Vanderbilt Law Review

Volume 2
Issue 2 *Issue 2 - A Symposium on Estate Planning*

Article 23

2-1949

Book Reviews

Philip A. Hendrick reviewer

Charles L.B. Lowndes (reviewer)

Adrian W. DeWind (reviewer)

Chas. A. Morehead (reviewer)

John R. Stivers (reviewer)

BOOK REVIEWS

AN ESTATE PLANNER'S HANDBOOK. By Mayo Adams Shattuck. Boston: Little, Brown & Company, 1948. Pp. 575. $7.50.

EVEN a man who does not permit himself a morbid preoccupation with the inevitability of death may, particularly if he is a member of the legal profession writing on estate planning, find it difficult to refrain from excessive emphasis on the equal inevitability of taxes and possible methods of dodging them. Mayo Adams Shattuck, however, believes that, although taxes can by no means be disregarded, the attempt to save them is a relatively small and comparatively uninteresting part of estate planning and that an estate plan of doubtful human worth should never be created merely for the purpose of tax economy. Indeed, he insists that the estate planner must have the integrity and the courage to advocate the use of the plan having the highest social and individual merit even when a tax advantage must be sacrificed.

His book, "An Estate Planner's Handbook," is not intended to guarantee any startling tax economies, but to fill the need for a handbook of the fundamentals of the conception, draftsmanship and administration of family and business plans. It fulfills that function most admirably. In a surprisingly compact and readable volume, Mr. Shattuck has covered a great deal of ground, including the mechanics and technique of obtaining a true picture of all the client's circumstances, both business and family, so that the plan most suitable in the light of all the facts may be drafted; the relative uses of insurance, living trusts and wills; cautions against specific pitfalls, with a list of phrases to be avoided, many of which, incidentally, may cause the general practitioner to wince as he recognizes them as being only too familiar to his dictating tongue; the selection of trustees and their powers, duties, and accountings; the restraints on alienation; the Massachusetts or "prudent man" rule in law and in practice; the family provisions; the general principles and historical trends of taxation as they affect estate planning; and the estate plan in relation to the conflict of laws. Furthermore, the author has added valuable appendices on several important aspects of the entire subject, some written by him and some by various other authorities.

Mr. Shattuck is notably competent to write such a book. He has a rare combination of scholarly interest in his subject and down-to-earth practicality. His name has long been associated with the law of trusts, wills, and taxation, on which he has written and lectured widely; he has had years of experience in the field as a practicing lawyer much sought after as a

senior in complicated cases; and he has a zestful enthusiasm for estate planning as an absorbing legal transaction. He is a prototype of that man not uncommonly met in fiction, the State Street lawyer, with a point of view distinctly in the finest Yankee tradition. Having due regard for the prudent conservation and management of property, he is even more intensely concerned with the preservation of a way of life for the family for whom the plan is made.

Because the person of great wealth customarily has his affairs in systematic arrangement as a matter of course, because taxation is a compelling factor as far as his estate is concerned, and because his problems are almost of necessity dealt with on an individual basis, the book is concerned more especially with estate planning for the young man in business or a profession and for the middle-aged man in his prime. Its utility is therefore the greater, since the majority of attorneys do not number their clients among the members of the Sixty Families or even their kissing kin.

Mr. Shattuck's entire approach is practical. His discussions of the problems involved are based on an interest in and comprehension of the human relations concerned, not merely with the legal technicalities. He is singularly free from prejudice and has a dispassionate awareness of the value of skills in addition to those of the attorney in devising and carrying out estate plans. He writes on all phases of his subject objectively, even those on which many members of the bar are inclined to be sensitive; such as, the use of corporate trustees and the relationship among lawyers, trust men, investment counsellors, insurance men, and accountants, in regard to the management of money and the planning of estates. Believing that one man may well feel doubt as to his unaided ability most effectively to formulate a plan, set it down, and operate it, Mr. Shattuck suggests that the services of a battery of experts are not only highly desirable but almost imperative: the attorney, assisted by the investment or banking counsellor, the insurance consultant, and the accountant, each having his special qualifications. Far from expressing opposition to corporations as trustees, having set out their points of superiority as well as their less desirable features, Mr. Shattuck advocates the use of a board rather than a single trustee and recommends that one of the co-trustees be corporate.

