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TAX CONFERENCE

MARSHALL-WYTHE SCHOOL OF LAW
COLLEGE OF WILLIAM AND MARY

TWENTY-NINTH ANNUAL CONFERENCE

SELECTED TAX SUBJECTS

THE TAX PROFESSIONAL AND THE
NEW TAX COMPLIANCE ENVIRONMENT *Marvin J. Garbis, Esq.*

INDIVIDUAL AND CORPORATE PLANNING TO
AVOID PITFALLS OF MINIMUM TAX *Oliver C. Murray, Jr., Esq.*

RECENT DEVELOPMENTS AFFECTING
MULTIPLE CORPORATIONS: SECTIONS
304, 306 and 338 *James P. Holden, Esq.*

LUNCHEON TALK: THE NEW THEOLOGY OF
TAX POLICY: REFORMATION OR HERESY *Bruce F. Davie*

CASH OR DEFERRED ARRANGEMENTS
(SECTION 401(K)): LEGAL ISSUES
AND PLAN DESIGN *William L. Sollee, Esq.*

INCOME AND ESTATE TAX PLANNING
WITH SUBCHAPTER S CORPORATIONS . . *Robert & Barbara Hipple, Esqs.*

PERSONAL FINANCIAL AND TAX PLANNING
WITH INSURANCE PRODUCTS AND
COMPARABLE INVESTMENTS *William B. Harman, Jr.*

COLLEGE OF WILLIAM AND MARY IN VIRGINIA
WILLIAMSBURG, VIRGINIA

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PREFACE

TAX CONFERENCE

This publication records the papers presented at the Twenty-ninth Annual Tax Conference held in Williamsburg December 3, 1983. These Conferences are conducted by the Marshall-Wythe School of Law of the College of William and Mary as an adjunct to the graduate program in Law and Taxation. A list of prior Tax Conference publications may be noted on page 145.

These Conferences have for their objective the discussion of policy, technical and procedural matters of an advanced nature in the area of Federal, State and local taxation by recognized authorities for the enrichment of the Law School curriculum, and as a service of practical application to Virginia attorneys, accountants and representatives of business and industry.

It may be observed that those serving as speakers and discussion leaders for this and prior Conferences are distinctively representative Federal and State tax officials, tax practicing attorneys and accountants, and members of law school faculties. The College acknowledges with deep appreciation their significant contribution to these Conferences, and commends their participation in this leadership opportunity as a recognized exemplification of public service in the highest tradition.

The College also records its appreciation to the many attorneys, accountants, and representatives of business and industry who have responded so graciously by their participation in and support of these Conferences.

The printing of this publication is made possible by funds from private sources and the College gratefully acknowledges the support for such a worthy endeavor.

THOMAS A. GRAVES, JR., *President*
The College of William and Mary
In Virginia

Williamsburg, Virginia
January, 1984

LAW AND TAXATION AT THE COLLEGE OF WILLIAM AND MARY

THE MARSHALL-WYTHE SCHOOL OF LAW

A chair of law was established at the College of William and Mary by action of the Board of Visitors under the leadership of Thomas Jefferson, an alumnus and then Governor of the Commonwealth of Virginia, on December 4, 1779. The present Law School takes its name from the first occupant of this chair—George Wythe, signer of the Declaration of Independence, leading attorney of the age and later Justice of the Chancery Court in Richmond; and John Marshall, one of Wythe's first students and subsequently the great chief justice of the United States.

The first phase of the law program at the College of William and Mary extended from 1779 to 1861. Following the long years of suffering and devastation after the Civil War, the Law School reopened its doors in 1922. It became a member of the Association of American Law Schools in 1936.

THE PROGRAM IN LAW AND TAXATION

The Marshall-Wythe School of Law of the College of William and Mary established a program leading to the Degree of Master of Law and Taxation in September 1954.

This program is designed to fill a need for competently trained persons to serve the nation in any capacity where a thorough comprehension of all phases of taxation is an essential requirement. In the present complex status of our tax laws it requires joint consideration by a lawyer, an accountant, an economist, and an expert in business management in order to analyze properly all aspects of a tax matter. While the program does not presume to accomplish expertness in each of these fields, it is intended to equip the student with fundamental groundwork in all and as much of advanced study in each as relates directly to the field of taxation. All candidates for admission to this program must have received a baccalaureate degree and a professional degree in law from approved colleges or universities, and have attained grades indicative of their ability to do graduate work in law. Applicants who have completed the following courses as part of their baccalaureate work will be given preferential consideration:

Business Administration: Financial Management and twenty-four semester hours credit in courses in Accounting.

