Stern: The Great Treasury Raid

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services. Even as these facts exist, industry continues to further restrict employment opportunity by galloping automation, with each year seeing more and more people condemned to the economic underworld of chronic unemployment. That idealistic concept by which Hopkins and the WPA picked up the slack in unemployment to the extent of three million employable individuals and produced nine billion dollars of public works must be re-examined, and again made a part of American life.

Those practices detailed by Charles, whereby in another day, these responsibilities were met, must again be woven into American life. The mechanics outlined must be again brought into use. We must also break the shackles of today’s thinking which regards men as surplus material to be stored until needed.

Without asking any question, or setting up any qualification whatever, we must plainly and simply provide a job for any who will work. Giant public projects must be initiated, in the intellectual as well as the physical areas, so that a man need not first prove that he is physically unfit, or incapacitated, in order to qualify for employment. A direct competition for labor between government and industry will be a strong incentive to an economically healthy America. Nor would we suffer were results today to parallel those of an earlier effort: “Waste there was at times and there were wrong decisions made. But to farmers using farm-to-market roads which were first made usable the entire year by WPA labor, to children who were taught by teachers paid for out of FERA or WPA funds, for towns and cities whose streets were repaired and improved, for the people in many areas across the land who since the thirties have ceased to suffer from floods, for the blind who learned to read from materials and teachers financed by the FERA and the WPA, for the high school and college youth who received additional education as a result of the HYA, for all of these and hundreds of thousands more, the money spent for relief and work relief was not a waste of the financial resources of this nation.”

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Contrary to the old adage that “a little knowledge is a dangerous thing,” there are times when a little knowledge (little in the sense that it is confined in scope to a very small portion of the tax laws) by an articulate non-legal scholar is of benefit to the legal profession. A case in point is the book now under review. It examines an area of law which is unfamiliar to too many practitioners; and indirectly poses a challenge to the profession to rectify serious flaws in present-day tax laws.

The complexities of the tax laws are enough to confound even a Walter Mitty in his “make-believe world” of heroics. The Internal Revenue Code is a tantalizing conglomeration of thoughts and theories which attempts to satisfy all things for all men. It runs the gamut in its attempted protection of deserted mothers with infants to permitting the nonrecognition of gain in corporate changes of form. It encourages the free flow of property in one instance and, conversely, prevents it under other circumstances.
In their attempt at economy of space, the draftsmen of the various revenue bills, which are the composite of today's Revenue Code, have employed a minimum of verbiage, resulting in word groupings that can cause considerable anguish to even the most erudite of scholars. Besides these complexities of both substance and verbal form, there is another element which further complicates the administration of our tax laws. Invariably, a change of the tax laws immediately creates an aggregate of vested interests. A subsequent reversal of Congressional disposition will be strongly rebuffed by the now dissident and formalized vested organization. The ineluctable result of future legislation is not a restriction of the growing vested interests, but an extension and liberalization of the original change with the creation of more and new vested interest groups. It is a circle so large that its circumference has not been reached, nor can it be determined.

As the chronology continues, the concept for the original change in the revenue law becomes archaic, and, in certain cases, abusive. The law should again be changed, but the newly developed interest groups will raise a powerful lobby which will either eliminate entirely any attempted alteration or achieve success through emasculating amendments and prevent any effective reform.

Mr. Stern addresses himself to these problems. He highlights the tax advantages of oil depletion, capital gains, real estate tax shelters, estate tax escape hatches and all of the commonly known, and some of the less commonly known, tax avoidance procedures. His thesis is clearly stated: If one eliminates all of the so-called loopholes, all tax rates (personal and corporate) could be sizably reduced, with each taxpayer determining his proportionate tax share solely by his ability to pay. Some of the abuses cited by Mr. Stern have recently been corrected, but, generally, only by debilitating amendments. Consequently, much of what has been written may be considered outdated. This, however, would be an erroneous assumption.

The concluding chapter is disappointing in the sense that it suggests a general elimination of all existing "loopholes," including capital gains with provision for bunched income and business deductions. It also suggests a modified medical deduction and a charitable contribution tax credit with a corresponding rate reduction to better facilitate and equalize the collection of revenues. This, however, is an oversimplification of a most difficult philosophical problem. The Internal Revenue Code is not solely a statutory device for the collection of revenue but has been, and should remain, a pliable tool to shape the economic, sociological, and welfare needs or restrictions required in our complex society. Mr. Stern recognizes, throughout his journey into the tax abuse area, that, for certain groups or for certain practices, the avoidance procedures are tantamount to unrecognized federal subsidies. Unlike direct subsidies, however, these concessions are not annually re-examined. They exist continually until a need is shown to modify or repeal. Consequently, any modification must involve affirmative legislation, the difficulty of which has already been manifested.

At the enactment of legislation, the question is not whether an indirect subsidy is needed or proper. Rather, enactment is based upon a particular philosophy of purpose. Any judgment on a particular tax concession does not occur until it is applied. Unintended abuses may be developed during the interim of enactment and judgment which ultimately indicate the need for legislative change. The reason for the indirect subsidy may no longer exist, or perhaps a more refined procedure may be required.
Thus, we are confronted by what this writer chooses to call the ambivalent dichotomy of taxation. One cannot abandon the use of the revenue law as an effective means to achieve an economic or social purpose which those in office see fit to institute. It can be more easily accomplished because it is not direct, and since it is not direct, the sharp-tongued cavils of either socialistic or big business legislation are absent. Much good can be accomplished for the society as a whole. Unfortunately, as Mr. Stern so adequately demonstrates, there is no continual re-evaluation of the needs for the original subsidy. Further, the philosophy of implementation has been used by individuals to achieve special laws which appear in the Revenue Code as legislation designed for the benefit of all. Such tactics have become an affront to the prevailing philosophy.

