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Federal Income Taxation (Book Review)

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FEDERAL INCOME TAXATION. By Dr. Joseph J. Klein. New York: John Wiley & Sons, 1929, pp. 2378.

When the tax on incomes was first made part of the fiscal policy of our government a new field of law was opened up. For the reason that the country was slow in accepting the idea of an income tax as a permanent method of raising revenue, our courts were not primarily concerned with the establishment of sound precedents to guide lawyers and legislators in building up a body of income tax laws. The earliest cases attacked the very idea of a tax on incomes on the ground that such a tax was unconstitutional because it was a direct tax and hence subject to apportionment among the states on the basis of population.¹

Historically and economically the attempt to make the income tax a direct tax was unsound, but the Supreme Court, viewing the problem with one ear to the ground, decided that an income tax was unconstitutional.² This decision made necessary a constitutional amendment³ before the Supreme Court would permit a tax levy on incomes. Even before the adoption of the amendment however, it was evident that the courts could not permanently prevent a tax levy on incomes, for the court was prepared to accept what in fact was an income tax although promulgated in the guise of an excise tax.⁴

Between 1913 and 1928 eight income tax measures were successively passed by Congress.⁵ During that period the administration of these measures has compelled the more serious attention of our courts to the new problems raised by income taxation. The result has been the creation of a new *quasi-judicial* body, the Board of Tax Appeals, and also the steady growth of law and precedents, both sound and unsound, surrounding income tax issues, so that one can today speak of the law of income taxation.

The influence of accountants and sound accounting principles in the development of the law of income taxation has been quite marked. It is not too much to say that this influence has been so compelling that lawyers have come to rely to a great extent on the accountant for sound direction and guidance in building up income tax law. The wisdom of the new alliance of lawyer and accountant in the field of income taxation is shown partly in the production of several excellent works on income taxation by several of the more prominent accountants.

The most recent work is Dr. Joseph J. Klein's encyclopedic volume on "Federal Income Taxation." A characteristic thoroughness marks the pages of the book, as well as a clarity and simplicity in the presentation of every conceivable problem in income taxation that has troubled the Treasury Department, the Board of Tax Appeals, the Federal Courts, the Lawyer, the Accountant, the Student, and finally, the Taxpayer himself.

The major problem in income taxation is the determination of what is income. This is so because the determination of income is not a matter of

¹ Constitution, Article 1, Section 9, Clause 4.

² Pollack v. Farmers Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. Rep. 673 (1895).

³ 16th Amendment, declared ratified on February 25, 1913.

⁴ Flint v. Stone Tracey Co., 220 U. S. 107, 31 Sup. Ct. Rep. 342.

⁵ Revenue Acts of 1913, 1916, 1917, 1918, 1921, 1924, 1926 and 1928.

legislation by Congress mainly, but of adjudication by the courts. The courts will not veto legislation by Congress on allowable deductions from gross income, but the final word of the courts may be necessary before one can with certainty accept as income what Congress has declared to be income. This has been the case on the question as to whether stock dividends are income;⁶ on the question of whether forgiveness of indebtedness results in income;⁷ on the question of whether a payment of a debt in foreign currency for less than the amount of the debt results in income;⁸ on the question of whether earnings prior to March 1, 1913 might be income;⁹ and more recently, whether a recoupment of a loss is income.¹⁰ On this entire subject Dr. Klein devotes an interesting chapter under the heading "The Nature and Scope of Income," the pages of which are at once scholarly and readable.

How invaluable this volume should be for the lawyer may be indicated in this very chapter, not merely because of the content, but by reason of the form in which the subject is presented. Each paragraph is properly indexed and classified. Copious notes refer the reader to the appropriate cases which form the basis of the author's statements, and also to the pertinent sections of the Revenue Acts and the Treasury Regulations. Besides the customary index in the back of the book, there is also an index showing a table of all Board of Tax Appeals decisions as well as court cases cited throughout the work. One of the appendices contains a complete bibliography dealing with the topics discussed throughout the text.

Under our income tax laws the taxpayer virtually assesses himself. The government provides a form for the taxpayer's return of income. This return contains a classification of all types of income, followed by a classification of all types of deductions, the difference between both totals being the net income which becomes the basis of the tax. Following this the return provides for the application of various types of credits against net income. In his book Dr. Klein subjects each item entering into the determination of the tax to a microscopic analysis or synthesis. The result is not only an adequate knowledge of what the law is with respect to each item, but also an understanding of the historical development of the law since the Revenue Act of 1909. Appropriate illustrations clarify any difficult situation.

In the chapter on "Exchanges and Reorganization" for example, the author discusses the subject of corporate reorganization. As a basis for understanding this all important development in the modern business unit he studies the early Supreme Court decisions which regarded the form of these reorganizations rather than the substance and hence taxed situations that the law itself subsequently declared non-taxable. In succinct paragraphs the author then discusses the meaning of the term reorganization; the purpose of the Reorganiza-

⁶ *Eisner v. Macomber*, 252 U. S. 189, 40 Sup. Ct. Rep. 189 (1920).

⁷ *United States v. Oregon Washington R. R. & Navigation Co.*, 251 Fed. 211 (C. C. A. 2d, 1918).

⁸ *Bowers v. Kerbaugh-Empire Co.*, 271 U. S. 170 (1926).

⁹ *Plant v. Walsh*, 280 Fed. 722 (1922); *Lynch v. Turrish*, 247 U. S. 221 (1918); *United States v. Ginzburg*, 278 Fed. 363 (C. C. A. 2d, 1921).

¹⁰ *Sanford & Brooks Co. v. Commissioner of Int. Rev. Circuit Court of Appeals*, 4th Circuit, No. 2827, reported in *United States Daily*, 10/24/29.

tion provisions; the meaning of the expression "Party to a Reorganization"; meaning of Plan of Reorganization; and then the various tax free exchanges permissible under the Statutes in connection with reorganization. The statutory provisions in all the Revenue Acts covering this topic are analyzed. Accompanying the entire discussions is a liberal sprinkling of references to the Treasury Regulations, and the cases, all making for an intelligent understanding of one of the most difficult features of the Revenue Act.

One subdivision of the book dealing with the procedure in the determination of tax, particularly the chapter on "Determination within the Department," permits us to look behind the scenes and view the fascinating process of the tax return from its filing by the taxpayer at the office of the Collector, through the listing, proving, and auditing divisions with ensuing conferences, field audits, reviews, appeals, and assessments, until the return finds a final resting place as a closed file.

Not the least important chapters in the book are the two dealing with Assessment, Payment and Collection. It is no exaggeration to say that nowhere will one find a more adequate discussion of such an important technical feature of the Revenue Act as when an assessment may be made. The running of a Statute of Limitations and the effect of waivers is important in connection with any judicial proceeding and is none the less so in respect to tax assessments. Numerous decisions covering Limitations and Waivers have been made by the courts and all of them are analyzed and set forth in the notes.

The layman often wonders how such an intangible institution as a government actually proceeds to enforce the collection of a tax. What weapons may it use? How effective are they? The story of how the government wields the big stick is told in a manner that is entertaining as well as instructive.

Unquestionably the book will ultimately find its way to the library of every lawyer and accountant interested in the subject of income taxation. As a summary of the experience of the government in administering the income tax laws over a period of fifteen years, this volume stands as a landmark.

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