Economics: Principles of Economics, Money and Banking, Principles and Methods of Statistics, Public Finance, Fiscal Policy, International Trade and Policies, or the equivalent in content.

The graduate program then offers them a broad range of courses in Federal and State tax policy, tax law and procedures. Upon completion of the program, the successful candidates are awarded the Degree of Master of Law and Taxation. The College follows with great interest the service rendered by all recipients of this advanced professional degree. An outline of the requirements and a description of the courses are shown in the Appendix beginning on page 139.

WILLIAM AND MARY TAX CONFERENCE
ADVISORY COUNCIL

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Fairfax, Virginia

Howard M. Zaritsky
Fairfax, Virginia

The tax advisory council has been most helpful in the selection of subject matter and speakers for the program. We are deeply grateful for the valuable time they have given to the Conference.

TWENTY-NINTH ANNUAL TAX CONFERENCE

PROGRAM PARTICIPANTS

GLENN E. COVEN, JR.—Professor of Law (Taxation of Partnerships, Federal Tax Policy, Federal Income Tax, Corporations). Professor Coven received his B.A. from Swarthmore and his LL.B. from Columbia where he was a member of the Board of Editors of the *Columbia Law Review*. Prior to joining the faculty of the University of Tennessee College of Law in 1976, he practiced in New York with the firm of Winthrop, Stimson, Putnam & Roberts. Professor Coven is the author of numerous publications, including articles in the *Michigan Law Review*, the *California Law Review*, the *Oregon Law Review* and the *Tax Law Review*.

BRUCE F. DAVIE—Undergraduate education at Pomona College in California; Ph.D. in Economics, Harvard University; Professor of Economics and Director, Office of Institutional Research at Georgetown University, 1963-1973; Senior Economist at the Office of Management and Budget, with responsibility for tax policy 1973-1978; published books and articles in the areas of public finance and economic history; Chief Tax Economist on the staff of the Committee on Ways and Means of the U.S. House of Representatives, advising the Chairman and Democratic members on tax policy issues 1978 to present.

MARVIN J. GARBIS—Member of Maryland and D.C. Bars; ABA-Chairman Court Procedure Committee, member, Section-Ways and M of Taxation; Maryland State Bar Association-Member, Board of Governors, Chairman, Continuing Legal Education Committee; Board of Governors, Baltimore City Bar Association; President, Baltimore Chapter Federal Bar Association; American College of Tax Counsel; American Law Institute; Adjunct Faculty of University of Maryland Law School 1970-1975; Georgetown University Law School, 1976-1980; University of Baltimore Law School 1982-1983; numerous advisory committee memberships, e.g., Commissioner of IRS, U.S. Claims Court, etc.; co-author of books on tax procedure and fraud, tax court practice, tax refund litigation, and procedures in federal tax controversies, numerous articles on procedures in civil and criminal tax matters, including ABA Journal, Taxes, Practical Lawyer, Practical Accountant, Journal of Taxation and Cumberland Law Review; presently Garbis and Schwait, Baltimore, Md.

WILLIAM B. HARMAN, JR.—Member of Virginia and D.C. Bars; member of ABA, Section of Taxation; American Law Institute Association of Life Insurance Council; Phi Beta Kappa; A.B., College of William and Mary; J.D., Marshall-Wythe School of Law; LL.M., Georgetown University Law School; Tax Section, General Motors Corp., 1956-58; Office of Chief Counsel, Legislation and Regulations Division, IRS,

1958-59; Office of Tax Legislative Counsel, U.S. Treasury Dept., 1959-61; Cummings & Sellers, Washington, D.C., 1961-62; Associate General Counsel, American Life Convention, 1962-67; General Counsel, American Life Convention, 1968-72; Executive Vice President, Vice President, Law, American Life Insurance Assn., 1973-75; Executive Vice President (Government Relations), American Council of Life Insurance, 1976-78; partner, Sutherland, Asbill & Brennan, Washington, D.C., 1978-present.

