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Book Reviews

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TAXABLE INCOME. By Roswell Magill. New York. The Ronald Press Company 1936. Pp. ix, 437.

To most of us income taxes mean an annual headache and a period of horror. They give us some of the few moments in life when we feel richer than we are and wish we weren't.

This may be likened to the worm's eye view of the income tax and is the antithesis of the panorama spread before us by Mr. Magill's excellent book.

Few people, if any, are as well fitted by training and aptitude as Mr. Magill to bring order out of the seeming maze of our income tax laws. Both as a practicing lawyer and as a professor of law he has been for years one of the leading analysts and expositors of our tax laws and especially of the income tax. In addition, he has occupied such important government positions as Adviser to the Tax Commission of Porto Rico, Chief Attorney of the U. S. Treasury Department, and Assistant to the Secretary of the Treasury on taxation, and is now Undersecretary of the Treasury.

In his present book, therefore, Mr. Magill blends the agility of a practicing lawyer whose problem is to escape paying, the detachment of a professor, and the grasping scrutiny of a government official whose job is to produce the cash. He also brings to the task a brilliant and inquiring mind that is not satisfied to know what the law says and does but must also know why.

One theory of modern education is to let the pupil pick the subject that most interests him and, by allowing concentration on this, to encourage the absorption of other fields of knowledge which, if offered in separate bottles, might repel him. A student interested in geography is bound to acquire a knowledge of mathematics, history, science, etc. in order to satisfy his enthusiasm for geography. With many people more useful and intelligently arranged knowledge will be acquired in this way than by repeated dosings of labelled learning.

One is reminded of this theory in reading Taxable Income. As implied by its title the main theme of the book is the discovery and analysis of what constitutes "taxable income" under the various Revenue Acts and the Sixteenth

Amendment. Mr. Magill first whets the desire of answering this and then when enthusiasm is aroused uses it as a lens through which to examine the entire field.

The advantages of such an approach are obvious. There is probably no branch of the law in which it is so easy to fail to see the forest for the trees. Not only does the inquirer soon become lost in a maze of exceedingly complicated statutes, regulations and rules, but the very guideposts that are employed by lawyers accentuate the difficulty. By means of voluminous services one can usually find the section, paragraph or decision which most nearly fits his factual situation, but it is a burrowing process and even when the particular tree is found its position in the forest is frequently lost.

As a consequence of Mr. Magill's method, furthermore, there is a refreshing minimum of reference to the law by chapter and verse. To one accustomed to the usual tax literature it scarcely seems like a book on taxation and has a sacrilegious feel about it similar to that of a Bible from which some profane person had pruned all the genealogical references. It has a life and vigor which tax treatises are not supposed to have. In fact, if a thorough work on anything as naturally ponderous as taxation can be made interesting to the normal reader, this is it.

It should be pointed out in this respect that Mr. Magill is no shrinking violet. He does not hesitate to pass judgment on the decisions of the Supreme Court in a most parental manner. On the other hand this is not overdone, and one of the most refreshing aspects of the book is its somewhat dogmatic character.

Like Gaul, Taxable Income is divided into three parts. In the first, one learns what an enormous word "income" is and also learns more fully to appreciate Humpty Dumpty's comforting rule that a word means "what I choose it to mean". As usual the judges are the masters —the word "income" is weaned away from the definition of the economists and acquires new and more practical characteristics in the hands of the Supreme Court.

In part two are catalogued and analyzed the characteristics of income, that is to say the "benefits" which are taxable as income, and in part three are discussed limitations dependent upon the source from which things sought to be taxed as income are derived. Finally there is a short and delightful summary in which are pointed up the bolder features of the entire concept.

Don't try Taxable Income in the drowsy hours after lunch, but if you enjoy touring difficult terrain under the guidance of a stimulating and incisive mind, don't fail to try it.

—H. H. WALKER LEWIS.*

MARYLAND ANNOTATIONS TO THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW OF CONFLICT OF LAWS. Prepared by G. Kenneth Reiblich, under the auspices of the Maryland State and Baltimore City Bar Associations. Published by the American Law Institute Publishers, St. Paul, Minn., 1937, pp. 214.

When, a year ago, it was suggested that the then newly organized Maryland Law Review might carry reviews of the Maryland Annotations to the Restatements promulgated by the American Law Institute as they appeared, a facetious colleague of the present reviewer's remarked that it would be equally appropriate to review the telephone directory or a mail order catalogue. But it was soon demonstrated that these local annotations provide sufficient material for a reviewer's pen to dissect. The first number of the REVIEW carried a review[1] of the earlier published Maryland Annotations to the Restatement of Agency, which compilation, like the one now under discussion, was prepared by a member of the Law School faculty under Bar Association auspices. In this earlier review a member of the local bar, himself active both in the work of the American Law Institute nationally and in the Maryland annotation work, took occasion to describe the nature of the Institute, the scope of its work, and the significance of the local annotations.

