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FEDERAL TAXATION OF ESTATES, GIFTS, AND TRUSTS. (With supp.)
By *Douglas A. Kahn, Earl M. Colson, and George Craven*. Philadelphia: American Law Institute—American Bar Association Joint Committee on Continuing Legal Education. 1970. Pp. xxi, 366. Paper \$9.95.

Having had a long interest in continuing legal education and a recent, compelling interest in the subject of estate and gift taxation (occasioned by an assignment to teach the subject for the first time), I was naturally gratified to discover that the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association had recently published a new volume dealing with federal taxation of estates, gifts, and trusts as part of its series of Taxation Practice Handbooks. It was of particular interest to me because I was familiar with the original version of the work, which was published in 1966 as a study outline and used in present-

ing a short course in estate gift, and trust taxation to various bar association groups around the country. The handbook, of course, differs from the study outline in its major concept. The outline was designed for use in connection with lectures or discussion groups in which a teacher and a group of interested students would participate in a classroom-type situation extending over a period of two days. The outline, therefore, was as much a guide for the teacher as a reference for the student. The handbook, on the other hand, has no teacher and no classroom situation. It is designed to be read and studied by a person with an interest in the subject. This distinction not only troubled me as I studied the book for purposes of reviewing it, but also led immediately to the questions of who will read the book and why. The very nature of the Joint Committee's project demands a large audience in order for it to be considered a success. To provide such an audience, a convincing answer to the question of why people should read the book is required.

At the outset, it must be said that this book abounds with information. Although one could quibble about occasional redundancies, and perhaps legitimately complain about the space priority given to various subjects, to do so would needlessly draw attention from the substantial amount of information presented in a short space. Rather, I am troubled about how the book is to be used in the process of continuing legal education or legal education in general. While teaching the subject for the first time, I discovered many illustrative problems in the book that made useful vehicles for interesting class discussion and provided factual background for expanding on other materials in the classroom. Thus it was certainly useful to me as a teacher. Of course, the book was not written only for teachers, and it could not be judged a success if it was of interest only to that type of reader. Although the original study outline would be considered a success by that measure, a book of this type cannot be judged solely by one criterion.

Then, whom was this book intended to reach? Who should be members of its audience? With respect to these questions, some confusion appears to exist. The original study outline, as has been noted, was as much the tool of the teacher as of the student. A revision of that tool has not eliminated some bias toward that smaller audience in the presentation of the materials. The Joint Committee explains in its foreword that the book "is designed to give an understanding of the law governing the more frequently encountered problems in the preparation of federal estate tax returns, federal gift tax returns, and federal fiduciary income tax returns" (p. vii). In the editor's preface, Professor Kahn stakes out a somewhat different purpose, saying that the book "is intended to be a guide to the counselor or student who is either dealing with the problems of administering a decedent's

estate (including the preparation of the estate tax return and income tax returns for the decedent and the estate), or who is engaged in estate planning" (p. ix). I would be inclined to state the purpose differently. It seems that this book should find its major audience among those lawyers or other interested individuals who have never studied this subject and want to extend their education to this field, or among those who had studied it in school but who have lost what knowledge they once had and want to brush up on the subject. Whether they use it in their practice because they prepare tax returns, engage in estate planning, or litigate tax cases seems unimportant.

To me then, the book poses one of the serious problems of any program of continuing legal education: What is the most effective way of teaching a given subject? Most lawyers agree on the need for continuing legal education. Particularly in fast-moving areas of the law such as taxation, there is a sense of being lost, of needing help to keep abreast with current developments. At the same time, many lawyers, perhaps most, who encounter tax problems begin to feel a real need for continuing their education, not simply by keeping abreast, but also by learning things they never knew, freshening memories of studies from the distant past, or restudying subjects that were a mystery in law school but suddenly begin to seem comprehensible as the lawyer's experience broadens to include many of the events with which the tax law concerns itself.

The traditional response of the profession has been to conduct tax institutes. Some have been very good and many have been very bad. Nonetheless, in recent years, the felt need of lawyers for some assistance, evidenced by their willingness to shell out enough money to make such ventures profitable, has caused the tax institute business to flourish. With due diligence, it might well be possible for a tax lawyer to spend at least three fourths of a year's practice time attending lectures in exotic (and mundane) places. Even if one were to do so, it seems certain that the need would still not be met. Tax institutes have to cover enough diverse subjects to attract the necessary clientele. They must be short enough to cause a minimal disruption of one's practice. They must obtain their teachers largely from the ranks of unpaid volunteers and must get along on often inadequate advance planning. Therefore, they simply cannot provide comprehensive coverage of a subject.