The problem is highlighted in Chapter 12, "Some Moral Preachments of Our Tax Law." In a series of statements, with which the reader may agree or disagree, Mr. Stern deftly emphasizes the unwarranted tax results possible under today's law. For example, "A blind person deserves financial help, but a paralytic does not." Unless abnormally partial to blind people, anyone other than a sadist would disagree with this comment. Yet a $600 deduction is annually permitted a blind person while no provision is made for the paralytic. The comment, however, is premature. When such a provision is enacted, one initially would rephrase the comment to read, "Blind people have equal economic opportunities as all others." Now, Mr. Stern is perfectly right in asking why not the paralytic. But what is to be done? Does one turn his back to both unfortunate groups or does one institute legislation to include paralytics? Thus, the ambivalent dichotomy of taxation emerges.

Through the principle of equity, all similar groups must be included; or, do we eliminate aid for the blind no matter how insignificant, remembering that any direct legislation would be difficult to exact no matter how beneficial it may be? Of course, the abuses are soon encountered and presently those with athletes' foot and bunions are clamouring to be included. Specifically, does one abandon the philosophy of implementation; or, does one include all groups through the principle of equity, notwithstanding the abuses which are bound to occur? Chapter 12 generally comments on and questions the morality of the various relief provisions, but this is precisely where the problem of reform becomes specifically profound and difficult with no simple solution being readily available.

One cannot criticize Mr. Stern's basic thought that there are serious and unjustified defects in the present revenue laws—defects that should be and must be repealed or markedly modified. The arguments of equity, of sociological need, of economic encouragement and moral betterment are aphorisms which ring all too familiar with those initiated into the esoteric system of revenue enactment. Yet, Mr. Stern, in his final chapter, still wishes to provide encouragement for philanthropic causes, impliedly suggests that oil depletion is not unreasonable for the wildcatters or small oil driller; and further desires relief provisions to prevent financial injustices should the pervading concept of capital gains be eliminated. He is himself advocating a system of subsidy but only on a smaller scale. He justifiably attacks the excesses of the system, but impliedly suggests retaining some that to him appear to be worthwhile. From little acorns great oaks grow, and the ambivalent dichotomy still remains.

The book is a well-written commentary which adroitly exposes the worst of our existing tax ills. While this writer cannot agree with all that Mr. Stern suggests, he has found his arguments compelling. The book can be understood by
all, and should be read by all in the legal profession. While perhaps not offering a palliative, let alone a remedy to the problem, it should encourage many legal technicians to examine the problem within the existing implementation philosophy of our tax laws. This book is truly worth more than that commendation, and Mr. Stern should be applauded.

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The great expansion in recent years of bankruptcy petitions filed in the United States District Courts created a need for a new text on the subject of bankruptcy from the point of view of the so-called “wage earner” case. Statistical research in bankruptcy cases revealed that upwards of ninety per cent of all bankruptcies are voluntary petitions in which the Referee in Bankruptcy finds that there are no assets in the bankrupt’s estate. Statistics also show that this ninety per cent group of bankrupts are not in business but are individuals dependent upon wages or salary for their income.

There are a number of good bankruptcy texts from the standpoint of the business bankruptcy case which require lengthy discussion of such topics as the trustee’s title to business property, the amenability of adverse parties to the summary jurisdiction of the bankruptcy court as opposed to plenary jurisdiction, and resolution of conflicting claims to jurisdiction over various aspects of insolvency litigation.

A text presented from the point of view of the wage-earner petitioner in bankruptcy demands greater attention to such topics as the bankrupt’s discharge and non-dischargeable debts under section 17. Legal aspects of the bankrupt’s property in a wage-earner bankruptcy have to be written with primary emphasis on what property the bankrupt may keep after the bankruptcy case is closed.

The efforts of Mr. Cowans to produce a new bankruptcy manual primarily for a bankrupt’s attorney who has no prior information on the subject, rather than for the specialist, satisfy most needs and can be regarded as successful. The text omits intensive treatment of many areas of bankruptcy law such as corporate reorganizations, the rights of creditors, either individually or collectively, the disallowance of claims, the trustee’s position in a bankruptcy proceeding and the effect of preferences under section 60a of the Bankruptcy Act.

Mr. Cowans presents the material necessary to process a no-asset bankruptcy case in a chronological order starting with a thorough consideration of whether a hard-pressed debtor should file a petition and carrying through with a description of the proper preparation of the bankrupt’s schedules, representing the bankrupt at the first meeting of creditors and amending the schedules. The author discusses many matters which do not fall within the usual pattern of these cases, and he covers additional selective matters, such as involuntary bankruptcy, partnership and corporate petitions and reviews and appeals from the bankruptcy referee’s orders. Probably recognizing that wage-earner extensions and compositions under Chapter XIII are futile in large population centers, the author confines his coverage to a short description of this procedure.