

BOOK REVIEWS

FEDERAL ESTATE AND GIFT TAXES. By Charles L. B. Lowndes¹ and Robert Kramer.² St. Paul: West Publishing Co., Second Edition 1962. Pp. xxvii, 951.

The first edition of this book was published in 1956 hard upon the passage of the 1954 Code and prior to the promulgation of Treasury Regulations for the estate and gift tax sections of the Code. This fact coupled with the significant judicial decisions rendered in the intervening years would, alone, have justified a new edition of this work. Significantly, however, the authors have not so restricted their efforts and the result is a complete revision of their earlier edition.

The second edition, like the first, is composed of three parts, "The Estate Tax," "The Gift Tax" and "Tax Planning For Estates." The chapters of the current edition are, however, numbered consecutively throughout the book and inter-chapter references and the designations of the table of cases are now page references rather than the cumbersome part-chapter-section references employed in the first edition. Another stylistic improvement is the inclusion of a sectional table of contents at the beginning of each chapter.

Fortunately, the authors have not substantially modified the essential structure of the book. The first part, relating to the federal estate tax, begins with a brief outline of the tax followed by a detailed consideration of its constitutionality. Then follows an extensive chapter by chapter analysis of the several statutory provisions requiring the inclusion of interests in a decedent's gross taxable estate. In this connection, the second edition contains an expanded consideration of the estate taxation of annuities, a topic of increasing importance because of the widespread use of annuities by employers to provide benefits to employees and their families. The available deductions from the gross estate and credits against the tax are then considered at length, the authors' treatment of the complex estate tax marital deduction being especially valuable. The part concludes with a chapter on estate tax procedure. A similar method of exposition obtains in part II relating to the gift tax. One especially impor-

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tant chapter is that concerning valuation which is designed generally to relate to both estate and gift taxes.

In the preface of the second edition of this book, as in the first, the authors describe their purpose as follows:

"To the experienced practitioner, we have attempted to present a compact text to refresh his recollection. To the general practitioner, who is not a tax specialist, we have tried to offer a convenient means of familiarizing himself with the tax considerations he must have in mind to plan an estate, draft a will or a trust, or act as attorney for an estate. To the student beginning his studies, we have sought to supply an introduction to the basic principles of the federal estate and gift taxes and of tax planning for estates."³

To both practitioner and student, an outstanding characteristic of the book is its completeness. Although one may anticipate little occasion to need a thorough explanation of the taxation of estates of non-resident aliens or the credit for foreign death taxes, for example, nevertheless it is helpful to have in a single volume a full explanation of all provisions of the estate and gift taxes. Of greater practical benefit, perhaps, is the relative independence of the book's chapters. Each is sufficiently self-contained so that the reader may read almost any chapter of the book without having to pursue cross references in order to obtain a complete presentation of his particular subject of inquiry. This is possible because the authors have carefully isolated topics such as valuation and devoted separate chapters to them. Similarly, a single chapter "The Relation Between The Gift Tax And The Estate And Income Taxes" eliminates the need for extensive cross referencing in several other chapters and also provides an incomparable guideline for the estate planner. The degree of repetition required in order to achieve the independence of individual chapters will likely pass unnoticed by the practitioner seeking assistance on a particular point and should actually prove beneficial to the student not yet familiar with the whole estate and gift tax structure.

The final part of the authors' work provides, in this reviewer's judgment, the most significant contribution of the book. Particularly for the student or for the attorney whose practice only occasionally brings him into this field, this part is invaluable. The authors persuasively expound in the introduction to this part upon the basic principles of effective estate planning: the need to accumu-

³ At IX.

late sufficient information; the importance of non-tax considerations; the need to reduce tax planning to concrete computations, and the need for keeping all estate plans current. This is followed by an examination of the mathematics of inter vivos transfers in which the relationship between the income and estate and gift taxes is illustrated by a number of specific examples. The chapter points up dramatically the risk of faulty planning unless general principles are tested by precise computations.

The chapters relating to the estate tax marital deduction also deserve special mention. Perhaps no other provision of the estate tax has evoked more comment and portends ultimately to prompt more litigation than this section. Particularly has controversy arisen as to whether "formula" clauses designed to qualify precisely the amount of the maximum marital deduction do not present other and more serious problems than those which they are designed to solve. Even if a formula clause is to be used, should it take the form of a pecuniary bequest or a gift of a fractional share of the residue? Though the authors do not presume to provide categorical answers to the questions presented the estate planner by the estate tax marital deduction, their thoughtful examination of them will most certainly prove helpful to him in both his planning and drafting.

The chapter entitled "Income Tax Provisions Of Wills and Trusts" is an especially helpful examination of the various techniques which can be used to effect income tax economies both for a client during his lifetime and also for his beneficiaries after his death. The summary of the "Clifford Trust" provisions of the Code is particularly valuable. This chapter highlights the income tax considerations which should be a part of all estate planning and which, despite the fact that substantial income tax savings are often available, are frequently overlooked. As the authors succinctly put it:

"The primary purpose of tax planning is to save tax dollars. It does not matter whether these economies take the form of estate or gift or income tax dollars."⁴

The final chapter of the book, "Post-Mortem Tax Planning; Income Tax Aspects of Administration of Estates," is new in the second edition. Despite a growing public awareness of the need for proper estate planning, the number of intestate estates and estates governed by homemade wills remains large. Obviously, the only tech-

⁴ At 886.

niques available for planning such estates are those which can be utilized after death. Moreover, even for estates which have benefited from pre-death planning, numerous opportunities are afforded to effect tax economies after death. The utilization of disclaimers and renunciations, the selection of the estate's taxable year and the timing of distributions from the estate are among the more significant matters discussed. The practitioner undertaking to advise the personal representative of an estate will find this chapter a valuable checklist.

In sum, both the novice and the experienced estate planner will find this book a valuable addition to their libraries. That this work could serve such diverse interests is remarkable; that each is served so well merits special commendation.

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THE TERMINATION OF THE STATE OF WAR WITH GERMANY AFTER THE SECOND WORLD WAR. By Hermann Mosler¹ and Karl Doehring² Köln-Berlin: Carl Heymanns Verlag K. G., 1963. Pp. x, 436.³

In a review of the leading German treatise on the public international law of peace the apprehension was expressed that the time was near when comprehensive renditions of the content and procedure of this substantive area could be expected from teams of scholars only, which combined the know-how necessary for a detailed treatment of each and every subject dealt with. The width and depth of documentation and knowledge required for the exposition of this vast legal domain, it was said, was such that an individual alone could hardly hope to give a well-founded narrative and analysis.⁴ The usefulness of the methodological proposition also conveyed by that statement is borne out by the publication under

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³ DIE BEENDIGUNG DES KRIEGSZUSTANDS MIT DEUTSCHLAND NACH DEM ZWEITEN WELTKRIEG. Bearbeitet mit einer Studiengruppe des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht von Hermann Mosler und Karl Doehring. Carl Heymanns Verlag K.G., Köln-Berlin 1963. (Nr. 37 der Beiträge zum ausländischen öffentlichen Recht und Völkerrecht), x and 436 pages.

⁴ Scheuner, 21 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 579 (1961) [reviewing Georg Dahm, 1 Völkerrecht (1958)].