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THE BRIGHT FUTURE IN TAX PRACTICE FOR THE YOUNG LAWYER

Introduction

One of the most lucrative fields of specialized law practice, one which brings with it quicker financial gains and one which can be a springboard to greater success and a larger clientele, is also one that has been shunned by a majority of lawyers. This field is tax practice.

In the beginning is the struggle. Many of today's successful lawyers could prepare a very interesting dissertation on "How to be Hungry While Maintaining a Professional Attitude". Little thought can be given to specialization with the financial burden of college, law school and establishing their office still bearing heavily upon them. Thus is born another general practitioner, eager for any legal work that is offered to help sustain him during a trying period.

The purpose of this article is to reveal to the ambitious law student, looking for a career in the legal profession, the possibilities of success in the tax field, by developing his knowledge to a point where it will enable him to avoid the usual financial struggle and thus much sooner venture into the particular type of legal work that is desired. Another advantage is that in most instances the tax attorney is not, after using every legal device at his command to press his case, left to the mercy of a jury of "twelve good men and true" to decide his future, as is quite often the trial lawyer. When a trial lawyer loses a few cases at the outset he may lose public esteem entirely.

In examining the possibilities, the need for more trained professional tax attorneys will be shown as well as ways to prepare for tax practice. The four phases of tax work available to the trained practitioner will be set out and methods and services to use as aids will be cited. Also emphasized will be the extent to which one can go in building a large clientele, by using tax practice as a basis for developing a demand for services in legal matters generally.

The Need is Great and Growing

The modern income tax law had its inception with the Sixteenth Amendment to the United States Constitution, adopted February 25, 1913, effective March 1, 1913. Since then many revenue acts have been passed to correct inequities in the law, to increase or decrease taxes and to plug loopholes which early developed to give decided advantages to certain classes at the expense of other classes. The most recent act revising the *Internal Revenue Code* was passed by the 83rd Congress on August 16, 1954.¹ This was an overall revision effecting hundreds of changes with different effective dates for different *Code* provisions.

With the advent of World War II and the resultant heavy expenditures for the prosecution of the war, following closely, as it did, the New Deal attempts to bring prosperity by government spending, increased income taxes and lowered ex-

¹ Public Law 591, published as vol. 68A of the U. S. Statutes at Large.

emptions were inevitable. The result was to reach down and tax the earnings of practically every person gainfully employed, so that at present more than 60,000,000 individual income tax returns are filed annually in the United States. Over half a million corporation returns are filed with the federal government, while state corporation returns of income, capital stock tax, corporate loans tax and a multitude of others swell the total to a staggering amount of annual tax reporting.

During the forty odd years since the first income tax act became effective, the great bulk of tax preparation, especially of business returns, became the forte of certified public accountants, due to their special training and the close relationship between accounting and tax preparation; and they have performed valiantly. As the burden of tax work grew, the certified public accountants and tax attorneys were unable to cope with the situation, and, to a large extent, by necessity confined their practice to corporations and the larger businesses.

The individual and the small businessman desiring tax assistance fell prey to the bookkeeper, the bank clerk and the justice of the peace, as well as the butcher, the baker and the candlestick maker, none of whom had the training or ability to render competent service in the tax field. It is not uncommon to find signs in cigar stores, barber shops and poolrooms offering "expert tax service", and, strangely enough, they attract a large number of gullible taxpayers. Usually the attraction stems from the very low fees charged, but the so-called "service" is anything but a bargain. A quotation from John Ruskin was never more applicable than to these self-styled tax consultants:

"There is hardly anything in the world that some men cannot make a little worse and sell a little cheaper, and the people who consider price only are this man's lawful prey."

Payment of income tax in America has probably caused more mental rebellion and resentment than most other laws of the land, and the average person views the filing of his income tax return with an abhorrence only slightly less than he has for the actual payment of the tax. The failure of the government to take corrective measures, restricting tax preparation to qualified persons, subjects the taxpayer to even greater expense when he relies on these "tax experts" whose knowledge generally extends only to filling in a Form 1040A or Form 1040 quickly, but not properly. When the return is examined by the revenue agent and errors are found, the taxpayer has no alternative but to pay the tax deficiency, with interest, due to the shoddy manner in which the return was prepared, although very often he has been induced to employ the "expert" by promises of large refunds which do not materialize.

A few cases in point will show the high cost of low-cost tax assistance. Effective in 1953, Pennsylvania began an accelerated payment plan for corporations which required the filing of a "Tentative Corporate Income Report" within four months after the end of the fiscal year or by April 30 for calendar years, along with a payment of a two and one-half percent tax on corporate earnings of the year just passed. This tax then applied as a credit against tax due at the close of the current

year. Failure to file caused assessment of a \$500 penalty. In one case a small corporation depended on an old-time bookkeeper, with no knowledge of current tax laws, to file its returns. When he came to the form mentioned above he simply wrote across the face of it, "Does not Apply" and stuck it in a file. The corporation soon received a bill for \$500 because of this blunder.