In regard to taxation he is also without rancor, even on matters as to which the legal viewpoint and that of the taxing authorities are sharply divergent, as, for example, on the taxation of the income and principal of a revocable living trust. He modestly states that his chapter on federal taxation as it affects estate planning is little more than an introduction to the subject, which is, of course, a formidable one, on which weighty volumes can be, and have been, written, among the most recent being Lloyd W. Kennedy's "Federal Income Taxation of Trusts and Estates" (an excellent

companion volume to the handbook, by the way). In comparatively few pages, however, Mr. Shattuck gives a good deal of background material, with a discussion of several of the leading decisions and observations on many salient points. Copious references to cases and articles are included to assist in a more detailed study of specific tax problems. After the book was in the printer's hands, the Revenue Act of 1948 was passed. Mr. Shattuck, therefore, added an appendix containing his comments on that act, which has brought several new tax factors into the picture. One development likely to result from its passage, he fears, is the discouragement of the use of the protective family trust, which he considers "the finest arrangement available to solve and answer the typical family estate problem." Here, again, he shows his concern lest the desire to save taxes will militate against the greater good of protection for the family.

Whether or not he expects to make a specialty of trust and estate practice, any young lawyer would do well to make himself thoroughly familiar with the contents of this handbook before he so much as draws a simple will. The older attorney, having read it, may cast an uneasy thought to many an instrument reposing in his black japanned boxes, justifiably feeling dissatisfaction not only with the wording of such instruments but even with their very form.

PHILIP A. HENDRICK *

ESTATE PLANNING AND ESTATE TAX SAVING. By Edward N. Polisher. Philadelphia: George T. Bisel Company. Second Edition, 1948. 2 Volumes. Pp. xxxii, 923. $20.00.

There is a substantial distinction between estate planning and tax planning for estates. Estate planning deals with the overall plan for the disposition of an estate. In addition to tax considerations, it involves, among other things, some of the more ticklish techniques of wills and administration of estates, future interests and trusts. One of the major objectives of estate planning is, of course, the conservation of estates. Any sizable accumulation of property today faces not only the business and investment risks of yesterday but the peculiarly modern hazard of confiscatory taxation. An estate must be planned with an eye to tax hazards. Tax planning is, however, but one aspect of estate planning. Although Mr. Polisher is definitely conscious of the distinction between estate planning and estate tax planning, the title of his book is mildly misleading. It does not deal with estate planning but rather with the tax saving aspects of estate planning. It might better be entitled "Tax Planning for Estates."

---

* Member, Boston, Massachusetts Bar.

Within the narrower limits of tax planning for estates, the author does a reasonably competent job. Successful tax planning is necessarily an *ad hoc* process. A plan eminently adapted to one set of circumstances may prove totally inept in another. No book will take the place of intelligence and ingenuity in tax planning; nor supply the lack of balanced judgment in the planner. Most successful tax plans are, however, promised upon certain fundamental characteristics of the tax laws. With occasional aberrations, *Estate Planning and Estate Tax Saving* is a comprehensive survey of this basic material.

After three introductory chapters, the first of which stresses the need for estate planning, the second, the refusal of the tax law to conform to common law property conceptions, and the third, the effect of local law on federal tax questions, the author takes up the estate tax. Although his discussion is neither as comprehensive nor as artistic as that of Mr. Paul,[1] he does a reasonably competent job of outlining the basic structure of the tax.

After considering the estate tax, Mr. Polisher devotes several chapters to the application of the income tax to trusts whose income is taxable to the grantor of the trust. This is in line with the author's quite legitimate insistence on the necessity of considering the overall impact of the estate, income and gift taxes in connection with tax planning an estate, particularly where part of the plan involves the use of intervivos transfers. The discussion of the income tax is followed by an outline of the gift tax. This brings the author to tax planning proper.

The tax planning part of the book consists of a chapter on tax saving mechanisms, an excellent chapter on insurance, and a chapter on the tax aspects of drafting a will. Mr. Polisher then devotes some enthusiastic words to charitable foundations, which he tells the reader should be used to insure "The stability of the communal structure of private philanthropy and its standards . . . during depressed economic periods." [2] Apart from Mr. Polisher's appraisal of the social desirability of charitable foundations, he seems a shade on the optimistic side when he says that "If a business entity serves as a feeder for a charitable foundation within the definition of the Code, and the profits are actually paid over to it, pursuant to the purposes for which it was organized or as a result of a binding agreement, the business net income will not be liable for the payment of income tax." [3] For this proposition he cites *Trinidad v. Sagrada Orden de Predicadores,*[4] which did not involve a charitable foundation owning a commercial business but a religious organi-