Obviously, a book does not suffer from these handicaps. The time constraints are quite different. The authors, if successful, will be partially compensated for their efforts. Fewer authors than teachers are needed; thus a publisher can attract better talent than can most institutes. Of course, the coverage of a subject can be more complete. On the other hand, in a book of this nature there is the enormously

difficult task of providing something that a lawyer will feel a sufficient compulsion or interest to study. When one walks in and sits down for a lecture, one is committed to staying to the end, but when one picks up a book, there is little psychological commitment to finish it. It is all too easy to lay it aside. This consideration presents the author of a handbook with the most difficult challenge of all—keeping the attention of a reader on something that has no plot, suspense, or sex.

The authors of this handbook have attempted to accomplish this in part through the technique of discussing the substantive law and then illustrating it "with hypothetical examples so that the reader can view the operation of the laws in context" (p. ix). The idea is well conceived. A person can absorb only a certain number of technical abstractions, after which the head begins to spin and the mind wanders. To state the rules concerning the valuation of accrued income rights, for example, may leave a student reeling, but to illustrate the rules with an example of a computation, as the authors have done (pp. 83-84), is a useful device to recapture attention and assist the reader in understanding the text. This technique, however, creates its own difficulties for an author. There are a number of ways in which examples, problems, or illustrations can be used in combination with text to assist understanding or to improve the readability or usefulness of text. If there is a fault in this handbook, it arises from an apparent lack of consistent purpose behind the examples. Frequently, the examples appear to have been inserted merely in order to maintain the appearance of uniform treatment of the subject matter rather than to serve any specific and well-defined end by which the authors can improve their communication with the reader.

Problems can be used in conjunction with text for a number of different purposes. One such use is to develop, in an orderly sequence, a series of general rules. For example, in computer-programmed instruction, problems with programmed answers provide almost the entire content of a course of instruction. A first problem will present a student with the need to discover and answer a single issue. Once this is achieved satisfactorily, a second problem will build on the first idea. Of course, this approach demands substantial input by the student, not just casual reading. The authors of this handbook occasionally use illustrations that develop an idea in this fashion. For example, at pages 91 to 92, which deal with the subject of restrictive agreements and the valuation of stock for estate tax purposes, the authors present four examples that develop the subject in progression. These illustrations could easily be modified to be problems in a programmed set of instructions, which a student would move through step-by-step to an understanding of how restrictive agreements may be used to fix the value of property subject to the agreement. If used in such an orderly development, problems and answers

can lead a student to a comprehensive mastery of a subject. This is an interesting technique for self-teaching, but it demands study by a student rather than simple reading. Its use in illustrating textual material in a book designed primarily to be read is of questionable value. Indeed, the authors find it a difficult technique to use, as the fourth illustration shows. It begins as a problem and then yields to text that ends by extending the earlier textual material into a new area (the question of when such an agreement may impose not a floor but only a ceiling on valuation). Such difficulty is not surprising because a presentation of ideas through a logical sequence of problems demands much more space than does textual material. The authors simply did not have the space in this handbook to present many ideas through this method of sequential problems. However, as I will later suggest, it is perhaps possible that the materials in the handbook could be modified into a correspondence course in which this method of sequential problems would be the primary pedagogical technique.

That text is more economical in the use of words than problems is evident throughout this handbook. A single example, however, will demonstrate two aspects of this fact: redundancy between text and accompanying illustration, and number of words needed to express an idea. The authors state that income in respect of decedent includes "[a]n amount representing gain on property sold by a decedent before death, but not including gain on property which the decedent had contracted to sell on his death" (p. 307). This statement is followed by two illustrations. Only the first is quoted here since both illustrations make essentially the same point.

Illustration b. A, prior to his death, had acquired 10,000 shares of the capital stock of the X Corporation at a cost of \$100 per share. During his lifetime, A had entered into an agreement with X Corporation whereby it agreed to purchase, and the decedent agreed that his executor would sell, the 10,000 shares of X Corporation stock owned by A at the book value of the stock at the date of A's death. Upon A's death, the shares are sold by A's executor for \$500 a share pursuant to the agreement. Since the sale of stock is consummated after A's death, there is no income in respect of a decedent with respect to the appreciation in value of A's stock to the date of his death. If, in this example, A had in fact sold the stock during his lifetime, but payment had not been received before his death, any gain on the sale would constitute income in respect of a decedent when the proceeds were received.

