapters 10 and 11 treat of what the author calls compensatory payments and gifts and bequests.

It is difficult to give the full flavor and richness of this book in a brief review. There is no doubt that the author enjoyed writing the book. The touches of humor throughout are evidence of this. For example, in commenting on the single attempt to impose an income tax upon the donor on the appreciation in value of donated property, the author says, "But in taxation, though not in Shakespeare, a rose by another name may not only smell as sweet, but sweeter."² One enjoys, too, the good natured analysis of conflicting decisions of courts that simply are not reconcilable, no matter what touchstone is applied to them. That is, in fact, the reason why it becomes impossible to concentrate "into a single sentence a definition of income which will be at once accurate and useful."⁴ The author has made a heroic and noteworthy attempt, concluding the whole matter in the words of Justice Holmes, "A word (income) is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."⁵

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² P. 366.

⁴ P. 398.

⁵ *Towne v. Eisner*, 245 U. S. 418, 38 Sup. Ct. 158 (1917).

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