1. PAUL, FEDERAL ESTATE AND GIFT TAXATION (1942).
2. P. 582. Another bit of amusing phraseology will be found in Mr. Justice Roberts' characterization of thirty-two years of the federal estate tax as a "comparativcly recent device . . . still in its initial stages of development." Preface, p. v.
3. P. 577.
4. 263 U. S. 578, 44 Sup. Ct. 204, 68 L. Ed. 458 (1924).

zation which had some income from investments and products which it produced and sold, and *Roche's Beach, Inc. v. Commissioner*.[5] Although the *Roche's Beach* case is closely in point on the proposition for which it is cited, the author would have done well to have noted the Bureau's refusal to follow the Second Circuit's decision in that case [6] and some of the cases which look the other way.[7] Regardless of whether or not charitable foundations, as they are presently constituted, are necessary to assure the "stability of the communal structure of private philanthropy," it seems fairly obvious that they are going to encounter rougher going in the future than they have experienced in the past. The taxpayer seeking to take advantage of a charitable foundation as a tax saving device would do well to consider it much more critically than Mr. Polisher seems inclined to do.

In a chapter entitled "Some Tax Implications of Tenancy by the Entireties," the author points out the tax disadvantages of this kind of ownership. About the only tax advantage which a tenancy by the entirety ever offered from the viewpoint of federal taxes was the opportunity to split the income from the joint property between husband and wife. This advantage is, of course, nullified by the 1948 Act, which allows spouses to divide their incomes generally. Incidentally, even before the 1948 Act, it was not true as the author asserts [8] that tenants by the entirety could invariably divide the income from property held under this form of ownership for income tax purposes. In North Carolina, for example, the rentals from real estate held by a married couple as tenants by the entirety are all taxable to the husband,[9] because under the North Carolina law he is entitled to all the income. Whether or not tenants by the entirety can split the income from joint property (apart from the splitting authorized by the 1948 Act) depends upon the local property law.

After disposing of tenancy by the entirety, the author points out the lack of correlation or consistency between the federal income, estate and gift taxes. A chapter devoted to pointing out some of these inconsistencies in detail is followed by another chapter setting forth a number of proposals for correlating the three taxes and a rather complete discussion of the Treasury study of an integrated estate and gift tax,[10] which Mr. Polisher seems to favor.

Two final chapters deal with the 1948 Act. In the chapter entitled "The

5. 96 F. 2d 776 (C. C. A. 2d 1938).
6. G. C. M. 23063, 1942-1 CUM. BULL. 103.
7. Sand Springs Ry. v. Commissioner, 21 B. T. A. 1291 (1931); Bear Gulch Water Co. v. Commissioner, 116 F. 2d 975 (C. C. A. 9th 1941).
8. P. 587.
9. I. T. 3878, 1947-2 CUM. BULL. 57. The same rule also prevails in Massachusetts. Cooley v. Commissioner, 75 F. 2d 188 (C. C. A. 1st 1935), *cert. denied*, 295 U. S. 747 (1935).
10. FEDERAL ESTATE AND GIFT TAXES, A PROPOSAL FOR INTEGRATION AND FOR CORRELATION WITH THE INCOME TAX (Government Printing Office 1947).

Revenue Act of 1948," the author reproduces the gift and estate tax amendments made by the 1948 Act, along with pertinent excerpts from the Senate Report explaining those amendments, and an occasional illuminating comment of his own upon the more involved phraseology of the new law. Unfortunately, the book was published before the new gift and estate tax regulations were promulgated. The final chapter on the "Effect of 1948 Act on Existing Estate Plans, Wills, Trusts and Life Insurance Programs" is less satisfactory. The discussion is on a rather academic and tentative level without any real attempt to grapple with the complex mathematics which are involved in the most beneficial utilization of the marital deductions under the new law. It is becoming increasingly evident that the marital deduction under the estate tax is less attractive when it is reduced to concrete computations than it appears in the abstract. The lawyer seeking to determine the maximum tax advantage from the marital deductions and gift splitting provisions of the 1948 Act will do well to consult the pamphlet published by the Commerce Clearing House Corporation entitled "Tax Planning for Hushands and Wives under the Revenue Act of 1948.

