

## BOOK REVIEWS

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**The Impact of Federal Taxes.** By Roswell Magill.\* New York: Columbia University Press, 1943. Pp. xi, 218. \$3.00.

"This book . . . is in the nature of a preliminary study, for much more could be written. It was written now, because these questions have great significance, now that tax rates have reached an all-time high, and may well reach greater heights. The book is not designed at all to compete with treatises which interpret the law, nor with general works on public finance. The intention is primarily to consider the tenets on which a tax system should be based, and some of the principal effects of the major federal imposts."<sup>1</sup>

About half of the book (Chapters II, III, and VI) is essentially a compilation of the author's recent journal publications (reorganized and brought up to date), dealing with tax problems in the administration of family estates. Here, with the viewpoint of the specialized practitioner, but in lucid, non-technical language, Professor Magill explains what the law is and how it has recently evolved. While offering much wise comment, these chapters raise few basic issues and stop short of broad proposals (such, e.g., as those of Professor Griswold<sup>2</sup>) for solution of the special problems in this area.

The rest of the volume by contrast (Chapter I—A Federal Tax Program, Chapter IV—Some Effects of Taxation on Corporate Policies, Chapter V—The Excess-Profits Tax, and Chapter VII—Federal Tax Administration) is largely concerned with broad policy questions and reform proposals. Chapter I is an excellent summary of the author's general position and, with complementary passages elsewhere, may properly receive main attention in a review. Chapter VII may, without further comment, be commended as perhaps the most stimulating part of the book.

Magill begins with general discussion (*a la* Adam Smith's maxims) of the criteria of good taxation. The intellectual level of this venture into "fundamentals" is not high. The well-designed tax system, we are told, should (a) provide an adequate yield, (b) be simple and economical of administration, and (c) be fair. These criteria are used severally to commend or to condemn particular levies, with little regard for the hard problems in following criteria which, in the important cases, point squarely in opposite directions.

"Adequacy," moreover, is used mainly to connote stability of yield (between boom and depression)—which, I submit, is not a virtue but a serious fault in a tax or a tax system. In such backhanded discourse on monetary and budgetary policy, Magill is simply talking nonsense, using ingenuous economic rhetoric to support bad proposals—and to effect plausible but spurious reconciliation of conflicting considerations ("adequacy" and "simplicity"). Properly construed, "adequacy" should connote sensitive, direct variation in yield to correspond with changes of employment, income, or price

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<sup>1</sup> Magill, *The Impact of Federal Taxes* vii (1943).

<sup>2</sup> Griswold, *A Plan for the Coordination of the Income, Estate, and Gift Tax*, 56 Harv. L. Rev. 337 (1942).

level. A tax which relentlessly pumps funds out of circulation during depression and deflation (and fails to respond with abundant yield-increase in the face of inflation) is not a good tax but, on monetary or budgetary grounds, a very bad one.

The misconceived strictures about "adequacy" are designed to support a plea for sales taxes as a major element in the federal system. Other arguments presented are also unimpressive. It is doubtful, if not simply a mistaken view, that a sales tax is easier or cheaper to administer than are income taxes on small incomes. Its simplicity or elegance exists mainly in the minds of people who, while closely acquainted with the complexity of equitable levies, have no awareness of the problems involved in drafting, interpreting, or administering a (10%) sales-tax law. A good case might be made, on grounds of both fairness and flexibility (and tax-consciousness), for displacing federal liquor and tobacco taxes with a sales tax of equivalent yield—if we cannot be rid of both. Magill, however, would keep the old excises (whose merits he finds too self-evident to warrant discussion!), superimposing his 10% sales tax—and as a permanent addition to our tax system.

On other matters, Magill's persuasions and proposals, especially as to corporation taxes and death duties, merit serious consideration.

Like most competent students, Magill, while accepting the excess profits tax for the duration, argues for its prompt and outright repeal after the war—along with our pre-war guessing game which passes under the same name. The corporation income taxes he would retain, but mainly (merely?) as a device of source collection, i. e., allowing full credit of corporation tax to the shareholder. This scheme, as against full deduction by the corporation of dividends paid, has perhaps the decisive political merit of retaining large nominal revenues from corporations. In either case, however, the problems of undistributed earnings, and of capital gains and losses, come to the fore. These problems Magill simply doesn't discuss—a strange omission by the author of *Taxable Income*,<sup>3</sup> and especially strange in a book which stresses tax problems of the corporation. His proposals, while sound as far as they go, will not commend themselves to serious students when offered without any complementary proposals for mitigating wholesale avoidance of personal tax with respect to undivided profits and capital gains. If corporate earnings are not to be taxed unfairly as such (and with an absurd bias against equity financing), they must be fairly and fully taxed in the hands of the shareholders.

