How to Win a Tax Case (Martin M. Lore, 1955)

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Do not be misled by the title of this book. The author is aware of the old adage that to make a rabbit stew, first you must catch a rabbit. In his preface he acknowledges that you cannot win if you have no case. Moreover, the book does not reflect the type of conceit that might be assumed from the title. Publishers like short, provocative titles, but the author would doubtless concede that his effort has been to present an illuminating discussion of federal tax procedure with some pertinent suggestions on things to do and not to do along the way. You might possibly read the book and still lose a tax case.

An interesting short chapter in the book is devoted to the matter of how the taxpayer can help win his own case. The emphasis here is on advance planning, not on what the taxpayer may do after a tax problem has become a case or controversy. Properly speaking, though, the author's real message is how a lawyer can help a taxpayer to help win his own case. Some of the measures to be taken, such as the proper preparation of documents, recording factors leading to corporate reorganizations, and drafting partnership agreements, cannot be done except with the guidance of counsel. Other measures suggested, such as keeping adequate records of travel and entertainment expenses and the segregation of investment and resale properties, probably will not be undertaken except upon prompting or prodding by the tax advisor. In this, as well as in other chapters, the author's illustrations have the merit of focusing attention on many critical areas in the tax field, even if some have been smoothed over by later developments.¹

How to Win a Tax Case will not impress its readers with the author's erudition. The text is almost entirely uncluttered with citations to the authorities, which accounts for the book's greatest strength and also its greatest weakness. On the minus side, one engaged in a tax case and desirous of checking the author's conclusions on some point must start largely from scratch in his own independent research. Still, he may benefit substantially from some clues as to what he may expect to find, and the lack of citations in the book does not reflect any lack of familiarity with the authorities. To one familiar

¹See the author's undocumented, but obvious, reference at p. 12 to the Court Holding Company problem, Commissioner v. Court Holding Co., 324 U.S. 331 (1945), and Int. Rev. Code §337 (1954).
with the field they may be seen peeking through the author's illustrations and examples.

On the plus side, this is the most readable book of its type that I have seen. You may have the feeling that the author simply sat down, summoned a secretary, and began: "Take a book." I venture to guess that the work called forth considerably more effort than that would suggest, but I mention it as indicative of the author's style. The book has a conversational tone. There is much to be said for fine writing and heavy documentation in legal literature, but good conversation by one possessing the requisite skill and experience also has a place. How to Win a Tax Case falls into the category of such good conversation.

The book emphasizes administrative procedure in tax cases and litigation in the tax court with only passing mention being given to procedures in the court of claims or the district court. Such emphasis could serve to obscure the need for careful decision as to which forum to use if a case must go to court, but the author counteracts this with half a dozen pages devoted to the problem. The important considerations, such as prior decisions of, or binding upon, the court in question; the desire for jury trial;2 technical expertise of the tax court judges; and the running of interest for or against the taxpayer. are all appropriately set out, together with some more obscure considerations based upon the author's experience. Of course, despite these considerations, cases often arise in which a taxpayer simply cannot afford to "pay first and litigate later" by way of a refund suit in the district court or court of claims, even if one of those tribunals would otherwise be preferable to the tax court. For this reason the author's informed treatment of procedure before trial in the tax court and of the tax court trial may be of particular interest to general practitioners who have not made the acquaintance of that special forum. The author hopes, as indicated in his preface, to "remove uncertainty and 'fear of the unknown'". These chapters on the tax court, together with some eighty pages in the appendix devoted to the documents filed in an actual case in that court, may go a long way in that direction.

In spirit bold but manner cautious, the author advances some

2Perhaps the author should have given more prominence to the recent statutory amendment, Pub. L. No. 559, 83rd Cong., 2d Sess. (1954), permitting jury trial in tax cases against the United States in the district court and removing long-standing restrictions upon the district courts' jurisdiction in such cases. See 28 U.S.C. §1346(a)(1) (1952).
ideas on the wisdom of seeking a conference in the Appellate Division of the Internal Revenue Service prior to the issuance of the statutory notice of deficiency. This is a controversial matter among tax lawyers, and views may depend, in part, on the strength of one's desire to stay out of court, and, perhaps in even greater part, on one's experience with the government officials with whom he will have to deal. Mr. Lore indicates the practical possibility that a pre-ninety-day conference in the Appellate Division may result in a deficiency notice more artfully prepared than one prepared in the District Director's office; there are, as is pointed out in the book, attending problems for the taxpayer arising largely out of the matter of where the burden of proof resides. One faced with this problem and lacking in experience will not gain much help from the discussion, except perhaps the important realization that there may be reasons, some quite concrete and others ill-defined, why he should not charge blindly ahead into an Appellate Division conference merely because he is told he can do so.

The book is a short one — engaging reading for an evening.

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