It is regrettable that Mr. Polisher could not have delayed publication of the second edition of his book until he had time to study the implications of the 1948 Act and integrate its provisions with the rest of his book. With the exception of the provisions dealing with community property, the new law does not abrogate entirely the previous principles of tax planning for estates. It does, however, introduce some distinctly new principles and radically changes the practical application of many old techniques. It is quite possible to get some idea of modern tax planning for estates by reading back and forth between the author's discussion of the 1948 Act and the other portions of his book. The author's failure to integrate the 1948 Act, however, results in a book on old style planning with a modern appendix, rather than a completely modern and up-to-date work.

Some of the inaccuracies which caught the reviewer's attention in examining the book may be noted briefly. Tenants by the entirety prior to the 1948 Act could not divide the income from joint property for federal tax purposes, unless under the local law they were equally entitled to such income.[11] In computing the value of the gift by a husband to his wife, when the husband buys property and takes title thereto in his name and that of his wife as tenants by the entirety, you do not subtract the value of the wife's present right to income.[12] The taxation of income from an endowment policy is

11. See notes 8 and 9 *supra.*

12. See the curious statement at page 25: "The amount of the gift is determined by the value of the real estate less the value of the right, if any, of the wife to the income or other enjoyment of her share of the property during their joint lives and the value of the client's right to recover the whole property should he survive his wife." The author states the rule for valuing such gifts correctly, however, at page 478.

determined not only by whether the insured exercises the optional forms of settlement prior to the maturity of the policy, but by the option which he chooses to exercise.[13] A power of appointment created prior to the 1942 Act may be released tax-free prior to July 1, 1949.[14] Insurance payable to a wife is entitled to a marital deduction under the estate tax, even though she is entitled to receive only the interests from the proceeds of the insurance during her life, provided she has a sufficiently broad power to appoint the residue.[15]

CHARLES L. B. LOWNDES *

FEDERAL TAXES—CORPORATIONS AND PARTNERSHIPS, 1948-49. By Robert H. Montgomery, Conrad B. Taylor and Mark E. Richardson. Vol. I: Gross Income and Deductions. Vol. II: Taxes, Returns and Administration. New York: The Ronald Press Company, 1948. Pp. xiii, 1001; pp. iv, 881. $20.00.

FEDERAL TAXES—ESTATES, TRUSTS AND GIFTS, 1948-49. By Robert H. Montgomery and James O. Wynn. New York: The Ronald Press Company, 1948. Pp. xi, 1263. $10.00.

In the inconstant world of federal taxation, where change and flux are the rule and the settled and the immutable are the exception, the annual appearance of the widely familiar Montgomery tax books has become a settled tradition—as well as a monument to our system of taxation and its unique

13. At page 555 the author states: "Where an endowment policy matures during the lifetime of the insured, it is advisable that the options granted under the policy to receive payment at maturity should be exercised before the policy matures. Under such circumstances, the payments received by the insured are not income to him until his entire cost is recovered." Of course, this is true only if the insured elects to take payment of the policy in installments. If he elects to take an annuity, for example, this would be taxed as an ordinary annuity, the cost of which would be the net cost of the endowment policy.

14. The author's consistent use of July 1, 1948, as the ultimate date for the tax-free release or reduction to the nontaxable power of a power created prior to the 1942 Act may be due to the fact that Congress may not have extended the period for tax-free release or reduction of such powers to July 1, 1949, before the book was published. There is less justification, however, for such meaningless statements as "Section 1000 (c) of the Internal Revenue Code, added by Section 452 (a) of the Revenue Act of 1942, makes the exercise or release of powers of appointment after June 6, 1932, and before January 1, 1943, (extended to July 1, 1948) subject to the gift tax" which appears at page 419; or, the erroneous statement on page 426, where after declaring in one paragraph that powers of appointment created prior to the 1942 Act may be released or reduced to nontaxable powers prior to July 1, 1948 [1949], the author states in the next paragraph: "This tax-free right to release does not apply to powers . . . created on or before October 21, 1942 which were exercisable in favor of the donee, his creditors or his estate, unless under legal disability."

15. Under the 1948 Act as it was originally passed, insurance payable to a spouse did not qualify for the marital deduction if she was simply to receive the interest on the proceeds during her life. This was, however, amended by Pub. L. No. 869, 80th Cong. 2d Sess. (July 1, 1948), which was probably after Mr. Polisher's book had been published.

* Professor of Law, Duke University School of Law.

capacity to produce the endless controversy and litigation which render appropriate a complete annual revision of basic texts such as these.

