



1947

Book Reviews

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Recommended Citation

Traylor, Orba F.; Roberts, W. Lewis; and Roberts, Raymond B. (1947) "Book Reviews," *Kentucky Law Journal*: Vol. 35 : Iss. 4 , Article 11.

Available at: <https://uknowledge.uky.edu/klj/vol35/iss4/11>

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BOOK REVIEW

JOHN L. CAREY, *PROFESSIONAL ETHICS OF PUBLIC ACCOUNTING*, American Institute of Accountants, New York City, New York, 1946, pp. 1-136, \$2.00.

Lawyers will be interested in this concise but important statement by the author of the public accounting profession's own conception of its obligations to the general public and its clients as well as proper ethical relations among its members. The majority of the ethical problems bear marked similarity to ethical issues of the legal profession. In modern day legal practice, many cases raise accounting questions and it becomes important to understand the accepted rules involving association with public accountants.

Although publication is by the American Institute of Accountants, the national organization of certified public accountants, and the Institute's rules are the basis for the author's discussion, the official views of the Institute are not intended to be stated. Rather, the author has limited himself to the narrowed scope of helping young accountants and students to understand the existing rules of professional accounting conduct. Nevertheless, it is believed the author's contribution represents a major contribution which will govern the development and interpretation of the Institute's rules.

Since it is impossible to cover all the situations arising under the various rules, the major rules and particularly those of interest to lawyers are selected for comment. Five of the Institute's rules are directed towards buttressing the independence of the public accountant since, like Caesar's wife, it is almost as bad to be suspected as to be convicted. If fully disclosed when the independent public accountant takes the position, accounting or auditing engagements on behalf of government agencies or other private third parties involving the accounts of a regular client can be undertaken properly at the same time opinions on financial statements, etc. are expressed for the use of large numbers of persons at large who never see the accountant. This is contrasted with the lawyer's position which usually is that of an advocate.

Of the five rules directed towards promoting confidence of the public in the public accountant's independence as a professional man, Rule 5, concerned with false or misleading statements, reflects the amendment of 1941 requiring accountants' certificates to direct attention to deviations from generally accepted accounting principles. Rule 9, on contingent fees, is more strict than Canon No. 13 of the American Bar Association's code in that outside the field of taxes, contingent fees for giving opinions on financial statements are wholly improper. Rule 13, forbidding a *substantial* financial interest in a client's business, hinges on whether the concern is a public or closely held company and is sanctioned in the latter case if dis-

closed. Simultaneous service as auditor and director of a corporation is regarded as an anomalous position. Rule 3, on commissions and brokerage, forbids fee splitting with the laity. Rule 4 of the Institute, although indicating no cataloging of occupations incompatible with public accounting, emphasizes the lack of contribution of dignity to the profession and lawyers will see some similarity to Canon 33 of the American Bar Association pertaining to mixed practice and side lines.

Of the Rules of the Institute designed to protect the interest of the accountant's client, Rule 16 considers the violation of confidential relationships arising, for example, when a client becomes involved in litigation or the accountant discovers the client is doing something wrong. Gratuitous disclosures are disapproved although communications are not privileged under the common law as are those of lawyers, physicians and clergymen. Some states have created statutory privileges for accountants. A difference of opinion exists within the accounting profession. Rule 3 prohibits splitting of fees with the laity and is designed to promote professional dignity to protect the client. Rule 11 prohibits evasion of responsibility by the practice of public accounting by corporations. Rule 2, prohibiting practice in the public accountant's name other than by partners and employees, and Rule 6, permitting collaboration among qualified public accountants, are intended to prevent fronting for unqualified accountants.

The remaining rules of the Institute discussed are primarily for internal control of the public accounting profession. Rule 10 prohibits self-advertising although permitting announcements of limited size and content for specific purposes. Rule 7, although not aimed at solicitation of clients *per se*, forbids solicitation of clients of other public accountants. Rule 14, while designed to support state accounting societies adopting rules against competitive bidding, describes competitive bidding as an undesirable practice. Rule 8 requires advance notice of direct or indirect offer of employment to employees of other public accountants. Rule 1 specifies the circumstances under which reference may be made in the firm name that members or associates belong to the American Institute of Accountants.

Lawyers may very well welcome this pragmatic discussion of the growth of rules of professional conduct of a sister profession. If the accounting profession has not yet gone the distance of the legal profession in enlightened self-interest to establish its status in the eye of the public, this statement reflects the growing pains of public accountancy since A. P. Richardson published *The Ethics of a Profession* (1931), the first book on the subject in this country.

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Federal Taxes—Corporations and Partnerships—1946-1947. By ROBERT H. MONTGOMERY, CONRAD B. TAYLOR AND MARK E. RICHARDSON. Two volumes, pp. 1226, 1217. The Ronald Press Company, New York.

