

Marvin A. Chirelstein, *Federal Income Taxation: A Law Student's Guide to the Leading Cases and Concepts*, Third Edition. Mineola, N.Y.: Foundation Press, 1982. Pp.348. \$13.50.

Reviewed by Richard L. Schmalbeck

Marvin Chirelstein's recent retirement from law teaching,¹ coupled with the publication last fall of a third edition of his law student's guide,² provides a suitable occasion for a reconsideration of this excellent and influential work.

Chirelstein's accomplishment in this book can hardly be overstated: it is probably safe to say that he has written the book that every tax teacher would like to have written.³ He has struggled, usually successfully, with the problem we all face—coping with the daunting bulk and complexity of the federal income tax subject matter, while keeping track of what conceptual threads can be found.

This book has achieved remarkable visibility for a student guide. A recent informal survey taken at a meeting of the Tax Section of the Association of American Law Schools revealed that about one-eighth of the sample has made this book required reading in their tax courses, and another half of the sample recommends it to their students. Some measure of its preeminence in its field is suggested by the fact that no comparable work was mentioned by more than a few respondents, even though there are competitors of good quality.⁴ Some evidence of its intellectual depth—an unusual attribute for a student guide—is provided by the fact that portions of an earlier edition of this book have been used as a point of departure for a full-scale academic debate on the basic nature of depreciation.⁵

The strengths that have yielded renown for this book are apparent from its first chapter, in which Chirelstein handles that most difficult of pedagogical problems: where and how to begin. Each bit of tax law seems best explained in terms of other bits of tax law, which, of course, have not yet been

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1. He has "retired" to the presumably greener pastures of New York City law practice.
2. Earlier editions were published in 1977 and 1979. The principal additions in the present version deal with the provisions of the Economic Recovery Tax Act of 1981, especially the Accelerated Cost Recovery System. This edition does *not* reflect changes made by the Tax Equity and Fiscal Responsibility Act of 1982.
3. If there are any readers who would suggest themselves as counterexamples, I would ask them first to consider the royalties.
4. See, e.g., Douglas A. Kahn, *Sum and Substance of Federal Income Tax*, 6th ed. (Los Angeles: Josephson, 1979), and John K. McNulty, *Federal Income Taxation of Individuals in a Nutshell*, 2d ed. (St. Paul, Minn.: West Publishing Co., 1978), among others.
5. To date, this debate has consisted of Chirelstein's basic sinking-fund depreciation model at 133-35 of the second edition of *Federal Income Taxation*; Douglas A. Kahn, *Accelerated Depreciation—Tax Expenditure or Proper Allowance for Measuring Net Income?*, 78 Mich. L. Rev. 1 (1979); Walter J. Blum, *Accelerated Depreciation: A Proper Allowance for Measuring Net Income?!*, 78 Mich. L. Rev. 1172 (1980); and a reply by Kahn at 78 Mich. L. Rev. 1185 (1980). Chirelstein did not, of course, originate the view of depreciation provided in his book; Kahn presumably chose Chirelstein's model for use in his (Kahn's) article because of Chirelstein's clarity of exposition and his faithful capture of the essence of the sinking-fund position within a few brief paragraphs.

explained to the newcomer to the field. I suppose that many teachers think that this problem of nonlinearity of knowledge is particularly acute in their own subject areas. I would assert, however, that few fields of legal education present as much difficulty of this sort as tax law does. Most of its major concepts, and even its vocabulary, have no close analogues in other areas of law—especially in those areas to which second-year law students have likely been exposed. The question with which this and most other introductory tax books begin is, What is income? This seems self-contained enough, but any teacher knows that torrents of partly relevant, partly extraneous concepts constantly threaten to break through and make the inquiry unmanageable. Issues of realization, valuation, characterization, timing, netting of offsetting amounts, the appropriate roles of Congress, the IRS, and the courts, etc., can be difficult to control.

Chirelstein does not entirely avoid these complications, but he has a nice way of handling them: he provides the reader with just enough information to put the issue to one side, but not so much that the reader loses the original point in the digression. For example, since no useful observations about timing issues can be offered unless the student first appreciates the significance of the time value of money, Chirelstein provides a short explanation of discounted present value when the first timing issue arises (pp. 13–14).⁶ Similarly, from the very beginning, Chirelstein takes every opportunity to emphasize the interplay of the basic tax doctrines: how, for example, the decision on an inclusion rule affects the choice of appropriate basis rules (pp. 11–13). The student reader is discouraged from developing a sense that each tax issue can be analyzed wholly apart from all other tax issues. But, at the same time, the introduction of the other issues involved is modulated, never overwhelming. By careful handling of the side issues, Chirelstein manages to move forward much as a cattle-driver might—achieving a reasonable amount of linear progress by describing a series of semicircles around a herd of unruly tax concepts.