Despite the rapidly shifting subject matter, in organization, method of discussion and format, these volumes alter remarkably little as the years—with their statutes, regulations, rulings and court decisions—come and go. In fact, the persistent pattern of organization prescribes the basic character of the works. The accent is on brevity, succinctness of expression, a minimum of general analysis of broad subject matter and a maximum of discussion of detailed rules. The principal concern is to embrace as much of the tax field as possible in concise statements of the treatment appropriate to particular transactions and situations; very little effort is expended on attempts to analyze or expose broader problems, or to reveal the underlying concepts and philosophies to which administrators and courts have responded and which may serve to guide the reader to an awareness of the probable or possible course and development of precedents and principles.

For the most part the material is organized into major subject headings (*e.g.*, "Dividends and Other Corporate Distributions; Earnings or Profits"), and subheadings (*e.g.*, "Statutory Dividends," "Stock Dividends and Rights"), but the greatest part of the discussion occurs under the further breakdown into detailed paragraph headings relating to specific and narrow topics (*e.g.*, "Dividends or Interest," "Dividends or Royalties," "Dividends or Compensation," "When Advances to Stockholders May Be Taxable as Dividends"). This technique serves very well indeed, where, although the subject matter may be complex, definite explanations or conclusions are available, or the conflicts are sharp and clearly drawn; and, of course, many areas of the tax law are susceptible to this sort of treatment, coupled with citations to or brief quotations from supporting or controlling statutory or other authority. This is where the Montgomery books, and particularly the corporation and partnership volumes, shine at their brightest. The material is carefully prepared and accurately and clearly stated. The indexing is good and the organization is such that the reader is likely to be agreeably surprised at the speed with which he may find the governing rule and the principal authorities. There is probably no better summary available of the law and accounting practices pertaining to the problems which generally affect business organizations than that provided by the corporation and partnership volumes. If the estate, gift and trust book seems less successful, it is probably largely because a greater proportion of the problems in those areas are not readily susceptible to the type of answer which is long on succinctness and short on analysis and probing.

Where the problems become more obscure and the patterns of factual situations approach the kaleidoscopic, where the governing rule is elusive and tricky, where one may have to formulate a judgment in the case before him

on the basis of decisions in other situations which provide a guide only in their fundamental philosophy, the assistance that books of the Montgomery type are likely to offer is limited. This may be merely to say that they do not accomplish more than they are intended to, but the warning may, nevertheless, be appropriate, since the uninitiated, not finding what he seeks, may be tempted too readily to believe he is adrift without rudder or compass, when a more questioning analysis of available authority might reveal the existence of helpful tides and currents.

A pointed, although possibly not the best, example of what is referred to occurs in the discussion of the *Clifford* doctrine, in the estate, trust and gift volume (Chapter 7). The material is largely organized around the regulations, which lend themselves readily to the organizational method employed. The difficulty arises in the discussion because of the emphasis placed on those situations in which the rule of the regulation lacks a judicial precedent to support it, or may even be in conflict with some particular decision in the many hundred involving the doctrine. The bewildered reader may quickly be inclined to believe that confusion remains in full control and that the regulations are so divorced from the cases as only to add to it. In fact, this is exactly the conclusion the authors themselves have reached—too readily it is submitted, particularly in the light of the analysis to be found in the rather extensive literature on the subject which, while frequently controversial, does serve to indicate that the regulations are not without a cohesive rationale that could, and it seems probable will in substantial part, guide at least those courts which have called for the benefit of administrative clarification. Since their number includes the Supreme Court itself, it may be a disservice to the unwary reader that there is not sufficient analysis to avoid the impression of a lack of all signposts in areas where particular case authority for a specific rule is lacking. In any event, one is wholly puzzled by the authors' cryptic and unsupported statement that because, "since the promulgation of the regulations, few [cases] have even mentioned the regulations," therefore, the "conclusion is irresistible, either that the Treasury itself does not look upon its regulations as clarifying the situation, or that its law officers choose to disregard the regulations whenever they see fit." (P. 303.)

The principal new material in the 1948-49 volumes pertains, of course, to the amendments introduced by the Revenue Act of 1948. The outstanding contribution, if one may so describe it, of that Act which falls within the scope of these volumes was the estate and gift tax marital deduction. Unfortunately the discussion of these amendments had to be undertaken without the benefit of regulations, which were issued in tentative form only as the books went to press. (The tentative regulations appear as an appendix to the estate, trust and gift volume.) The result is that the material

labors under the burden of a good many then unanswered problems that the regulations apparently go far to resolve (mostly in favor of the taxpayer). The text, in other respects, does not rise far above a skeleton discussion of the new provisions, interspersed with copious quotations from the Senate Finance Committee's report, the principal source of interpretation available when the book was in preparation.

