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Notes

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Notes

HISTORY OF TAXATION IN THE UNITED STATES

1. See *Steward Machine Co. v. Davis*, 301 U. S. 548, 580 (1937).
2. *Springer v. United States*, 102 U. S. 586 (1880); *Scholey v. Rew*, 23 Wall. 331 (1874).
3. *Pollock v. Farmers' Loan and Trust Co.*, 157 U. S. 429 (1895), 158 U. S. 601 (1895).
4. *Flint v. Stone-Tracy Co.*, 220 U. S. 107 (1911).
5. Act of October 3, 1913, (II, ch. 16, 38 STAT. 166).
6. *Helvering v. Gerhardt*, 304 U. S. 405 (1938). This decision foreshadowed the demise of *Collector v. Day*, 11 Wall. 113 (1870). This case was "narrowly limited" in the Gerhardt majority opinion. It was explicitly overruled in *Graves v. New York*, ex. rel. O'Keefe, 306 U. S. 466 (1939).
7. *Allen v. Regents of the University System of Georgia*, 304 U. S. 439 (1938).
8. *O'Malley v. Woodrough*, 307 U. S. 277 (1939), overruling *Evans v. Gore*, 253 U. S. 245 (1920), and *Miles v. Graham*, 268 U. S. 501 (1925).
9. *Helvering v. Hallock*, 309 U. S. 106, 121 (1940).
10. Randolph Paul, *Taxation in the United States*, Little, Brown and Co., Boston, 1954, pp. 236, 315.
11. *Ibid.*, p. 279.
12. *New York Trust Co. v. Eisner*, 256 U. S. 345, 349 (1921).
13. Paul, *op. cit.*, p. 650.
14. See Holmes, J., dissenting in *Compania de Tabacos v. Collector*, 275 U. S. 87, 100 (1927).
15. *United States v. Kabriger*, 345 U. S. 22, 36 (1953).
16. William L. Cary, "Pressure groups and the Revenue Code: A Requiem in Honor of The Departing Uniformity of The Tax Laws," 68 *Harv. Law Review*, 745 (1955).
17. Benjamin N. Cardozo, *What Medicine Can Do For the Law, Law and Literature and Other Essays*, 92 (1931).

BASIC TAX ISSUES

1. Walter J. Blum and Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*. Chicago: University of Chicago Press, 1953.

THE TAX COURT OF THE UNITED STATES

1. P. 8132

2. *Congressional Record* for May 26, 1924, Part 9, Vol. 65, pp. 9539 and 9540.

3. At this point, it may be well to note that under Section 7453 of the Internal Revenue Code of 1954, the admissibility of evidence is now to be determined according to the rules "applicable in trials without a jury in the United States District Court of the District of Columbia."

4. *Congressional Record*, Vol 67, page 3530.

5. 279 U. S. 438, p. 451.

6. Section 8. The Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States; . . .

7. *Ibid.*, p. 452.

8. 1 Pet. 511.

9. 289 U. S. 553.

10. 2 Wall. 561.

11. Published Later at 117 U. S. 698.

12. As further indicating that the Court of Claims was not a court and its decisions were not judicial decisions, Chief Justice Taney also stressed the absence of power in the Court of Claims to issue process in execution of its judgments. In *Old Colony Trust Company v. Commissioner*, 279 U. S. 716, however, the Supreme Court, in an opinion by Chief Justice Taft, stated that in order to constitute a judicial judgment it was not necessary that there should be both a determination of the rights of the litigants and the power to issue formal execution to carry out the judgment, but that a judgment is sometimes regarded as properly enforceable through the executive departments, instead of through an award of execution by the court. He cited *Fidelity National Bank & Trust Company v. Swope*, 274 U. S. 123, 132, as showing instances where the award of execution is not an indispensable element of a constitutional case or controversy.

13. Chapter 359, 24 Stat. 505.

14. 227 U. S. 551.

15. 279 U. S. 716.

16. 20 Fed. (2d) 10.

17. 162 Fed. (2d) 379.

18. 165. Fed. (2d) 213.

19. 320 U. S. 489.

20. 215 Fed. (2d) 701.

21. Since the oral presentation of this paper and on May 18, 1955, *Fairmont Aluminum Company v. Commissioner* was decided by the Court of Appeals for the Fourth Circuit. The question there was whether the doctrine of collateral estoppel, or estoppel by judgment, could properly be applied to decisions of the Tax Court. In the opinion, Chief Judge Parker, speaking for the court, said in part:

The taxpayer contends also that the doctrine of collateral estoppel, or estoppel by judgment, may not be applied to proceedings of the Tax Court, which, it contends, is not a court at all but an administrative agency. It is perfectly clear, however, that whether the Tax Court be regarded as a court or as an administrative agency, it is exercising judicial functions in hearing tax cases of this character; and, when exercising judicial functions, as distinguished from

administrative functions,* it is bound to apply such fundamental judicial doctrines as *res judicata* and *estoppel*. . . .

* That *res judicata* and *estoppel* do not apply to administrative action, see *Houghton v. Payne* 195 U. S. 88; *Federal Communication Com'n v. Pottsville Broadcasting Co.* 309 U. S. 134, 145; *N.L.R.B. v. Baltimore Trust Co.* 4 Cir. 140 F. 2d 51, 55; *Wallace Corp v. N.L.R.B.* 4 Cir. 141 F. 2d 87, 91.

22. The details which follow begin at July 1, 1927, since there has been no comparable breakdown as to cases closed prior to that date.

23. One appeal at times covers more than one docketed case and the same situation exists with respect to the Court's opinions.

THE INFLUENCE OF THE COURTS ON TAX POLICY AND CURRENT TRENDS

1. Learned Hand, "Thomas Walter Swan," 57 *Yale Law Journal*, 167, 169 (1947).
2. *Dobson v. Commissioner*, 320 U. S. 489 (1943).
3. *Ibid.*, p. 498.
4. *Ibid.*, p. 499.
5. Randolph E. Paul, *Taxation in the United States*, Boston, Little, Brown and Company, 1954, p. 102.
6. *Dobson v. Commissioner*, *supra*, p. 499.
7. *Ibid.*, p. 499.
8. *Anniston Manufacturing Company v. Davis*, 301 U. S. 337 (1937).
9. *Brushaber v. Union Pacific*, 240 U. S. 1 (1916).
10. *Commissioner v. Glenshaw*, 23 L.W. 4155 (1955).
11. *United States v. Kabrigger*, 345 U. S. 22 (1953).
12. *Ibid.*, p. 38.
13. *Ibid.*, p. 40.
14. *Johnson v. United States*, 163 Fed. 30 (1st Cir. 1908), p. 32.
15. *Gregory v. Helvering*, 293 U. S. 465 (1935).
16. *Addison v. Holly Hill Co.*, 322 U. S. 607 (1944) pp. 617-18.
17. *Helvering v. Clifford*, 309 U. S. 331 (1940).
18. *Helvering v. Hallock*, 309 U. S. 106 (1940).
19. *Commissioner v. Estate of Church*, 335 U. S. 632 (1949).
20. *Estate of Spiegel v. Commissioner*, 335 U. S. 701 (1949).
21. *Bazely v. Commissioner*, 331 U. S. 737 (1947).
22. *Commissioner v. Tower*, 327 U. S. 280 (1946).
23. *Thomas v. Collins*, 323 U. S. 516 (1945).
24. *Ibid.*, p. 552.
25. *United States v. Kabrigger*, *supra*, p. 36.