It is thus not necessary so soon to repeat the description of what the Restatements are and why they were promulgated. Suffice it to say that the Restatement of Conflict of Laws was prepared by Professor Joseph H. Beale of the Harvard Law School as Reporter and, naturally, reflects the decided views of that pre-eminent authority in the field.

Publication of the Restatement of Conflict of Laws has brought to a head the growing controversy over the general desirability of "restating" the law at all. A respectably large group of thinkers on matters legal hold to the view that the whole idea of restating the law is mistaken because

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* Of the Baltimore City bar.

[1] Howard, review of Casner, Maryland Annotations to the American Law Institute's Restatement of the Law of Agency (1936) 1 Md. L. Rev. 99.

it will tend unnecessarily to "straight-jacket" the law.[2] Then there are those who believe that the Conflict of Laws Restatement's choice of doctrine too often reflects the Reporter's own views rather than either the majority rule or that which is the most desirable one. Considerable controversy has arisen, for instance, over one section[3] wherein the Restatement adopts the view of the Reporter[4] rather than that of the Supreme Court of the United States[5] on a point where that Court has the final and only say in the matter.

But it is not proposed to go further into this. To review a book devoted to local annotations of a general Restatement is to accept, for the sake of the argument at least, the propriety of attempting and the validity of the execution of the general project which is annotated. Regardless of what one thinks about the validity of the general idea of Restatements, it cannot be denied that they have had the beneficent influence of stimulating the production of these orderly summaries of local materials on topics which, otherwise, would not have been so soon thus covered.

Professor Reiblich (aided by a group of student and recent graduate research assistants) prepared these annotations under the auspices (financial and otherwise) of the Maryland State and Baltimore City Bar Associations. In making possible the production of such local annotations, the co-operating groups have made a double contribution to the legal scene. They have, in the first place, provided themselves and their fellow lawyers with a means of access to local materials which will facilitate the task of advising clients and arguing cases. But they have, further, made a contribution the significance of which should not be underestimated. This concerns the utility of the annotations in law teaching. Not only has the task of preparing them made it possible for the group of research assistants to gain valuable experience in legal research (akin to that afforded to student editors on the REVIEW) but the finished product provides for future generations of students an efficient

[2] A recent series of articles taking part in the controversy includes: Lorenzen and Heilman, *The Restatement of the Conflict of Laws* (1935) 83 U. of Pa. L. Rev. 555; Goodrich, *Institute Bards and Yale Reviewers* (1936) 84 U. of Pa. L. Rev. 449; Arnold, *Institute Priests and Yale Observers: A reply to Dean Goodrich* (1936) 84 U. of Pa. L. Rev. 811.

[3] Sec. 113.

[4] In connection with this see McClintock, *Fault as an Element of Divorce Jurisdiction* (1928) 37 Yale L. J. 564, and Bingham, *The American Law Institute vs. The Supreme Court: In the matter of Haddock v. Haddock* (1936) 21 Corn. L. J. 393.

[5] Haddock v. Haddock, 201 U. S. 562, 50 L. Ed. 867, 26 S. Ct. 525 (196).

means of access to the Maryland materials. Such publications make it possible effectually to present local materials with a minimum of trouble. Thus there is easily left time for the thorough indoctrination in the general common law of the various subjects which is necessary if the graduate lawyer is to have more than a provincial viewpoint.

The reviewer can testify both to the pedagogical utility and the intrinsic merit of Professor Reiblich's compilation inasmuch as he was permitted access to the manuscript of these annotations as an aid in teaching the course temporarily during the annotator's recent leave of absence from the Law School. The annotations proved invaluable in presenting the local materials.

That the Bar Associations have made such annotations possible represents a commendable contribution which the leaders of the bar have made to the cause of legal education and one which would justify the project even if there were disregarded the equally significant fact that such annotations are extremely useful in the practice. Co-operation between the Bar Associations and the Law School in this manner accomplishes an effectual liaison between the practice of law and the training of neophytes—an end more than ever desirable of being attained now that the growing complexity of legal materials has forced legal education into the hands of specialists. A similarly appropriate contact has been achieved through the co-operation of the Associations and the Law School in the publication of the REVIEW, a contact which it is hoped will prove valuable both to the Bar and to the School.

Examination of Professor Reiblich's finished product shows how completely he has executed his task. Whenever a Maryland case or a statute has dealt with a proposition covered by the Restatement, it is appropriately listed. But he did not stop with a mere counting of noses pro and con. On points where there was no square ruling of our Court he sought out analogies from or hints given in cases or statutes which might, conceivably, be used as bearing on the point annotated.