In other respects also, the estate, trust and gift volume is somewhat disappointing. For example, the *Hallock* problem discussion seems both inadequate and confusing, partly at least because the authors deemed it necessary to discuss the regulations and the earlier case law in separate sections and could find no satisfactory basis for even an attempted reconciliation or analysis of differences. (Their difficulties are largely erected upon the no more fundamental basis than the admittedly puzzling, but not insurmountable, opinion in the *Goldstone* case and an ill-considered footnote reference in the opinion in that case to the holding in the *Fidelity Philadelphia Trust Company* decision.) [1] Elsewhere the discussion seems inadequate to present significant trends in the law. Thus, to state an instance, the present confusion over the estate and gift tax rules governing divorce settlements is not sufficiently analyzed. A more pointed type of defect is exemplified by the failure to suggest that the Supreme Court holding in the *Bull* case as to the application of the estate tax to interests in partnership income may have lost its vitality.

It is to be suspected that a good deal of what is here criticized in these books stems basically from the consistently conservative viewpoint of the authors. Given a restrictive attitude as to the propriety of courts and administrators undertaking to fill in the gaps and interstices in the tax law, or to correct past errors, which have become acutely realized only as issues which were once hidden or non-existent have become sharpened, one is likely not accurately to anticipate the course of future development of the law in important areas. The horror and surprise with which many practitioners (including the authors of the books here reviewed) have received new judicial landmarks, which in recent years have extended the tax collector's reach beyond what a too narrow reading of the statute might reveal, have been due in large part, one suspects, to a failure properly to read the signposts along the road. Few such decisions have sprung unheralded from the tax soil; their appearance has generally been preceded by rumblings and portents. While predicting trends in judicial behavior is a dangerous occupation, it seems at least not improbable that the pressure of continued high taxes will continue to produce new attempts and failures to create narrow interpretations with resultant further unpleasant awakenings for the unwary.

---

1. The government's victory in the *Spiegel* and *Church* cases, decided by the Supreme Court on January 17, 1949 (17 U. S. L. WEEK 4127, 4135), as this review went to press, seems to render most of this discussion obsolete in any event.

As for the other more inherent shortcomings of volumes such as these, the suggestion occurs to one that a possible partial solution is quite readily available. Why should not the discussion be supplemented by specific footnote references to texts, law review articles and other materials providing further analysis or insight into the particular problems under consideration. Such additional references would seem greatly to enhance the value of the books without altering their present character significantly and without affecting the function they may adequately serve in themselves; nor would the addition of such footnotes seem materially to add to the length of the volumes. A carefully selected bibliography in this form would constitute a ready springboard to the next level of research of difficult questions, a full discussion of which is beyond the scope of these books.

No review of these books would be complete without reference to one other notable, if incidental, feature: the annual preface, in which Mr. Montgomery comments, to use his own words, "sometimes favorably, sometimes bitterly" on the passing tax scene. This year, as has been the case more frequently than not for a good many years, the author has found more to criticize than to praise. Last year the mirage of Republican sponsored tax revision was the cause of a burst of prefatory optimism, under the spell of which it seemed "reasonable to count on a revised law about the middle of 1948," to be passed under the aegis of a Ways and Means Committee which had at last "done the sensible thing and called in expert help" (presumably the Special Tax Study Committee, under the Chairmanship of Mr. Roswell Magill). The subsequent failure of the Congressional tax committees successfully to push the tax revision bill through the Congress last June (when the time was later than almost anyone thought) must now seem to its mourners as little short of gross negligence. Under the circumstances, one may sympathize, if not agree, with the disgusted lament in this year's preface ("One would think I would have known better"), and the accompanying slightly extraordinary suggestion made to "subscribers to campaign funds" that they could "easily get what [they] beef about" if they would merely "threaten to withhold campaign contributions."

