

Federal Income Tax Handbook, 1935-36; Federal Taxes on Estates, Trusts and Gifts, 1935-36; and Hidden Taxes in Corporate Reorganizations (Book Reviews)

Benjamin Harrow

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Harrow, Benjamin (1936) "Federal Income Tax Handbook, 1935-36; Federal Taxes on Estates, Trusts and Gifts, 1935-36; and Hidden Taxes in Corporate Reorganizations (Book Reviews)," *St. John's Law Review*: Vol. 10 : No. 2 , Article 40.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol10/iss2/40>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

with an easy source of access to the material needed to understand the background in which the future laws of neutrality will be found.‡

MAURICE FINKELSTEIN.*

FEDERAL INCOME TAX HANDBOOK, 1935-36. By Robert H. Montgomery. New York: The Ronald Press Co., 1935, pp. xix, 1034.

FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS, 1935-36. By Robert H. Montgomery and Roswell Magill. New York: The Ronald Press Co., 1935, pp. x, 458.

HIDDEN TAXES IN CORPORATE REORGANIZATIONS. By Arnold R. Baar and George Maurice Morris. Chicago: The Foundation Press, Inc., 1935, pp. xv, 547.

The Federal Income Tax Handbook, 1935-36, is the annual contribution of Robert H. Montgomery to the accounting and legal profession on the current status of the income tax law and its administration within the Treasury Department and the courts. The tax practitioner automatically adds this book to his tax library each year, for the author has long been recognized as a foremost authority on income tax law and what he says will prove of practical value to one interested in income tax law and its administration. The book is more than a handbook. It is encyclopedic in scope and should prove an excellent starting point and source for the investigation of any tax problem that disturbs the taxpayer and his defender against the marauding tactics of the Treasury Department.

This year the author has seen fit to add a bad preface to an otherwise excellent book. To the writer, at least, the preface seems incongruous in this type of book, for Montgomery here assumes the role of a political advocate, a soap-box orator as he bitterly attacks the present administration. He all but asks the reader to go to the polls next November and vote the straight Republican ticket and "throw the rascals out". To an admirer of Montgomery as a leader in the accounting profession, a lecturer, and authority on tax law, this is a jarring note.

In one of the calmer observations in the preface, the author claims that our income tax law violates the fundamentals of scientific taxation. Perhaps it does, but Montgomery does not enlighten us on what is meant by scientific taxation. Is it scientific, for example, to exempt state and federal bonds from taxation? Such an exemption has been part of our income tax laws since 1913. It stands out today as probably the most glaring defect in our tax law, and yet the author has not a word of protest against this unscientific "help-the-rich" feature of our law.

‡ ED. NOTE—Since the submission of this review, the remaining volumes have been released by the publishers.

* Professor of Law, St. John's University School of Law.

The author's tirade against Congress, for the contradictory changes made by it in the law, is not merited. Montgomery's criticism should rather be levelled against the contradictions inherent in the present state of our capitalist economy, which contradictions perhaps prevent the administration of a tax law along scientific lines and make necessary patchwork changes. The preservation of our capitalist economy requires some redistribution of wealth. It seems to the writer that this may be accomplished in a large measure by taxation, but Montgomery does not see the wisdom of this. This may be due to the fact that the author is concerned primarily with the immediate practical issue of the taxpayer versus the Treasury. Again and again the author speaks of decisions unfair to the taxpayer, and yet he does not emphasize the many decisions made that are extremely fair to the taxpayer. For example, on page 171 the author discusses the case of *Buckhardt v. Commissioner*.¹ Taxpayer's farm was condemned in 1931, the taxpayer having procured another farm in 1933. No gain or loss is recognized in the case of involuntary conversions² where money is forthwith expended in the acquisition of related property or in the establishment of a replacement fund. No such fund had been set up in this case and yet the Board held that there had been substantial compliance with the law.

Again on page 220 the author discusses the cases of *Rogers v. Commissioner*³ and *Northport Shores, Inc., et al. v. Commissioner*⁴ in relation to the determination of gain or loss on the sale of inherited property. In both cases the fair market value as of the date of death governed.⁵ Such values had been established by appraisals for estate tax purposes and yet in the *Rogers* case the Board permitted the taxpayer to prove that the appraised value was erroneous and in the *Northport Shores* case the Board held that the taxpayer was not estopped from claiming a higher value than that claimed for estate tax purposes.