Thus he points out[6] that there is no Maryland case deciding whether or not to exercise the option allowed by the *Haddock*[7] case to recognize all divorces granted at the

[6] Sec. 113, pp. 64-5.

[7] Supra note 5. It should be remembered that Sec. 113 of the Restatement takes a different view of the situation from the rule of the Haddock case. See supra note 4. Mr. Reiblich's suggestion thus implies that Maryland would recognize certain foreign divorces in situations where the Restatement rule would not.

domicil of only one of the spouses. But he suggests that the Maryland courts should probably do so inasmuch as they themselves will grant a divorce when only one of the spouses is domiciled locally. Then, again, in handling the topic of territorial jurisdiction to annul marriages, it is pointed out[8] that the Court of Appeals has never yet squarely ruled what factors are necessary to confer such jurisdiction although it has, in given cases, considered on the merits cases for annulment where at least one spouse was domiciled in Maryland although the marriage was contracted elsewhere, or where, conversely, the marriage was performed in Maryland but neither spouse was here domiciled. From this his conclusion is that Maryland could possibly entertain annulment suits either on the basis of domicil or that of place of marriage, and even on the basis of personal jurisdiction. To do this would go farther than the Restatement rule which, in requiring the same basis as for jurisdiction to divorce, calls for the domicile of at least one party.

These indirect methods of working out the Maryland rule were rendered inevitable by the paucity of the local materials on some points. They also attest the thoroughness of the research which underlay the annotation and the care used in handling the materials. They give one confidence in the completeness of the execution of the project.

This is further bolstered by the fact that the annotator took occasion to make careful analyses of local cases which seemed to reach undesirable or aberrant results. There is a pointed treatment of the problem of local suits for foreign wrongful deaths,[9] a topic recently noted in this REVIEW,[10] and also recently subjected to statutory reform.[11] In treating of the *Corder*[12] and *Elfont*[13] cases he points out[14] that in each case the Court of Appeals refused an opportunity to make a square ruling on the matter of territorial jurisdiction to annul marriages, in the one instance by confusing the plea to the jurisdiction with the matter of equitable jurisdiction to annul generally, and in the other by ruling that the objection had been raised too late.

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[8] Sec. 115, pp. 65-7.
[9] Secs. 391, 392, pp. 154-6.
[10] Note, *Action in Maryland for Wrongful Death Caused and Occurring Elsewhere* (1937) 1 Md. L. Rev. 162.
[11] Acts, 1937, Ch. 495.
[12] Corder v. Corder, 141 Md. 114, 117 Atl. 119 (1922).
[13] Elfont v. Elfont, 161 Md. 458, 157 Atl. 741 (1932).
[14] p. 66.

The readers should share Mr. Reiblich's expressed gratitude to the New York annotators for granting their permission to use their collection of the United States Supreme Court materials which are applicable. Thus unnecessary duplication of effort was avoided and at the same time these highly relevant materials were presented.[15] Conflict of Laws is now so largely tending to become a branch of Constitutional Law that decisions of the Supreme Court are of the highest importance in a local annotation. Cases from the Supreme Court are as much local law as those from our own Court of Appeals and they were, quite appropriately, included.

With the outline already provided by the Restatement, and because of the disjointed text form involved in annotation matter, little opportunity was given to display traits of organization and style. On the other hand the work does demonstrate qualities which may be involved in an annotation, viz., sound use of legal logic in analyzing the materials, accurate classification, and, through it all, an obviously very thorough survey of all applicable authorities.

—JOHN S. STRAHORN, JR.*

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[15] It might have been well to have added a case from the Supreme Court which is of local interest. Stewart v. B. & O. R. R. Co., 168 U. S. 445, 42 L. Ed. 537, 18 S. Ct. 105 (1897) would have been relevant in connection with Davis v. Ruzicka, 183 Atl. 569 (Md. 1936), treated at Sections 391, 392, pp. 154-6. As mentioned in the casenote cited supra note 10, 1 Md. L. Rev. 162, 163, Davis v. Ruzicka held that the wrongful death statutes of Maryland and the District of Columbia were too dissimilar to permit an action in Maryland for a death occurring in the District. In the Stewart case, on the other hand, the Supreme Court, while adhering to the doctrine of similarity, held that the respective statutes were sufficiently similar to permit an action in the converse case of death in Maryland and suit in the District. The Stewart case was cited under a neighboring section (Sec. 395) but without reference to the point mentioned herein.

* Professor of Law, University of Maryland School of Law. Faculty Editor of the Review.