

State Inheritance Tax and Taxability of Trusts (Book Review)

Franklin Ferriss Russell

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

Recommended Citation

Russell, Franklin Ferriss (1935) "State Inheritance Tax and Taxability of Trusts (Book Review)," *St. John's Law Review*: Vol. 9 : No. 2 , Article 38.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss2/38>

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.

Mr. Weinberger's addresses are inspiring, moving, and at the same time, convincing. They stress in forceful language the legal struggle for the right to say and to write what we think and at the same time they emphasize the important part which was enacted in that struggle by the venerable Andrew Hamilton, friend of Benjamin Franklin and veteran of the Pennsylvania Bar.

In regard to the liberty of the press, there is a problem other than the legal, which it might not be amiss to mention at this time. It has been forcefully called to our attention by an address delivered by Walter Lippmann at George Washington University on February 22, 1935. In it he eloquently stressed the non-legal problem of the independence of the press. For, as he said, "It is perfectly possible to have a press which is legally free, but it is not independent because it is the mouthpiece of parties, interests, cults."

The addresses by Mr. Weinberger and the address by Mr. Lippmann state the causes of the legal freedom and individual independence of the press as they have not been stated for some time. Both are recommended for reading and re-reading, not only in these days of unrest, but at all times lest we forget that liberty of any kind is prone to vanish more easily than it is acquired.

EDWARD J. O'TOOLE.

St. John's University School of Law.

STATE INHERITANCE TAX AND TAXABILITY OF TRUSTS. By Royce A. Kidder.
Chicago: The Foundation Press, Inc., 1934, pp. xxiii, 544.

The author of this work was for several years Assistant Attorney General in charge of the Inheritance Tax Division of the Office of the Attorney General of Illinois. In the Foreword he states that the purpose of the work is to render to the law practitioner a much needed service by presenting the current law applicable to state inheritance taxation, including the subject of taxability of trusts, in convenient and compact form. During the past few years the administration of the state inheritance tax has undergone revolutionary changes in that there was double taxation of tangible personal property, and in some cases quadruple taxation of intangible property. The majority of states have passed reciprocal laws whereby intangibles of non-resident decedents were exempted from taxation, provided the state of the domicile extended reciprocity in the same manner, and to the same extent. About the same time, the decisions of the United States Supreme Court began to show a tendency towards the abolition of multiple taxation, the idea or principle being gradually developed that the assertion of the right to tax in one state denies the right to tax in another state.

Undoubtedly one of the outstanding developments of recent years has been the growth of trusts and trust companies. Today few small cities have no trust company, and it is rapidly becoming the practice for persons who desire to be relieved of the active management of property, and to provide for its transfer to relatives after death, to transfer the property to a trust company

in trust to manage it, pay the income to the grantor for life, and upon his death to distribute the corpus to the beneficiaries. Necessarily, the growth of trust business has focused much attention upon future estates, the taxability of which has always been a troublesome problem, owing to the difficulty of ascertaining, in many cases, both the legal nature and the value of such interests. Finally, the advent of the life insurance trust has created a new type of legal business of large amount, and has raised many problems of taxation which have perplexed lawyers, trust officers, taxing officials and others.

The book contains a great deal of valuable information in convenient form. It discusses transfers by will, transfers by death other than by will, transfers during life by resident and non-resident decedents, transfers to aliens, valuations of life estates and future interests, deductions, exemptions, conflict of laws, and various procedural matters in state inheritance taxation, including the adjudication of the tax, appeals, collection and refunds. The book is not limited to the state of Illinois, but gives the law of many other states. On the other hand, it does not pretend to be a rival of the tax services which are veritable encyclopædias of information concerning all the laws and all the regulations of all the states. Such a work necessarily would have to be constantly changed as new laws, new decisions and new regulations issue from the forty-eight states. But the present work is very valuable not only for lawyers, but also for economists and legislators. It gives enough of the important parts of the tax laws of various states to permit one to form an opinion of the desirability of certain changes in the law of particular states. For example, a committee on taxation of some legislature which desires to revamp the inheritance tax laws of that state could probably do no better than to commence its study of the problem with this book.

The work admittedly does not pretend to cover the subject of the federal estate tax. But, to quote the foreword, "the fundamental rules of law determining the major questions presented in federal estate taxation are likewise applicable in state inheritance taxation; and therefore the leading estate tax cases are reviewed and discussed in connection with their bearing on the law governing state inheritance tax. In the treatment of the subject of taxability of trusts, the federal estate tax liability is fully considered as well as the liability for state inheritance taxation." The author more than makes good his promise in this respect.

One unusually interesting feature of the work is the chapter dealing with transfers to aliens. This subject of course involves the effect of treaties between the United States and various foreign countries. The treaty-making power of the United States and the rights of individual states to tax property left to aliens are amply discussed. The provisions of treaties with twenty countries are discussed in detail. The author might have devoted some space to a discussion of the most-favored-nation clause.

The chapter on taxability of trusts contains forms of trust agreements which should prove of value to a young lawyer who is drawing up his first instrument of this character.

If one were to select what is probably the outstanding part of the work, he might very well pick upon the portions dealing with the effect of the reservation on the part of the grantor of a trust of the right to revoke, alter or amend the

trust, or to exercise some powers over the administration of the trust during his lifetime. This portion of the book portrays in a very interesting form the struggle which has been going on for years between the taxing authorities, on the one hand, and legal and tax advisers to men of wealth, on the other. He points out the differences between the federal and the state rules. The cases show how men of means have desired to have their cake and eat it at the same time, by giving away property and yet continuing to control it, in an effort to avoid taxes and yet enjoy the income and real dominion over their wealth. The book shows the evolution of the present law on the subject, and points out just how the differences in the present law have arisen.

A comparatively trivial, yet at times annoying defect could easily have been corrected. At times the author gives the dates of the decisions of the cases, and at other times he does not. For example, on page 193 he gives three footnotes to three cases decided in the United States Supreme Court, two of which give the dates and one of which does not. While the addition of dates in all cases would add somewhat to the size of the footnotes where a large number of authorities are cited, in perhaps the majority of cases this would not be so, *e.g.*, page 193. In tax books, especially, the dates are important to the reader, who usually knows the dates of the more important statutes, although of course in many cases, the date would not reveal what particular statute was being considered.

The average lawyer who handles tax matters becomes quite familiar in a short time with the leading decisions of his own state, but usually ignores authorities of other jurisdictions. He is generally appalled at the idea of making an exhaustive examination of the law of other jurisdictions, because in many cases the differences in the wordings of the statutes will be sufficiently important to make such authorities of little value. The author, on the other hand, has already done this tedious spade-work in respect of the most important parts of taxation with which the average practitioner is apt to come in contact. The work is especially useful for this reason.

From the standpoint of the general public, a work like this is perhaps more valuable to the law reformer than it is for lawyers, tax officials and trust company men in that it reveals the lack of similarity of inheritance tax laws in the different states, and hence may tend to bring about uniformity of statutes of this kind. Few things would be more desirable, especially when state lines mean so little from the standpoint of the decedent or grantor. Mr. Kidder has made a useful contribution to tax literature.

FRANKLIN FERRISS RUSSELL.

Brooklyn Law School.

SECURITY SPECULATION: ITS ECONOMIC EFFECTS. By John T. Flynn. New York: Harcourt, Brace & Co., 1934, pp. xii, 332.

One of the outstanding landmarks in the recent history of governmental interference in business is the Roosevelt law concerning the regulation of the national securities exchanges. Not only is this measure almost wholly unprecedented; it marks one of the boldest and most direct attacks ever made by the