June 1953

Lectures on Taxation of Business Enterprise (The Summer Institute, 1952)

Richard B. Stephens
University of Florida

Follow this and additional works at: https://scholarship.law.ufl.edu/flr

Recommended Citation
Richard B. Stephens, Lectures on Taxation of Business Enterprise (The Summer Institute, 1952), 6 Fla. L. Rev. 266 (1953).
Available at: https://scholarship.law.ufl.edu/flr/vol6/iss2/13

This Book Review is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact rachel@law.ufl.edu.
BOOK REVIEWS


A few weeks ago, in Coughlin v. Commissioner, the United States Court of Appeals for the Second Circuit decided that a Binghamton, New York, attorney could deduct for federal income tax purposes travel and related expenses incurred by him in attending New York University's Fifth Annual Institute on Federal Taxation. Costs of attending the Institute were treated as ordinary and necessary business expenses, and cases denying a deduction for general educational expenses were distinguished in part on the basis of the "evanescent" nature of the knowledge sought by an active tax practitioner.

At the time this is being written it is too early to predict what other courts will do with the Second Circuit's rule in the Coughlin case. If the rule itself does not prove "evanescent," other courts may determine the question of deductibility on the basis of the kind of learning afforded at institute proceedings — may look to see if the proceedings are designed to enable the lawyer to "keep sharp the tools" of his trade rather than merely to increase "his fund of learning in general."

These thoughts form an interesting background for a consideration of the Michigan Summer Institute of 1951. There are three broad categories into which most tax discussions will fit. They are: (1) how to get along under present law; (2) technical changes that should be made in the law; and (3) general changes that should be made in the law, involving major departures from present policy. The Summer Institute of 1951 (and accordingly the collection of essays that comprise the book here reviewed) falls in part into each of these categories. A striking feature of the Institute is the nice balance struck in this respect.

It may be supposed that the average tax practitioner or business

---

1 203 F.2d 307 (2d Cir. 1953).
3 Congress itself is going to take a look at the problem. See Taxes on Parade, June 17, 1953, p. 1.
4 203 F.2d 307, 309 (2d Cir. 1953).
5 Ibid.
executive attending the Institute found the greatest reward, from the standpoint of his day-to-day business, in part of Part Three and in Parts Four and Five. In these portions he was furnished some weapons for immediate use—information on the tax aspects of corporate reorganization\(^6\) and information on tax considerations involved in the selection of a business form,\(^7\) corporate accumulations of surplus,\(^8\) salary policies,\(^9\) efforts to defer salary,\(^10\) and the use of stock options in the compensation of important personnel.\(^11\)

Finally, he could hear a sophisticated but withal pragmatic discussion of the intricacies of the Excess Profits Tax Act of 1950.\(^12\) The "evanescent" nature of tax knowledge is here most apparent. As this is being written, two short years after the Institute, the excess profits tax is not long for this world, whether allowed to expire June 30, 1953, or propped up by a balky Congress for a last six months. As regards the book under review, some will continue to find help in the lectures on the Excess Profits Tax as the residual controversies left in the wake of what most hope will be the last such tax gradually work their way toward the courts.

The need for technical improvement in the tax laws was suggested by several speakers.\(^13\) Mr. Surrey devoted his entire time to suggested technical changes in the federal income tax treatment of corporate distributions.\(^14\) There is a good month's rations of thought food in his remarks; and Mr. Surrey's ability, experience and scholarship enable him to deal with these problems in a masterful way. There is also an appealing note of modesty in his request for further analysis and in the implicit suggestion that he, and others with whom he has worked, may not have yet found all the answers. One cannot but wonder, however, whether the shift in national administration that has taken place in the past two years may not mark such a major change in tax policy as to call for something more than mere technical nibblings around the fringes of the present provisions taxing corpora-

\(^6\)See Pedrick and Emery at pp. 197, 218, respectively.
\(^7\)See Miller at p. 297.
\(^8\)See Shafroth at p. 325.
\(^9\)See Koykka at p. 340.
\(^10\)See Shook at p. 389.
\(^11\)See Gardner at p. 402.
\(^12\)Bouchard, Domke, Tarleau, and Hawley, Part Five, pp. 423 et seq.
\(^13\)See, e.g., Shafroth at p. 339, urging a technical amendment of INT. REV. CODE §102.
\(^14\)See Surrey, p. 237.
tions and their shareholders.\textsuperscript{15} Apparently, 1954 is to supply some answers here.