Corporate tax statutes and construction thereof keep the corporate lawyer on his toes keeping up-to-date with the court decisions and the rulings of the Internal Revenue Department. A great aid in handling corporate taxation problems is Montgomery's *Federal Taxes—Corporations and Partnerships*. It looks at the problems both from the lawyer's point of view and that of the accountant. The work is the product of one of the leading firms of accountants, many members of which are lawyers as well as certified accountants.

In the preface, Mr. Montgomery emphasizes the need of a new tax bill which will not hurt the government but which will help the taxpayer. He is opposed to the practice of the past in making such a bill retroactive to the first of the year in which it is passed. He feels that taxpayers should be heard before the bill is drawn, not after it is too late to make changes. He even waxes eloquent over the obtuseness in Washington to simplification, and improvement in federal tax laws. He would leave the question of rates to Congress, however. "It is not too late," he says, "to reestablish economy in business and personal affairs. . . . So I may again be crying in the wilderness when I ask that waste be eliminated as far as possible, tax rates be reduced to that point where no one will spend recklessly just because the government pays all but 10 or 15 cents of the total cost."

The author has for years urged that a nonpartisan tax commission do the job of revamping the whole tax structure. He repeats that it is his conviction that nothing worthwhile will be accomplished until such a commission is established.

The present volumes omit prior law and decisions thereunder except where necessary for clear exposition of present provisions of the Code. Emphasis has been placed on sections of the statutes that are difficult or ambiguous. The authors have not hesitated to make suggestions as to procedure in doubtful situations.

The authors' contention (p. 9) that no gain can be made from a purchase of property at less than its apparent fair market value is technically correct. If a corporation is making a distribution of its earnings in this way to its stockholders, they concede that the case is different.

The present volumes make use of the same method of developing the subject of corporate income taxation followed in the earlier editions. Code provisions and the regulations of the Internal Revenue Department are set forth and their application thoroughly considered. Where there are uncertainties or ambiguities valuable suggestions as to the best course to pursue in making out a tax return are offered for the taxpayer's consideration. Court decisions are

cited to clarify Code and Department regulations. The two volumes cite all the important court and Department decisions on the subject of corporate and partnership income taxation. These cases are carefully indexed. These two volumes are bound to be of great aid to the corporate lawyer who is called upon to find his way through the intricate maze of our federal tax laws.

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FEDERAL TAXES—ESTATES, TRUSTS, AND GIFTS, 1946-1947.

By ROBERT H. MONTGOMERY AND JAMES O. WYNN. pp. v, 990.

The Ronald Press Company, New York.

Practicing attorneys who are called upon to advise clients in the field of estate planning will welcome the current edition of Montgomery's annual volume dealing with the taxation of estates, trusts, and gifts. The 1946-1947 edition is the joint product of Robert H. Montgomery of Lybrand, Ross Bros. & Montgomery and James O. Wynn, member of the New York and District of Columbia Bars. As such it has the advantage of combining the contributions that can be made by both accountants and lawyers to the solution of problems in this intricate field.

The book is divided into four parts. Part I consists of a concise presentation of the problems to be considered in planning the distribution of an estate and contains helpful statistical tables comparing the incidence of estate, gift and income taxes. Parts II, III, and IV deal respectively with The Income Tax on Decedents, Estates and Trusts, The Estate Tax and The Gift Tax.

The authors effectively combine a comprehensive text with treatment of the specific provisions of the Internal Revenue Code and Regulations and of pertinent court decisions and rulings. Cases and administrative rulings are concisely stated and well indexed with special emphasis upon those indicating a departure from previously accepted conclusions or forecasting new trends in the law applicable to the particular problem under discussion. The reader is thus assured of up-to-the-minute citation of authorities, and, what is perhaps more important in the field of estate planning, of definite assistance in determining the extent to which present rules may reasonably be expected to obtain in the future.

The estate and gift tax sections seem to the reviewer much better than the income tax sections. He finds the chapter on valuation of property, Chapter 13, readily usable as compared to other services. The lawyer is more apt to find at once something on a given point in this book than he is in one of the regular tax

services. As an example on this point, one can turn to the discussion under the estate tax at page 530 with regard to "valuation of property transferred during life" for estate tax purposes. One finds here ready reference to the few cases which really tackle this problem. Criticism of the sections dealing with income taxes may be aimed particularly at the treatment given the provisions added by the 1942 Revenue Act, which now appear as Section 162 (d) of the Code and of the Regulations issued thereunder. Granted that the Statute and the Regulations are both confusing and impractical, it is possible that the criticism and comments by the authors are even more so. This, however, is a minor matter and should not be taken as a basis for criticising the whole income tax division.

Those who fail to read the preface should be warned against unqualified acceptance of all conclusions drawn by the authors. They are naturally inclined in the taxpayer's favor, and care must be taken in many instances, particularly when deciding upon a conservative long range problem, to discount somewhat their able advocacy of the taxpayer's point of view. This fact, however, makes the book an invaluable source of authority for the harrassed attorney who faces an uphill fight, for he is pretty sure to find ready reference therein to helpful cases which he cannot find elsewhere.

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