BARBARA B. HIPPLE—Member of Bar of Missouri and Georgia; B.A. Bryn Mawr College, 1962; J.D., University of Michigan, 1965; Law Clerk, 8th Circuit Court of Appeals, 1965-66; Assistant Professor of Law, University of Georgia, 1970-72; Assistant Professor of Law, Emory University, 1972-74, Associate Professor 1974-78; Lecturer and author of articles on tax subjects; presently Vice-President, Trust Department, Trust Company Bank, Atlanta, Georgia.

ROBERT J. HIPPLE—Member of Bar of Georgia and Virginia; B.A., Wesleyan University, 1966; J.D., Georgetown Law Center, 1969; LL.M. (Tax), Georgetown Law Center, 1971; Trial Attorney, Tax Division, U.S. Department of Justice, 1969-74; Adjunct Professor of Law, Graduate Tax Program, Georgetown Law Center, 1973-74; Associate Professor of Law and Director of Graduate Tax Program, Emory Law School, 1974-78; Speaker at numerous tax institutes; author of tax articles in numerous tax journals and law reviews; presently in self practice, Robert J. Hipple, P.C., Atlanta, Georgia.

JAMES P. HOLDEN—Member of D.C. Bar; member, BNA Tax Management Advisory Board and International Law Association; Past Chairman, Committee on Corporate Stockholder Relationships and member of Council of ABA Section of Taxation; B.S., University of Colorado, 1953, J.D., Georgetown University, 1960; Georgetown Law Review; Adjunct Professor of Tax Law, Georgetown University Law Center; Advisory Group to Commissioner of Internal Revenue, 1979-80; Editor, Corporate Department, Journal of Taxation; contributor to tax and general legal publications; lecturer on Federal Taxation at various tax institutes; presently Steptoe & Johnson Chartered, Washington, D.C.

JOHN W. LEE—Associate Professor of Law (Corporate and Shareholder Taxation, Capital Transactions, Business Planning). Professor Lee received his A.B. from North Carolina, his LL.B. from Virginia and his LL.M. in Taxation from Georgetown. Prior to joining the William and Mary faculty in 1981, he served as a clerk for the Honorable C. Moxley Featherston, Judge of the United States Tax Court, and practiced law in Richmond. Professor Lee is the author of numerous tax related publications, including articles in the *Journal of Taxation*, the *Washington and Lee Law Review* and the *Tax Law Review*, is a collaborator with Professor Bittker on *Federal Income Taxation of Income*,

Estates and Gifts, and is a frequent lecturer at continuing legal education programs.

OLIVER C. MURRAY, JR.—Member, Georgia Bar, American Bar Association; American Institute of CPA's and several technical organizations, including the Atlanta Tax Forum, and Atlanta Estate Planning Council and the Tax Section of the American Bar Association; B.S. in Accounting, University of Florida, 1958; J.D. (cum laude), University of Miami, 1970; was Regional Director of Taxes for the Southeast of Ernst & Whinney and partner in charge of taxes for that firm's Atlanta office; lecturer to various institutions and contributor of articles to many publications, including the University of Miami Law Review, Taxation for Lawyers, Taxation for Accountants, Journal of Accountancy, Estate Planning, and the Georgia Bar Journal; presently Partner in Charge of the Tax Group, Hansel & Post, Atlanta, Georgia.

WILLIAM L. SOLLEE—Member of the D.C. and Florida Bars; member of the American Bar Association, Chairman of the Committee on Employee Benefits (Section of Taxation); coauthor of T.M. 351, "Pension Plans—Qualification" and T.M. 352, "Profit-Sharing Plan—Qualification;" author of articles and lecturer at various professional forums on a wide range of employee benefits and tax subjects; presently a member in the firm of Ivins, Phillips and Barker, Chartered, Washington, D.C.

CONFERENCE ADMINISTRATORS

WILLIAM B. SPONG, JR., *Dean, Marshall-Wythe School of Law*

EMERIC FISCHER, *Professor of Law, Conference Director*

GLENN E. COVEN, JR., *Professor of Law*

JOHN E. DONALDSON, *Professor of Law*

JOHN W. LEE, *Professor of Law*

ARTHUR WHITE, *Professor of Law*