Beyond the well-planned and well-executed discussion of business problems under existing law and of technical changes that should perhaps be made, a substantial portion of the Institute proceedings concerned major policy problems. Such matters have little practical, bread and butter appeal to attorneys and businessmen; and it is doubtful if large numbers would turn out for a program limited to such considerations. Nevertheless, if taxing programs are to receive proper over-all study and review it is vital that men trained through professional work and business experience direct some of their energies toward the economic, social, and political aspects of such programs. "Every tax is in some measure regulatory,"\textsuperscript{16} and unless attention is constantly directed to the nonrevenue aspects of federal taxation we may discover that by design, accident, or simply default major undesired changes have been worked in our economy and society. Very likely, participants in the Institute proceedings found the lectures in this category of great interest to them, even if they may have been coaxed into the area with the live bait of more practical discussions.

The Institute was not aimed at promoting any particular policy. For example, if Wilfrid Rumble\textsuperscript{17} made out a case for special tax treatment of co-operatives, Albert Adcock\textsuperscript{18} did at least a comparably competent job for the opposition.\textsuperscript{19} Without attempting to take sides on this controversy, it might be observed that Mr. Rumble, defending the status quo, adhered largely to technical arguments, whereas Mr. Adcock, on the offensive, did a much better job of pointing up the policy considerations. The important point from the standpoint of the book and the Institute, however, is that a careful consideration of the two lectures puts one in a better position to arrive at some policy conclusions of his own.

Severe problems arise out of the fact that businesses that are na-

\textsuperscript{15} Mr. Surrey's 1951 view may still hold. Even in 1953 we can all agree that "... Congress will, to say the least, hesitate for a long time before it materially alters or abandons [the corporate income] tax" (p. 238).


\textsuperscript{17} At p. 91.

\textsuperscript{18} At p. 50.

\textsuperscript{19} Technical changes in the taxation of cooperatives, made after the Institute, but not affecting the policy controversy materially, are touched on briefly in a footnote at p. 90.
tional or international in scope may find themselves within the taxing jurisdiction of foreign nations, the Federal Government, many states, and countless subdivisions of state governments. Part Two, entitled "Jurisdictional Problems," treats these difficulties, some of which are largely technical. What are the limitations on state taxing powers?²⁰ How should the states administer their laws?²¹ Some of these problems combine technical and policy considerations. How can cooperation between taxing authorities be made to alleviate some of the difficulties arising out of multiple taxing powers?²² Some of these problems involve largely policy or economic considerations. Are present federal tax policies, even as modified by treaty and statutory credit provisions, restricting international trade?²³

A critical examination of the lectures which go to make up the book under review would require an extension of these remarks beyond reasonable limits. But two generalizations seem warranted. The program was planned with consummate skill so as to touch upon the very important current practical, technical, and policy problems involved in the taxation of business, and so as to present both sides of controversial policy matters. The speakers chosen to participate, who were well qualified to perform their appointed tasks, devoted more than common energy and thought to the preparation of their lectures.

RICHARD B. STEPHENS
Associate Professor of Law
University of Florida


Aptly designated a guide to the labyrinth of law surrounding our federal income tax, this handy volume affords for student and general practitioner alike a thorough treatment of the fundamental aspects of what undoubtedly has become the foremost "bugaboo" of present-day public law. Beyond its role as an orientation device for the un-

²⁰See Dodd at p. 109.
²¹See Spaeth at p. 121.
²²See Groves and Eaton at pp. 131, 141, respectively.
²³See Post, King and James at pp. 152, 171, 184, respectively.