It is, however, more difficult to understand how the author could see, in the recently interred H.R. 6712, much that would have contributed to "an understandable tax law." Whatever the merits of the major provisions of that bill (such as those dealing with stock options, family partnerships and the *Hallock* case problem, to name a few) their virtue was not simplicity. Actually, one suspects, the passage into law of a single provision granting to certain groups of taxpayers some more favorable treatment than has theretofore existed, causes, in most law and accounting offices, more delight than any ten simplification measures. Witness, for example, the estate tax "com-

munity property" amendments in the Revenue Act of 1948 (enthusiastically approved by Mr. Montgomery and many other opponents of obscure and difficult tax laws). If ever legislation contributed to complexity it did, but it reduced taxes for a few thousands of well advised persons of means. Hence its faults are frequently forgiven.

This is but to say that short of the development of a new attitude toward taxation, it seems unlikely that the frequently demanded goals of simplicity and less litigation are likely to come any closer. Any substantially increased realization of either would probably have to have as cornerstones, (1) an increased willingness to sacrifice much of the present "special treatment" provisions (whether designed to satisfy highly refined notions of equity or to provide special incentives or tax immunities) and (2) an increased grant of responsibility to the tax administrator. If the price seems too high to enough of us, then we will no doubt continue to enjoy taxation by legislation, litigation, more legislation and more litigation, as we have in the past. No other important nation, including those we regard as being democratic in their legislative and judicial processes, seems to find taxation by litigation necessary or desirable to anything like the same degree, or perhaps it is only that we alone can afford the luxury. ADRIAN W. DEWIND *

WILLS, GIFTS AND ESTATE PLANNING UNDER THE 1948 REVENUE ACT. By Seymour S. Mintz, Richard C. Flesch and Bernard Soman. Washington: The Bureau of National Affairs, Inc., 1948. Pp. 328. $2.00.

This booklet was prepared because of the profound changes made in our basic tax structure by the Revenue Act of 1948, which became law on April 2, 1948. Those who have assiduously followed the devious route and final passage of the statute, will find the booklet elementary, especially in view of the new Estate Tax Regulations which have been lately proposed and because of the vast quantity of literature interpreting and speculating upon the new law. Millions of taxpayers, presumably, have already filed their 1948 income tax returns on or before January 15, 1949, and have already discovered, for themselves, the income tax provisions of the new Revenue Act. The booklet has a tendency to "write down" to the reader; this does not necessarily detract from its value, for it nevertheless serves an extremely useful purpose of bringing before the public the important new provisions which, after all, is all that the publication is intended to accomplish.

Until the passage of the 1948 Revenue Act, the unit was the individual, not the family. Residents of community-property states were in a preferred position because the income of the husband and wife belonged to each

* Of the firm of Paul, Weiss, Wharton & Garrison, New York, New York.

equally. Each reported one-half of such income with consequent income tax savings. In the common-law states, on the other hand, such splitting of income could be accomplished only in exceptional cases. Salary income, for example, could not be divided as it could in the community-property states. As the authors point out, beginning with 1948, a husband and wife may elect to file a joint return and report their combined incomes and deductions. The surtax net income is then divided in two, the tax is calculated on each one-half, which are added together, thus accomplishing the "splitting" under the new law.

The second chapter is devoted to a discussion of the gift tax changes made in the new law. Fundamentally, the new Act provides a "marital deduction" equal to one-half the value of any gift made by the husband to the wife or by the wife to the husband, and gifts made by the husband or wife to a third person are considered made one-half by the husband and one-half by the wife. Numerous illustrations are given to show the practical workings of the gift tax computation and there is a brief discussion of the "terminable interest" rule for gift tax, which rule is highly technical in nature; and also some discussion of administrative provisions, such as consent by husband and wife to have their gifts considered as made one-half by each.

The estate tax provisions of the new Revenue Act have shaken the whole federal estate tax structure to its roots and a goodly portion of the booklet is given over to these new concepts. The marital deduction, of course, is the most significant change and there is an excellent discussion of this new device in tax law. This provision allows as a deduction for federal estate tax purposes, "an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate," and is limited to a maximum amount not exceeding 50% of the value of the decedent's "adjusted gross estate." The conditions which must be met are discussed at length; namely, there must be (1) an interest in property, (2) which is included in the decedent's gross estate, (3) and which passes or has passed from the decedent to (4) his surviving spouse.

The rules with reference to "terminable interest" and the handling of life insurance are clearly and concisely set forth, as are the new provisions for the deduction for property previously taxed and the credit for gift tax paid. The scope of this review does not permit a discussion of these revolutionary provisions.

