

Some Problems Facing the Tax Court

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SECTION ON TAXATION

EDITOR'S NOTE: The opportunity for intensive study of various phases of taxation provided by the broad scope of tax course offerings has been productive of many tax articles of real interest. Those selected for publication are included in this section of the Review.

The course offerings in taxation at the Marshall-Wythe School of Law include Survey of Tax Literature, Basic Federal Taxation, State and Local Taxation, Tax Administration and Procedure, Adjective Tax Law, Preparation of Tax Forms, Estate and Gift Taxation, Advanced Income Taxation, and Tax Research. Most of these course offerings are open to second- and third-year law students on an elective basis. All are required for the Degree of Master of Law and Taxation.

The Master of Law and Taxation Degree was instituted at the Marshall-Wythe School of Law for the purpose of providing an opportunity for added scope and depth in the study of, and inquiry into, tax policy, theory and practice. Prerequisites for this degree, in addition to academic baccalaureate and law degrees and the courses in Taxation listed above, include the following undergraduate courses in the fields of Business Administration and Economics: Advanced Accounting, Cost Accounting, Auditing, Municipal and Governmental Accounting, Money and Banking, Statistics, Corporate Finance, Investments, Public Finance and National Financial Policy, and Government Regulation of Business.

A contributing factor to the interest in the study of taxation has been the papers presented at a Conference on the History and Philosophy of Taxation held at the College of William and Mary in 1955. These papers include "History of Taxation in the United States" by Randolph Paul; "Basic Tax Issues" by Roy Blough; "The Tax Court of the United States, Its Origin and Functions" by Bolon B. Turner; "Enforcement" by E. Barrett Prettyman; "Influence of the Courts on Tax Policy" by Joel Barlow; "Accounting Theory and Taxation" by Mark E. Richardson; and "The Role of Taxation in a Free Enterprise System" by C. Lowell Harriss.

The study of taxation has been given further encouragement by papers presented each year at the Annual Tidewater Tax Conference sponsored by the Marshall-Wythe School of Law. Some of these papers have been published in earlier volumes of this Review.

The subject matter covered by tax articles contributed by students and others interested in the field of taxation and published in the Law Review for the years 1957 through 1961 is indicated by the following titles:

The Tax Practice Controversy in Historical Perspective. Joseph V. Anderson, 1957, vol. 1, no. 1, p. 18.

Virginia Income Taxation of Individuals—Some Comparisons with the Federal Law. E. McGruder Faris, 1957, vol. 1, no. 1, p. 38.

Some Differences Between Federal and Virginia Taxation in the Estate and Gift Tax Fields. H. Brice Graves, 1957, vol. 1, no. 1, p. 69.

Taxes Imposed by the Federal Government—Their Nature, Rates, and Methods of Reporting and Payment. Thomas J. Middleton, Jr., 1958, vol. 1, no. 2, p. 374.

Compensation from an Employment (Internal Revenue Code of 1954, sec. 1301). R. Harvey Chappell, Jr., 1959, vol. 2, no. 1, p. 3.

Taxes Imposed by the Virginia Code—Their Nature, Rates and Methods of Reporting and Payment. Frederick P. Aucamp et al., 1959, vol. 2, no. 1, p. 104.

Tax Effects of Divorce, Marital Separation and Support Agreement. Lester I. Bowman, 1960, vol. 2, no. 2, p. 297.

Short Term Trusts. J. W. Hornsby, 1960, vol. 2, no. 2, p. 311.

Observations on the Tax Immunity of Federal Properties and Operations in Virginia. John M. Court, 1960, vol. 2, no. 2, p. 460.

Taxation, Amount Received for Future Damages. John J. Harrington, 1960, vol. 2, no. 2, p. 514.

The Civil Aspects of the Net Worth Method. Richard D. Schwab, 1961, vol. 3, no. 1, p. 65.

A Roadmap of Subchapter S. Robert S. Bersch, 1961, vol. 3, no. 1, p. 99.

The Deductibility of Moving Expenses and Investigatory Expenses. Bernard Goldstein, 1961, vol. 3, no. 1, p. 115.

The Real Estate Investment Trust: A New Medium for Investors. A. Overton Durrett, 1961, vol. 3, no. 1, p. 140.

Federal Income Taxation: Meals and Lodgings Furnished for the Convenience of the Employer—Two Sequels to the Boykin Case. Rexford R. Cherryman, 1961, vol. 3, no. 1, p. 166.