The uses to which this book can be put depend somewhat upon the orientation of the tax course. Tax courses taught in various places by various teachers could probably be best arrayed by their positions between two poles: the conceptual, policy-oriented pole, perhaps best represented by William Andrews's casebook,⁷ and the problem-oriented pole, which could be presented in its most extreme form by a course that emphasized a problems book like Steuben and Turnier's.⁸ Chirelstein's book has a place in either

6. He also provides a somewhat more formal presentation of this topic, excerpted from Armen A. Alchian & William R. Allen, *University Economics* (Belmont, Calif.: Wadsworth Publishing Co., 1972), in an appendix.

7. William Andrews, *Basic Federal Income Taxation*, 2d ed. (Boston: Little, Brown, 1979). It should be noted that there are a fair number of problems in the Andrews casebook in addition to the discussion of the policy and concepts; the Andrews casebook thus lends itself to a variety of approaches. It is my impression, however, that it is most favored by teachers who prefer to emphasize policy and conceptual underpinnings.

8. Norton L. Steuben & William J. Turnier, *Problems in the Taxation of Individuals, Partnerships, and Corporations* (Mineola, N.Y.: Foundation Press, 1978). The authors of this collection of problems recommend that it be used in conjunction with a basic tax casebook, and no doubt it typically is. However, even if it were used in conjunction with a

approach. In the former, it serves almost as a hornbook might: offering common-sense, sometimes tentative (as they should be) resolutions for the many conundra that the Andrews book presents. But Chirelstein's book may be even more important in a problems course, since he offers an overview of the tax system that otherwise may be lost in the detail of a myriad of tax problems.

Chirelstein achieves that overview by an approach that begins in each area by asking what choices the tax system has in dealing with that problem area.⁹ After the pros and cons of all the possibilities have been considered, a summary of the Code and case law is provided, sometimes with an explanation of practical considerations that may have caused the law to deviate from what might seem to be a more conceptually sound approach.¹⁰

Devoting so much attention to roads not taken could be criticized, especially when that attention comes, as it must in so short a book, at the expense of more detailed coverage of what tax law actually is. This book is definitely *not* a treatise, and students should be cautioned against using it as such. It is useful as a broad outline of the tax law, but it is much too likely to omit qualifications and exceptions to be reliable in providing correct answers to specific tax questions. Everyone familiar with the book has, I am sure, his own list of things that are inadequately treated in it. I would put Chirelstein's cursory, one-paragraph treatment of alimony, child-support, and periodic payments of property settlements at the top of my list of such items (p. 196).¹¹ A colleague of mine suggests that the scanty discussion of the mechanics of capital gains computations is hopelessly incomplete. In fact, the broader point is that Chirelstein's discussion of the mechanics of *anything* in this book is likely to be insufficiently detailed to permit the student to master even straightforward tax computations without reference to some source other than Chirelstein.

But all this is only to say that the Chirelstein book should not be the only resource used in the tax course, which, of course, its author never intended. Although one might quibble with some of Chirelstein's particular choices about coverage, or complain about minor technical defects,¹² his overall decision to present the full range of tax possibilities for each problem seems eminently sensible for the education of lawyers. Tax lawyers—in contrast to

conceptual policy-oriented casebook, any significant time devoted to the problems approach would preclude full exposure to the conceptual policy approach and would hence represent a movement away from that pole.

9. This approach is consistent throughout the Chirelstein book. See, e.g., the discussion of the basis treatment of mortgaged property at 228-41, or the discussion of no fewer than four options available as to the taxation of leasehold improvements at 79-83.
10. See, e.g., the discussion of *Irwin v. Gavit*, 268 U.S.161 (1925), in which Chirelstein defends the court's choice of the theoretically inferior rule regarding section 102 exclusions on grounds of its "practicality and convenience" (p. 65).
11. In contrast, he devotes about six times as much space to a discussion of the issue of realization at divorce, perhaps because he finds it more conceptually interesting (pp. 83-86).
12. One little detail too annoying not to mention is that the Table of Cases arranges many (but not all) cases by the names of the tax collectors (Lucas, Irwin, Eisner, et al.) rather than by the more standard (and more sensible) approach of using the names of the taxpayers (Earl, Gavit, Macomber, et al.).

other tax practitioners—are often called into a tax controversy or planning problem because the situation presents peculiar difficulties of characterization, or because ambiguities are thought to exist in the applicable law. Chirelstein's book can aid immensely in developing a basic tax course with sufficient conceptual richness to prepare students for such problems. Presentation of all the options also tends to make changes in the law (which seem more than ever to be an inevitable part of the tax landscape) less jarring, perhaps even predictable. Sound and understandable conceptual exegesis is a rare and admirable thing. We should be grateful for the significant contribution to this aspect of tax education that Chirelstein has made with this book.