Magill wisely urges transforming our federal gift and estate taxes into a single cumulative tax *on beneficiaries* with respect to all donative transfers. Such a levy would begin to make sense in a field where levies have heretofore made little or no sense and, incidentally, would greatly simplify many vexed problems, notably in the case of trusts. One may question its merits (a) as against a levy upon the beneficiary according to his net worth or (b) as against integration of gift taxes and death duties with the income tax.<sup>4</sup> Relationship discrimination, which Magill proposes, seems undesirable and, moreover, simply incompatible with his central scheme of cumulative, progressive levy. His proposal to exempt all transfers between spouses strikes me as a bright idea of a busy man who has passed it along for others to nurture and raise to maturity. It is an overly simple solution of a hard problem—and likely (especially with relationship discrimination) to induce a lot of tax-avoidance ceremonies!

<sup>3</sup> Magill, *Taxable Income* (1936).

<sup>4</sup> Simons, *Personal Income Taxation*, cc. vi, x (1938).

The author, like the reviewer, finds little merit in the spendings tax, either as a substitute or as an emergency complement for the income tax. On the other hand, he urges special income-tax credits for customary "fixed charges," e.g., life insurance premiums (he is a director of Mutual Life), amortization payments on F.H.A. mortgages (as though home-owners were not already inordinately favored over renters), and war-bond purchases (although he proposes no post-war refunds against which such credits might be charged). This inconsistency will delight Professor Fisher, just as it distresses one who finds income the best basis for progression. I find the spendings tax a very inferior form of levy; but it may be preferable to the mongrel income tax *cum* credits for selected "fixed charges" which Magill solemnly proposes.

Magill seems strongly to favor compulsory joint returns—although he does not mention alternative and perhaps preferable devices for dealing with the community-property problem. He minces no words in urging abolition of tax-exempt securities—immediately and retroactively. The gross inequity between renters and home-owners, like the more crucial problems of capital gains, is entirely ignored—as are the anomalies of percentage depletion.

Incidentally, Magill (like the Treasury) makes the case for recent changes regarding alimony<sup>5</sup> seem much simpler and much more one-sided than (I think) it is. And I am merely perplexed by this statement: "The income of a four-year trust created with a trust company to send a young friend of the settlor's through college should not, it seems to me, be taxable to the settlor. . . ." <sup>6</sup> This appears to say that the short-time-trust device should enable one to make deductions not otherwise permitted as contributions, and without regard to the 15 per cent limitation on such deductions.

As a whole, the book suffers from a serious bifurcation, seeming at times to focus on problems of war finance and, more commonly, on problems of post-war tax reform. It is unfortunate that Magill did not stick to long-range issues, for what he has to say about war finance were better left unsaid. Like his successors at the Treasury, he faces the financial problems only of a trivial week-end war, proposing a \$35 billion tax program which was pathetically inadequate when the book appeared and is about \$35 billions short of fiscal sanity now. Even meager tax increases he proposed with misgivings about their effect on our scale of living—as though we could protect our scale of living by spending our \$120 billions of income after taxes (fiscal '44) on \$70 billions worth of consumer goods and services!

All these criticisms, however, concern minor flaws (or omissions) in a useful and stimulating book. It may be recommended highly for many purposes—for layman and specialist, for legislators, for college classes, and especially for law students lacking that over-all acquaintance with the federal taxation and its policy problems from which case study should proceed. I have read the book with pleasure and with much profit. Its particular shortcomings are highlighted by general excellence. One may dissent at many points; but one may only envy the author his skill in selecting essential information and presenting it concisely in a context of policy discussion.

With all their merits, however, these essays leave one with the unpleasant thought that Magill probably will now never find the time or the detachment to write the fine treatise on taxation which his early work adumbrated.

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<sup>5</sup> Int. Rev. Code § 120(c), 56 Stat.—(1942), 26 U.S.C.A. § 171 (Supp. 1942).

<sup>6</sup> Magill, *The Impact of Federal Taxation* 61 (1943).

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