SOME PROBLEMS FACING THE TAX COURT

EDITOR'S NOTE: *The Hon. Norman O. Tietjens, Chief Judge of the Tax Court of the United States was invited to informally summarize some of the problems of the Tax Court for the information of the conferees attending the Seventh Annual Tidewater Tax Conference held on the Campus of the College of William and Mary at Williamsburg, Virginia on December 2, 1961. The summary was presented within the context of the conference theme relating to problems stemming from the Administration's request for added tax enforcement personnel. The summary presented by Judge Tietjens is reproduced herein.*

First, I would like to stress the importance of our Court in the tax collection scheme. Some figures, bleak as they sometimes seem, will illustrate the Court's vital importance. From the establishment of the Board of Tax Appeals in 1924, which later became the Tax Court, through September 30, 1961, over 200,000 cases have been docketed involving tax deficiencies of more than eight and a half billions of dollars. As of October 1961 some 11,400 cases were still on the docket with deficiencies of over a billion dollars.

A case load of those proportions presents a continuing problem. But we are not overly worried. One time in the thirties the cases in our backlog numbered over thirty thousand. A year ago they numbered about thirteen thousand—so that even now, despite an increase in the number of internal revenue agents over the past few years and a projected further

increase next year it appears that we are more than holding our own. The backlog has fallen some fourteen hundred cases in the past year.

This has come about without any appreciable increase in the personnel of the Court. We still have our original complement of sixteen judges supplemented by five retired judges who are subject to recall for at least ninety days each year. Though from time to time it has been suggested by various sources, I do not think any increase in the number of judges is called for. We could use one more at the present time, but that would be to fill a vacancy that has existed since last June.

With the continued help of the tax bar and the Internal Revenue Service I think we can continue to work off our cases within a reasonable time after they are ready for decision.

All of our judges have their backlogs of cases constantly in mind. But individual work habits naturally result in some being slower than others. Three or four judges can, and do, write fifty or sixty opinions a year. Some of the others turn out less. Nevertheless, we seem to get along.

We have other problems, too. Right now we are having trouble obtaining adequate courtrooms in the fifty cities where we try cases. This has been a continuing problem, but during the past year, as you all know, a large number of new Federal judgeships has been created. Each additional judge needs chambers and a court room. Thus, rooms that were available to us in other years have been assigned to others. We have been meeting this problem by keeping in touch with the General Services Administration, the Administrative office of the Federal courts and the chief judges of the various Federal courts. Where new courthouses are being built or old ones remodeled we are helping to plan a general purpose courtroom which will be available to us as well as to other federal agencies whose duties require them to hold hearings in places other than Washington. We have had some success in this matter and look for more. I might add that local tax bars have been very helpful, too.

Another problem is our lack of a court building of our own in Washington. For many years we have been housed in the

Internal Revenue Building. We would like to have a traditional-type courthouse and though we have been planning for over twenty years together with the Court of Claims and the Court of Customs and Patent Appeals—you know what happened—those two Courts are to have a building of their own on Lafayette Square. In the meantime the Tax Court continues to occupy space which the Commissioner of Internal Revenue would dearly love to have.

There is also the problem of our lack of a firm place in the Federal Judiciary. By statute we are called a Court, but we are also designated by statute as an independent agency in the Executive Branch of the Government. This can cause embarrassment. Our power over our own decisions has been questioned. We have no power of contempt and no power of our own to enforce our subpoenas. Only recently the Sixth Circuit held that we could not order depositions to be taken to perpetuate testimony. Bills have been introduced from time to time to take the Tax Court out of the Executive Branch and put it in the Judicial Branch. This has had the support of the American Bar Association. But there has been opposition, and nothing has happened. This, of course, does not mean that the opponents are enemies of our Court.

A tri-party committee is in existence composed of representatives of the Tax Bar, the Internal Revenue Service, and the Court. Some of the subjects to be discussed at the Judicial Conference of the Tax Court to be held on the 12th of this month are as follows:

1. Report of subcommittee on pre-trial practice.
2. Summary judgment on any one or more issues by rule similar to Rule 56 of Rules of Civil Procedure, with or without supporting affidavits.
3. Taking of testimony by oral depositions to perpetuate testimony or for exploratory or discovery purposes.
4. Adoption of rule similar to Rule 27(b) of the Court of Claims re production of documents, etc.
5. Special procedures in small cases, such as
 - a. Tentative decisions from the bench; prevailing attorney to submit skeleton findings of facts and con-

clusions of law; no briefs to be required unless Chief Judge directs full court review.

b. Holding of conferences in chambers at the trial session or at a preceding session.

6. Greater use of Commissioners to hear cases involving extended factual presentation.

7. Increased membership of the Court; review by panels in many cases rather than full court review; greater use of retired judges.

8. Greater uniformity in dealing with procedural matters such as sufficiency of pleadings and the problem of the order of trials in fraud cases where criminal charges are also pending.

9. Elimination of calendars in cities where case loads are small.

10. The incorporated law firm—application for admission to practice.

I believe that the nature of these subjects will indicate that we are constantly trying to improve our procedures and to meet the problems with which we are faced.