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Tax News

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TAX NEWS

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Of interest to tax practitioners generally was the Seventh Annual Institute on Federal Taxation, held by New York University from November 9th to 18th. Approximately five hundred tax men from 41 states and the District of Columbia heard more than a hundred lecturers discuss tax problems. For the first time two women appeared on the program: Miriam I. R. Eolis, a CPA (N. Y.) and attorney (also a member of AWSCPA), and Lillian L. Malley, an attorney, a member of the bar of Massachusetts and Connecticut.

Miss Eolis spoke on "Problems in Evaluating the Adequacy of Officers' Salaries." Miss Malley's subject was "The Assertion of Transferee Liability." Professional women generally have every reason to be proud of the way their representatives in two professions acquitted themselves on a program which consisted of lectures by the better known authorities on Federal taxation.

While the discussions covered almost the entire range of Federal taxes. particular emphasis was given to the estate and gift tax provisions of the 1948 Revenue Act, and to the influence of recent decisions by the courts on corporate reorganizations.

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The time is drawing near when we shall be filing the first individual income tax returns since the enactment of the "Tax Reduction Revenue Act of 1948." The "split-income" provisions appeared clear-cut and simple at the first glance, but after closer scrutiny, it developed that these provisions gave rise to numerous problems and questions.

The Bureau has attempted to eliminate some of the questions by the issuance of formal and informal rulings. The Commissioner has published his proposed amendments to Regulations 111, to conform the regulations to the Revenue Act of 1948. Any views, data, or arguments pertaining to the proposed amendments which are submitted to the Commissioner within 30 days after publication of his notice in the Federal Register on October 27, 1948 will be given consideration prior to the final adoption.

Section 86.2 of Regulations 108 has been amended by E. T. 21, IRB 1948- 20, 10, so as to provide that payment of joint income tax by one spouse does not result in a taxable gift.

Research Institute of America reports that the Bureau has informally indicated to the Institute that the $5,000 surtax exemption limit on pre-March 1, 1941 Treasury and savings bonds is applied on the basis of each taxpayer rather than on the basis of each return.

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One of the perquisites to which brides are by custom entitled was dealt a blow in the memorandum decision by the Tax Court in the case of Bernard L. Shackleford v. Commissioner, Docket No. 15,338. The taxpayer, a Southern physician, attempted to deduct from his income the cost of wedding gifts to the city's belles, as an ordinary and necessary expense. Since the generous doctor was unable to prove a direct connection between the wedding gifts and the fees he earned for obstetrical services rendered, the Tax Court disallowed the deduction.

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Probably not many people are aware that the Federal Government has a standing offer of reward "for information that shall lead to the detection and punishment of persons guilty of violating the internal revenue laws, or conniving at the same." Formerly the amount of the reward was limited to 10% of the amount recovered by the Treasury Department, but a recent Treasury Decision (No. 5661) removes the limitation and states that the amount of the reward will depend upon the value of the information furnished. The informer must notify the Treasury Department when the information is given that he intends to file a formal claim for the reward, and the claim must be filed on a form prescribed by the Commissioner. Since the number of claims for rewards actually filed is infinitesimal in comparison with the number of informers who give tax information to the Bureau of Internal Revenue, apparently most of the information is given with malice rather than avarice as the motivating influence.

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The Commissioner has sometimes taken the position that the sale of an undivided interest in a partnership was in effect the sale of the component assets of the partnership and that whether the gain or loss resulting from the sale was a capital gain or loss depended upon the character of the partnership's assets. The Tax Court found otherwise in the Estate of Daniel Gartling, Deceased, 6 TCM 879 and in George Whitney, 8 TC 1019. The matter appears now finally settled with the opinion on the former case rendered by the Ninth Circuit Court of Appeals on October 21st.

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Back in April of this year, the case of Akers et ux v. Scofield received considerable publicity in the various newspapers.

Why should an embezzler be exempt from tax on the proceeds of his thievery, while the swindler is taxed on his ill-gotten gains? The distinction is enough to make the less pedantic rush to her law dictionary, but the Fifth Circuit Court of Appeals distinguished clearly between the two in the much publicized Akers case.

A rich widow, swindled out of $272,200 in four years, had advanced the swindler and a confederate the money for the purchase of maps showing where gold bars were buried on her lands. Chagrined at having permitted herself to be so defrauded she refused to prosecute.

"The distinction between theft and embezzlement on the one hand and swindling on the other is that in the former case title to the property acquired never passes, while in the latter case title does pass."

In this case, the swindler was sent to the penitentiary for failure to report the proceeds of his swindle as income, but Akers et al v. Scofield now appears on the Supreme Court Calendar. It will be interesting to see if the Supreme Court agrees with the distinction drawn by the Fifth Circuit.

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Frequently cited as evidence of the generosity of our income tax regulations is Section 29.23 (a)-9 which reads "When the amount of the salary of an officer or employee is paid for a limited period after his death to his widow or heirs, in recognition of the services rendered by the individual, such payments may be deducted." The real advantage, as pointed out in I. T. 3329, IRB 1939-2, 153, is that the payment is deductible by the employer, but is not income to the recipient who has furnished no service.

The Commissioner has informally indicated that he will allow deduction of such payments for a "limited period" of usually not more than two years. He does not require a contract obligation, or a pension policy, nor does he want proof that the payments merely make up prior underpaid salary.

The Tax Court, on the other hand, would apparently not allow any deduction, for any period of time, for a purely voluntary payment. In McLaughlin Gormley King Co., 11 T. C. No. 68, the Tax Court upheld the Commissioner's disallowance of deduction for payments made after November 30, 1941. The Commissioner did not attempt to disallow the payments for the first twenty-nine months, but the statement of the Court is indicative of what taxpayers may expect in the future if such cases are litigated.

> ". . . in the absence of a contract liability, an established pension policy, or a showing that such payments were for past compensation and were reasonable in amount, the payments may not be deducted under section 23 (a)."

To help you know your national officers, we plan to print photographs of them from time to time. The two presidents, Ruth Clark and Marion Frye, were pictured in the October issue. Marion Frye is also first vice president of AWSCPA. Here is a photograph of Alice Aubert, first vice president of ASWA. Miss Aubert is a New York CPA, is on the staff of Hurdman & Cranstoun, and has served ASWA in many posts, including the presidency of the New York chapter. She is public relations chairman for both societies. For further information about her see the October issue.