

6-1-1949

THE FEDERAL INCOME TAX, A GUIDE TO THE LAW. By Joyce Stanley and Richard Kilcullen. New York: The Tax Club Press. 1948.

Wirt Peters

Follow this and additional works at: <https://repository.law.miami.edu/umlr>



Part of the [Law Commons](#)

Recommended Citation

Wirt Peters, *THE FEDERAL INCOME TAX, A GUIDE TO THE LAW. By Joyce Stanley and Richard Kilcullen. New York: The Tax Club Press. 1948.*, 3 U. Miami L. Rev. 664 (1949)
Available at: <https://repository.law.miami.edu/umlr/vol3/iss4/26>

This Book Review is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

preciated: "Justice made difficult is justice denied." "Genius is never entirely safe in government." "A district judge must be able to show powder burns if he expects to be upheld in a contempt proceeding." References are also made to assertions of other judges which are well correlated to the subject matter presented by the author.

Though there is no continuity in the presentation of the various subjects throughout the pages, each item ably displays a well thought-out foundation as a basis for a straight-to-the-point delivery to the designated area of the judicial field that the judge directs it. A number of the points evolved in such a style are sufficiently provocative as to merit further argumentative elaboration, but Judge McCulloch prefers to leave the thought dangling, so to speak, in mid-air. But, rather than finding this tantamount to a shortcoming of the book, it seems that it perhaps consummates the specific objective that the writer seeks to attain—that is, to leave food for thought in the mind of the reader, so as to arouse an interest that will develop from a recognition of a controversial issue to a gnawing realization that it is such a problem that can be solved only by a thorough knowledge of both sides of the question.

With the hope that it may not seem too naïve to state that the terminal point of the book is "End of Part I," this reviewer is left with a desire that his reading between-the-lines will become a pleasant reality when the honorable Judge McCulloch sees fit, in the near future, to supplement his "notes" of this publication with his "Beginning of Part II."

EARL BARBER

MIAMI, FLORIDA

THE FEDERAL INCOME TAX, A GUIDE TO THE LAW. By Joyce Stanley and Richard Kilcullen. New York: The Tax Club Press, 1948. Pp. 324. \$6.00.

So much material is already available that another book on The Federal Income Tax must adequately fill some specified need if it is to be more than merely a vehicle for conveying the authors' names into print. These authors have begun their Introduction by this justification:

It has been written to make income tax law easier to understand. It has been written primarily for practicing lawyers who do not specialize in tax law, for law students, for accountants working in the tax field and, in general, for all people who in their business or profession need more than a casual knowledge of income tax law.

Incidentally, there may be those who would not agree that a book which admittedly is not for lawyers who do specialize in tax law would be adequate for accountants working in the tax field. But, in reviewing any book it should be judged with reference to its stated purposes and objectives, so we will bear

in mind two questions: Does it make the income tax law easier to understand, and, does it provide a business or professional man more than a casual knowledge of the income tax law?

In the beginning it seems that we are fortunate in having a survey of this book presented in a Preface supplied by Mr. Randolph E. Paul, one of the best known authorities on The Federal Income Tax. His approval and recommendation should, perhaps, place this book above and beyond the reach of any criticism. However, one statement in the Preface seems sufficiently incongruous to attract our attention. "It achieves a high level of accuracy." Now why did Mr. Paul think it necessary to so advise our business or professional person who needs more than a casual knowledge of the income tax law? Accordingly, in view of this innuendo our reading of this book must be correspondingly more critical. And, again, in Mr. Paul's evaluation he says that, "The book has balance; space is distributed among subjects with discrimination and due regard for relative values." But, only a quick flip of the pages is necessary to discover that the subject of Inventories, which is of major importance to every businessman (remember that this is a book for those who need more than a casual knowledge of the income tax law), is covered and dismissed in a page and a half, while twice that amount of space is devoted to Alimony. Now, if this is a distribution of space with "discrimination and due regard for relative values," then my ideas of relative values in the tax field certainly differ from those of Mr. Paul's and of the authors. I am more inclined to believe that so busy a man as Mr. Paul could not be expected to take the time necessary to analyze an elementary work in the field where he is an acknowledged leader, and that we had better rely upon our own inspection of the book.

Does it make the income tax law easier to understand?

You will need a copy of the Internal Revenue Code and of the Treasury Department Regulations because the book is correlated with the Code sections. Some sections are omitted entirely, others with regard for relative values are dismissed with a brief description, as

Sec. 58 (Declaration of Estimated Tax by Individuals), Sec. 59 (Payment of Estimated Tax) and Sec. 60 (Special Rules for Application of Sections 58 and 59) all deal with the declaration and payment of estimated tax. These sections also are not discussed. The problems involved, although at times extremely detailed, are not difficult to understand.