A praiseworthy chapter is devoted to estate planning and how it has been affected by the new Revenue Act. Such questions as how much, if any, of existing life insurance should be qualified for the marital deduction are concisely and competently discussed.

There is also an appendix to the booklet which contains the Revenue

Act of 1948, and the Senate Finance Committee Report. These should carefully be studied in advance of regulations adopted by the Treasury Department under the 1948 Revenue Act.

The new Act calls for a revision of all estate plans and wills, as the publication forcefully demonstrates. "Times, conditions and laws change. An estate plan once adopted should be made the subject of periodic review in order to insure its continued soundness in the light of subsequent changes." (P. 110.)

To summarize, the booklet is of value only as a brief resumé of the new law and is without too much value for the more serious or practical student. Its efficacy has been largely diminished by numerous studies made by the standard tax services, such as Prentice-Hall and Commerce Clearing House and by excellent articles published in various tax periodicals and magazines. The publication of proposed Estate Tax Regulations under the new Revenue Act has clarified numerous troublesome features of the estate tax provisions which have been puzzling drafters of wills, tax lawyers, and others concerned with the practical workings of the new Revenue Act. The authors have done an excellent job with the raw material at their command, namely, the new Revenue Act of 1948, and at the time this publication was issued, no one in tax practice or otherwise could intelligently elaborate upon many of the provisions of the Act. It is, therefore, understood why numerous concepts were skipped over very lightly. As regulations have been promulgated and proposed and as rulings have come down from the Bureau, many of the qualifications and comments made by the writers of the booklet have declined in value. The booklet, nevertheless, has probably served, and will continue to serve, a very valuable purpose in acquainting the public and professional men with the provisions of the new Act, and how they affect wills, gifts and estate planning.

CHAS. A. MOREHEAD *

FEDERAL TAXATION FOR THE LAWYER. By Houstin Shockey. New York: Prentice-Hall, Inc., Second Edition, 1947. Pp. xiii, 396. $5.00.

THE introduction to *Federal Taxation for the Lawyer* states in substance that its objective is to assist the average attorney to absorb, as easily as possible, the basic principles of federal tax law and recognize such principles in connection with his general practice. To a considerable extent the book accomplishes its objective.

It seems that the author is endeavoring to create or instill a degree of sensitivity to the tax problems which may lurk in situations upon which

* Member of firm of Morehead, Pallot, Smith, Green & Phillips, Miami, Florida.

a lawyer may be called to advise his clients and to this end the author has identified and described certain stimuli which should engender a state of tax consciousness.

It is obvious that a book of 396 pages cannot be a comprehensive treatment of federal taxation and this book makes no extravagant claims in that respect. It can be useful, however, to the lawyer who neither needs nor desires to maintain an extensive tax library in that it points out specific tax hazards which may exist in various situations that might otherwise be considered as uncomplicated by federal tax issues.

Federal Taxation for the Lawyer confines itself to federal income, estate and gift taxes and in its presentation of these subjects they are each treated whenever appropriate with respect to their relation to each other in the consideration of a given transaction or activity.

The first ten chapters of the book deal with federal tax matters as they more narrowly affect the individual and in this connection it should be borne in mind that this book was published before the enactment of the Revenue Act of 1948 and therefore does not reflect the very substantial changes made by said Act. The remaining seven chapters are concerned with tax questions pertinent to business entities such as partnerships and corporations.

The method of the presentation of the material in the individual chapters should go far in accomplishing the author's desire to aid the attorney in obtaining as easily as possible the minimum basic knowledge of the principles of federal tax law.

Each chapter starts out with a brief statement of the matter to be considered. This is followed by a numbered series of subject headings which are to be examined. Then in a very readable and palatable narrative bearing the same subject heading and numerical designation as the ones given initially an assumed but realistic situation is stated and analyzed. A summary of the principle involved is given at the end of each subject discussion and each chapter is concluded with a general discussion of the material embraced in the chapter. This involves a degree of repetition but it is by no means objectionable. Reference numbers appear very unobtrusively in the body of the narrative and the pages are not cluttered with footnote annotations. The reference material is given at the back of the book in a section dealing with the notes applicable to the separate chapters. The reference material appears to be confined to citations of cases, references to the Internal Revenue Code, the Regulations and Prentice-Hall Federal Tax Service.

It is possible to take issue with the author on the scope to be accorded a given subject but in a work whose physical limitations are, in a measure, its virtues, such criticism would only indicate a choice of the individual as to the relative importance of the material offered.