

Book Review of Items of Gross Income

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told me that he had been a Barrister for many years before he realized that the "principles" he learned so avidly were really useless unless they could be made applicable to Burmese conditions. It was an insight which many never achieve.

At the risk of chauvinism, it seems that American lawyers, as the products of a system evolved from a period of transition, might be of some assistance in these countries. Local conditions and, hence, substantive solutions might be beyond their expertise, but an attitude towards law and assistance in developing decision-making institutions which ask the right question are not.

Professor Howard's book, of course, does not deal with the transition in terms other than the Magna Carta. It does represent an interesting contribution in that regard. As an example of the transition it does trigger thought.

The only major criticism of the book is that so much is covered that one gets more general impressions than detailed development. It was necessary to select major themes, and that was well done. A reader, however, might wish that the author would have written two hundred more pages. Additional factual materials could have been added, and more space could have been given to the author's opinions and conclusions. It is a compliment, no doubt, that the reader would like a fuller statement of the author's views.

ROBERT E. KNOWLTON*

ITEMS OF GROSS INCOME. By RICHARD R. DAILEY and LAWRENCE T. WARBLE. Philadelphia: Practising Law Institute, 1967. Pp. 125.

Gross Income—what is it? That's what every tax practitioner would like to know—and every judge or justice who has been confronted with this puzzling problem. Congress attempted to express the concept (without assuming to define it) with the following phrase: "Except as otherwise provided . . . gross income means all income from whatever source derived. . . ." ¹ A more elusive expression could hardly have been used! Reference to a few of the Supreme Court decisions will illustrate the fugitive nature of this slippery notion. The pragmatic pronouncement in *Eisner v. Macomber*,² often quoted but hardly ever

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1. INT. REV. CODE OF 1954, § 61(a).

2. 252 U.S. 189 (1920).

useful, that "income" may be defined as the gain derived from capital and from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets," was later expanded to include "an accession to income" realized from a discharge of a bonded indebtedness for less than the corporate obligor received upon its issuance.³ This was further broadened in *Commissioner v. Glenshaw Glass Co.*⁴ by including in income exemplary damages for fraud and punitive damages for anti-trust violation received by the taxpayer who was plaintiff in the anti-trust case. The Court refused to accept taxpayer's characterization that the receipt was a "windfall" flowing from the culpable conduct of third parties, but instead concluded that Congress has exerted "the full measure of its taxing power" and declined to "restrict a clear legislative attempt to bring the taxing power to bear upon all receipts constitutionally taxable."⁵ And that is that!

With this background in mind, the authors of this monogram have written for quick reference purposes a very useful handbook. The discussion of the distinction between realization and recognition of income, and of the concepts of constructive receipt and claim of right, is a clear analysis of some rather murky areas which have been a fertile source of litigation. The various kinds of income are categorized and separately handled. Thus, compensation for services is analyzed and distinguished from sales, gifts, loans or dividends, reimbursed expenses and bargain purchases. Deferment of taxation of such income is treated under the headings of stock options, deferred compensation and income averaging, concluding the topic with a discussion of employees' exclusions from tax (such as accident and health plans, meals and lodging, etc.).

Investment income is studied by analysis of items such as dividends, interest, rent, disposition of investments, royalties, life insurance proceeds, annuities, trust and estate distributions, and more esoteric types such as controlled foreign corporations and others. The treatment of the subjects is factual; no attempt is made to advise or express opinions.

Matters more business-oriented are also presented. Methods of accounting, use of inventories, installment sales, reallocation of income, the tax benefit rule, and discharge of obligations are briefly handled,

3. *United States v. Kirby Lumber Co.*, 284 U.S. 1, 3 (1931).

4. 348 U.S. 426 (1955).

5. *Id.* at 432-33.

as are various other items includible in income, as well as items excludible therefrom.

The purpose of the book as a handy shorthand reference has been well accomplished by the authors. The citations lead the reader to materials more comprehensive in treatment, which will be needed in order to apply the subject matter to practical use.

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