So, as law students, for example, we must learn about estimated tax from some other source. Then, as a businessman, the subject of Depreciation is of particular importance but we have never quite been able to understand

the legal basis for the computation of the deduction, but now here is a work written for the specific purpose of making the income tax law easier to understand.

Sec. 23(n) (Basis for Depreciation and Depletion) is a cross-reference section, referring to Sec. 114; the latter section is discussed in Chapter 6.

So, turning to Chapter 6,

Sec. 114 (Basis for Depreciation and Depletion) provides in its first subsection [Sec. 114 (a)] the rules for determining the basis of property for depreciation and obsolescence. As stated earlier, this basis is the basis as determined under Sec. 113 for the purpose of determining gain upon a sale or other disposition of property. With two exceptions, the basis under Sec. 114 is exactly the same as the single basis prescribed under the applicable subsection of Sec. 113 (a) after the adjustments of Sec. (b) are made. The two exceptions are two different bases—one for determining gain and one for determining loss. In those cases, the basis under Sec. 114 for depreciation and obsolescence is the Sec. 113 basis for determining gain.

Have I made my point or should we now turn to Sec. 113?

Does it provide more than a casual knowledge of the law?

Our authors have not been too careful in the use of technical language. We find, for example, "taxable income" being used when what is meant is "amount subject to tax" or perhaps "net income." "Taxpayer," which includes individuals, corporations, etc., has been used when the statement applies only to one class of taxpayer. The term "income" has been used when, although the item must be reported in income for tax purposes, it is not properly referred to as income. Of course, if one is thoroughly familiar with the tax laws then the meanings of the authors can readily be determined from the context, but, if one already has more than a casual knowledge of the tax law then this book is not written for him.

Further, I have found statements being made without sufficient consideration. With reference to the taxation of annuities, for example, it is explained that the taxpayer annuitant must include in income each year an amount equal to 3% of the original contract cost in accordance with an arbitrary rule which assumes this represents interest earned on the amount invested. The amount of the annual return from the annuity in excess of the above 3% is excluded from income as a recovery of cost until the total of these excluded amounts equal the cost, after which all amounts received are included in income. Then this statement is made,

This rule implies an interest rate of 6% which is obviously excessive, and under the present formula few annuitants ever live long enough to recover their entire cost tax-free.

Now, this is merely a repetition of an old criticism without consideration of its meaning. In the first place, why is a 6% rate of return on an investment necessarily "obviously excessive"? And, in the second place, the implied rate of 6% becomes an effective rate of 6% only if the annuitant recovers the entire contract cost, but inasmuch as "few annuitants ever live long enough" to do that, their practical rates are less than 6%.

In connection with other explanations the example used does not illustrate the principle presented. Sec. 22(b)(3) is described as providing "that if property is received by gift the property itself is not income" though "any income from the property is included in the donee's income." It is also provided "that if the gift or bequest, etc., is of income from property the amount of the gift is not excluded from gross income. If, for example, A gives property to B for life with remainder to C, the income during B's life is taxable to B even though it was received by gift." Of course, the income is taxable to B, but not because the income was given to him but because the property out of which the income arises was given to him, as explained in the first portion of this paragraph.

Of course, finding inadequacies in any effort to explain The Federal Income Tax in a single small volume is relatively easy. However, we had been invited by the authors to consider this work as one for law students; and others, who need more than a casual knowledge of the tax law and we could only conclude that the book did not adequately fulfill this stated purpose. After examining the entire book with this objective in mind, imagine my surprise upon reaching the very last page to find the authors themselves admitting that the "book is intended to give the reader a general familiarity with tax law." No doubt by the time the authors had reached this last page they, too, had arrived at my conclusions. If one is interested in a general familiarity with the law then this work may serve about as well as any of the others that are available. And, a conversational knowledge of Federal income taxes is not to be belittled, as probably in no other field of endeavor is it as easy to be accepted as an expert.

WIRT PETERS

PROFESSOR OF LAW
UNIVERSITY OF MIAMI

BOOKS RECEIVED

LABOR IN AMERICA. By Foster Rhea Dulles. New York: Thomas Y. Crowell Company, 1949. Pp. 402. \$4.50.

LANGUAGE AND THE LAW. By Frederick A. Philbrick. New York: The Macmillan Company, 1949. Pp. 254. \$3.75.

CRIME AND THE MIND. By Walter Bromberg. Philadelphia: J. B. Lippincott Company, 1948. Pp. 219. \$4.50.

SUCCESSFUL TRIAL TACTICS. By A. S. Cutler. New York: Prentice-Hall, Inc., 1949. Pp. 319.