On page 93 the author considers the case of *The Central R. R. of N. J. v. Commissioner*.⁶ In this case an official employed by a railroad carried on a business adverse to his employer. The employer brought suit and recovered damages. The court held that the amount recovered was not taxable income. Surely Montgomery himself could multiply instances of eminently fair treatment to the taxpayer, and among such examples he would probably include the case of *Forest Glen Creamery Co. v. Commissioner*⁷ where the Commissioner had sent by registered mail to the taxpayer a notice of deficiency "for the taxable year 1926 and the period ended June 30, 1927." The notice was erroneous and should have covered the year 1927, but the Board held the Commissioner was bound by the deficiency notice and so by the Statute of Limitations from determining a tax liability for the period from July 1, 1927 to December 31, 1927. One further case should be mentioned. On page 6 the

¹ 32 B. T. A. 1272 (1935).

² REVENUE ACT OF 1934, § 112 (b), 48 STAT. — (1934), 26 U. S. C. A. § 112 (b) (1935).

³ 31 B. T. A. 994 (1935).

⁴ 31 B. T. A. 1013 (1935).

⁵ REVENUE ACT OF 1934, § 113 (a) (5), 48 STAT. 706 (1934), 26 U. S. C. A. § 113 (a) (2) (1935).

⁶ 79 F. (2d) 679 (C. C. A. 3d, 1935).

⁷ 33 B. T. A. 87 (1935).

author comments on *Wayburn v. Commissioner*⁸ where, despite a complete absence of records, the Board allowed \$12,000. of a claim of \$22,000. as a deduction for entertainment expenses. There is very little else that one might find fault with in the book.

Montgomery makes a most constructive suggestion in advocating the abandonment of the cash basis of reporting income. The accrual basis is of course a sounder basis of determining net income, but courts have been slow in adopting accounting concepts of income⁹ as the author shows in his chapter on methods of Reporting Income.

Montgomery is at his best in showing the glaring defects and inconsistencies in the law and regulations. For example, in discussing the recognition of gain or loss on exchanges in connection with a reorganization¹⁰ he shows the absurdity in not considering a foreign corporation as a corporation. As to the meaning of "Stock and Securities" in the reorganization sections, Montgomery is quite impatient with the lack of definiteness on the part of the Treasury as to whether promissory notes are or are not securities.

The discussion on the subject of basis for determining gain or loss in the case of property acquired by gift¹¹ is one of the clearest the writer has read on this subject. Montgomery's disagreement with the regulations is sound.

In addition to the Income Tax, the author discusses adequately the Capital Stock Tax and Excess Profits Tax which are bound up with the Income Tax. The book contains a complete index to Articles of Regulations, Treasury Department Rulings, U. S. Board of Tax Appeals, Decisions, and Court Cases, a boon to the research worker. It is an easy matter to forgive the author for the preface, in view of the many excellences of the book itself. Montgomery himself says, "it [the preface] has little to do with the contents of the book."

* * * * *

The book on Federal Taxes on Estates, Trusts and Gifts, like its companion volume,¹² is a handbook for tax practitioners. It is the first book of its kind and will undoubtedly prove useful to the lawyer or accountant who wishes a quick opinion and ready references before proceeding on a thorough investigation of a question involving the taxation of estates, trusts and gifts.

The addition of the name of Roswell Magill as one of the authors leads one to expect a more scholarly treatment of the subject, or some phases of it at least, rather than a handbook. One who is familiar with the excellent work of Professor Magill as a scholar and administrator may well ask why he should wish to be the author of a handbook.

Part I of the book discusses the Income Tax on Estates and Trusts. While estates and trusts are taxable entities, the income of such entities is not always taxable to it, for legal and practical aspects affect the determination of who

⁸ 32 B. T. A. 813 (1935).

⁹ Benjamin Harrow, *The Supreme Court on Accounting Methods* (1928)

14 A. B. A. J. 607.

¹⁰ REVENUE ACT OF 1934, § 112 (b) (5), 48 STAT. — (1934), 26 U. S. C. A. § 112 (b) (5) (1935).

¹¹ REVENUE ACT OF 1934, § 113 (a) (2), 48 STAT. 706 (1934), 26 U. S. C. A. § 113 (a) (2) (1935).

¹² Federal Income Tax Handbook, 1935-36.

is to be taxed on the income of the estate or trust. The beneficiary may be taxed, the estate itself may be taxed, and in some cases the grantor of the trust may be taxed. The law affecting such taxation is quite clearly interpreted by the authors.