It is readily apparent that the illustration makes exactly the same point as the brief sentence of text yet requires many more words to do so. Moreover, this serves to show the way in which illustrations frequently are repetitious of text. Thus, in light of the space prob-

lem inherent in the use of illustrations, it becomes extremely important to decide what role is to be assigned to illustrations in a book and to limit them to the performance of that role. Should they present new ideas? Should they repeat and therefore reinforce text? Should they be exercises in spotting and understanding difficult legal issues? Should they seek to clarify the reader's understanding of fact situations on which the legal rules operate? The foregoing questions indicate the four major roles that illustrations may perform; this handbook uses illustrations in all of these ways.

Illustration "a" at page 58 presents the reader with the idea not previously mentioned in text, that the amount of exclusion in the case of joint property is not the amount of consideration furnished by the surviving joint tenant, but a portion of the value of the property proportional to the amount of consideration furnished. On page 316, illustration "a" is an example of an illustration used as an exercise in spotting and understanding a difficult legal issue involving some of the common law of grantor trusts as developed by the courts. Finally, the book frequently uses illustrations to clarify the reader's understanding of the fact patterns in which the legal rules operate. A good example of this technique appears at page 99, where two illustrations are used to clarify a short sentence of text dealing with the deductibility of administration expenses. In these illustrations, the authors demonstrate the influence of local law on the deductibility of funeral expenses and executors' commissions for estate tax purposes.

It is my belief that the handbook is most successful in its format when it uses text to state the legal rules and illustrations to clarify the fact situations. Such illustrations provide a base for understanding the law that one can normally acquire only through experience. They provide no surprise for the reader, as may be the case when a new idea is presented in an illustration, and thus there is nothing to inhibit the ease of reading. The authors use many such illustrations; these points are the strongest parts of the handbook. The other types of illustrations used in this handbook generally seem to be of little value or, at best, are a less effective means than text for explaining a point. In addition, the variety of types of illustrations tends to interrupt the flow of reading. One never knows quite what to expect from an illustration. This makes for difficult reading. Indeed, if illustrations are to be used to present new ideas or explain difficult legal issues, they might benefit from a short phrase identifying the nature of the problem, a technique the authors use in illustrations "g" and "h" (p. 114).

Despite the shortcomings, this handbook is a useful text for a lawyer who feels the need for continuing his legal education in the area of estate and gift tax. It is far more comprehensive in its coverage

than most tax institutes or short courses could be or even attempt to be. Thus for the lawyer willing to expend the necessary time to study this subject, this handbook would seem a clear choice over attending a tax institute. It is not intended as a research tool and there are probably more helpful guides for the preparation of estate and gift tax returns. But there is a clear need for lawyers to extend or refresh their educations in the law, and this handbook is quite useful for that purpose, whether one desires a comprehensive overview of the entire estate and gift tax area or merely wishes a concise treatment of a specific problem.

I am still troubled, however, by the directions being taken by programs of continuing legal education. The institutes and short courses have clearly touched a need of lawyers. The response to them has proved this. Yet these techniques are not doing the job. They are limited in their scope and frequently draw crowds motivated as much by pleasant surroundings as by a desire to study. Books directed toward this same need do not suffer from such lack of scope. It is possible for them to cover a subject comprehensively, as this handbook has done. But one suspects that few lawyers will stay with a book long enough to master what it has to teach. Rather, it is likely that all too often the book will end up on a shelf, unread, waiting to be used as a research tool. To the extent that books of this type meet that fate, they have largely failed.

Perhaps there is a way to combine some of the strongest features of the study books and of the institutes into effective and practical correspondence courses. A lawyer feeling the need to study the law of estate and gift taxation might be overwhelmed by the task of studying a 334-page book and put it aside after the first enthusiasm for the material wanes; yet that same lawyer might spend the necessary time to complete the study of the subject if it were given to him or her in sufficiently small doses. In a sixteen-week course, it would be possible to present about twenty pages of this book to the students each week. This might be manageable for most lawyers who feel the initial motivation to sign up for the course. This is not to suggest that the course could be conducted by simply sending the lawyer or student twenty pages of this handbook each week. A change in format would be necessary, but the illustrations used by this handbook could be easily adapted to that new format. Problems, with references to statutes and regulations for solving them, could be sent to the student the first week. During the second week, solutions to the first problems could be sent with textual material explaining them and a new set of problems could also be mailed. In this way, the student would be encouraged to think through the issues and attempt to discover the answers in the statutes and regulations before reading the explicative text. Of course, this approach might not be effective, but it seems to

be worth a try. Perhaps the Joint Committee on Continuing Legal Education and the authors of this handbook could be persuaded to make the experiment. They have already done much of the basic work that would be needed, and it would be particularly interesting to see how a correspondence course would work in a subject area in which the Joint Committee and the authors have already collaborated on both a short course and teaching book.

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