Part II is concerned with the Estate Tax. Six chapters in all are devoted to a quite adequate treatment of the several aspects of the estate tax law. One chapter deals with the problem of valuations of specific items of the gross estate, a most important feature of the Estate Tax law, and another with the estates of non-resident alien decedents. Since the estate tax is levied not only on testamentary transfers but also in certain cases on *inter-vivos* transfers, the chapter on gross estates of residents properly concerns itself with such matters as transfers in contemplation of death, transfers intended to take effect in possession or enjoyment at or after death, revocable trusts, and property passing under powers of appointment. The law with respect to taxation of *inter-vivos* transfers has been quite disturbing and unsettled and the uncertainties in the minds of the courts have resulted in conflicting opinions. The clarification of the status of the law at the present date is eminently well stated by the authors in the chapter, making this by far the most valuable contribution in the book. Court decisions affecting *inter-vivos* transfers handed down as recently as November and December, 1935,²³ are referred to and discussed. The sections devoted to the taxation of insurance and the retroactive application of estate tax laws are also excellently explained.

Part III of the book is devoted to the gift tax. The authors content themselves with a mere explanation of the law and perhaps properly so since very few questions arising under the law have come before the courts for adjudication.

Pages 319 to 413 of the volume are devoted to appendices giving verbatim the text of the Federal Estate Tax Law, the Gift Tax Law, the proposed Inheritance Tax, the proposed Gift Tax on Donees, and Committee Reports. The relevancy of devoting one hundred pages, about one-fourth of the book, to quoting these laws verbatim, especially two proposed laws that were never enacted, is questionable. Such valuable space might well have been given over to the subject of *inter-vivos* transfers, or to some of those matters that the authors refer to in the preface, such as the penalizing of revocable trusts, the effect of tax laws on the social and business life of the times, some contribution on the study of social and economic effects of particular forms of taxation. There are few authorities more competent to do this very thing than Mr. Montgomery and Professor Magill.

* * * * *

The contribution of Messrs. Baar and Morris is not a handbook, but a specialized treatment of the reorganization provisions of the Income Tax Law

²³ *Helvering v. St. Louis Union Trust Co.*, 56 Sup. Ct. 74 (1935) (on taxing reversionary interests); *Becker v. St. Louis Union Trust Co.*, 56 Sup. Ct. 122 (1935) (on taxing reversionary interests); *Helvering v. Helmholtz*, 56 Sup. Ct. 68 (1935) (on taxing revocable trusts); *Helvering v. City Bank Farmers Trust Co.*, 56 Sup. Ct. 70 (1935) (on taxing revocable trusts); *White v. Poor*, 56 Sup. Ct. 66 (1935) (on trustee as an adverse interest); *Johnstone v. Commissioner*, 76 F. (2d) 55 (C. C. A. 9th, 1935), *cert. denied*, 56 Sup. Ct. 89 (1935) (on powers of appointment).

and allied problems, such as the basis for determining gain or loss on sales or exchanges and in the case of depreciation and depletion. The authors plunge right into the subject and make an almost microscopical study of the terms used in the reorganization provisions, tracing the meanings of words and phrases through all the laws, court and Board of Tax Appeals decisions and Congressional Committee reports. No case, however remote, is omitted from consideration and reference. Here then might be the last word and final clarification of problems on corporate reorganizations were it not for the fact that important court decisions handed down since September, 1935, must modify some of the conclusions reached by the authors.

The Supreme Court on December 16, 1935, finally settled the question raised in the *Minnesota Tea Company* case,¹⁴ whether the dissolution of the transferor corporation is requisite to a merger or consolidation, by holding that the reorganization was not dependent upon dissolution of the transferor corporation. This issue was even more important in the *Watts* case,¹⁵ where there was an attempted reorganization through the acquisition of stock, instead of through the acquisition of assets, but the Supreme Court followed the rule announced in the *Minnesota Tea Company* case that dissolution of the transferor corporation was not a requisite. In the *Watts* case also the court held that bonds are to be regarded as securities and not as cash.

In *John A. Nelson Co. v. Helvering*¹⁶ the assets of one corporation were transferred for non-voting preferred stock and cash. The lower court held this to be a sale, but the Supreme Court recognized this transaction as a reorganization under the rule in the *Minnesota Tea Company* case, even though the acquisition of the preferred stock did not give the transferor control of the transferee.

The first authoritative treatment of reorganizations in income taxation appeared in 1931.¹⁷ The present volume brings the material down to date and adds the contribution of two able tax attorneys to an intricate subject. The book will be part of the library of every tax consultant.

BENJAMIN HARROW.*

¹⁴ *Helvering v. Minnesota Tea Co.*, 56 Sup. Ct. 269 (1936).

¹⁵ *Helvering v. Watts*, 56 Sup. Ct. 275 (1936).

¹⁶ 56 Sup. Ct. 273 (1936).

¹⁷ MILLER, HENDRICKS AND EVERETT, REORGANIZATIONS AND OTHER EXCHANGES IN INCOME TAXATION (1931).

* Professor of Law, St. John's University Graduate School of Law.