Among the laity, anyone will tell you, "There's nothing to making out a tax return; anyone can do it." True, but can anyone do it well and properly? A case in file shows where a justice of the peace, who filed hundreds of returns each year, prepared for each of three years, simple individual returns for two brothers, each of whom claimed a younger brother as a dependent. This justice of the peace entered the name of the same dependent on both returns for every year and left out the other dependent completely. When the Revenue Bureau checked the returns, each brother was billed over \$300, which the justice of the peace told them they would have to pay. When borrowing money to pay the tax, the banker inquired into their problem and sent them to a qualified tax man who quickly had the entire tax deficiency abated.

Many other cases could be cited where, by a small technicality, a taxpayer was forced to pay hundreds of dollars which he did not owe, but which, due to improper reporting, he could not escape.

In most cities under 50,000 in population there is a great opportunity to build a clientele from the above sources alone, and the potential is increased as tax laws become more involved.

The Training

Many attorneys shun tax work because of belief in the fallacy that one must be a mathematical genius to make the calculations necessary to tax filing. Some feel that too much training is required in order to fathom the complexities of the various tax forms, when in reality an analysis will show that the fundamentals are quite simple. Despite the great amount of annual criticism heaped upon the tax forms in poetry, in prose and in cartoons, there is nothing in the most complicated of them that defies comprehension by a trained professional man. Interpretation of tax laws is the natural province of legal minds. The small amount of accounting knowledge acquired in the average elective course offered in most law schools, if retained, is a good basis and may be supplemented by a brief course in income taxes such as is offered each year in most cities of the third class and larger. These courses are usually presented one or two nights per week from October to late December, at a very nominal cost, and are taught by successful tax men, either attorneys or certified public accountants. Any law school graduate, by strict application, can glean sufficient knowledge from a course of this kind to be able to prepare all but the most complicated tax returns. Additional study along with practice will develop the dedicated person so that he can reach the desired objective in tax practice. For the more intricate tax problems, many tax clinics are held each year. One of the best is that sponsored by New York University, held annually

during early November and staffed by leading tax authorities of the eastern area from both legal and accounting circles.

The Tax Library and Other Aids

The cost of a library for a tax practitioner is very small compared to that for general law practice. Two leading reporting services, Prentice Hall, Inc. and Commerce Clearing House, furnish service in all phases of tax practice ranging from a condensed guide or handbook selling for \$3.00 to complete loose-leaf services covering every possible tax angle including citations of Tax Court cases and decisions. Along with Social Security and Pennsylvania State Service, the cost is approximately \$300. Completely filled-in forms of each type, with annotations for every line on the form, are furnished with these services each year. Another advantage of the full service is that weekly letters come to each subscriber, giving advance information on all new developments in tax matters. This can be used as a stimulant to business by relaying this information to tax clients, which is to their advantage and without which they would not have the knowledge of tax-saving ideas. In addition, special pamphlets are available covering unusual situations such as "Preparation of Farmers Returns", "Doctors and Professional Returns" and a host of others, all at little cost. For the more complicated forms "Annotated Forms for Tax Practice", a one-volume edition by Prentice Hall, Inc., is very valuable. An excellent book selling for only \$1.50 was published last year by the *Legal Intelligencer*. It is called "State Taxation of Corporations", and covers many details regarding requirements and filing instructions for corporations in Pennsylvania.

Internal Revenue Cumulative Bulletins and many other government issues can be had at a very small cost, and are exceedingly helpful in supplying up-to-date information on all late regulations and rulings. To save long and tedious calculations or to check results already obtained, Chelsea Publications of Los Angeles each year publishes tables showing exact taxes for any amount of income from one dollar to one million dollars. Price of the book of tables is \$2.50.

It is now possible to purchase most federal tax reporting forms in sets with one-time carbon paper inserted, which carbon snaps out after typing. There is a definite saving in time by using them and it also results in neater, more uniform typing with no smearing from carbon paper, which more than offsets the cost of the forms. Tax Forms Supply Service, Lodi, California is the supplier.

In recent years many types of duplicating processes have been introduced whereby tax forms are printed on translucent paper with the figures entered on the form by hand, using either pencil or pen, after which as many copies as are required may be produced in a few minutes. The advantage is that once a return is completed and checked, no further checking is required, as is necessary when typed. They provide many copies quickly in facsimile and reduce the work of the office girl considerably. The disadvantages are the original cost of the machine, which is quite high, and, in the opinion of some, the return does not present the pro-

fessional appearance that a typewritten one does. They have found favor, however, in the larger accounting firms. They can also be utilized for many other purposes to save time and typing. A necessity to tax practice, both to save time and to present a more professional look to tax reports, are supplementary schedules, such as are printed by Cricket Publishing Company of Battle Creek, Michigan. They cover depreciation, dividend income, rental schedules, medical and traveling expense and many other situations requiring itemized statements.

The Minimization of Tax Liability

Tax practice is a fascinating field which carries the lawyers into every corner of business and personal activity. Since the procedures tend to be technical, it is a "natural" for the young lawyer just beginning practice. If the tax laws were so simply written that every citizen could understand them, or, when in doubt, go to the government for sympathetic and helpful assistance in solving his tax problem, it would be ideal. Unfortunately for the taxpayer this is not the case, and since the Sixteenth Amendment became effective there has been waged a constant struggle between the taxpayer on one side, fighting to minimize his tax, and the government on the other, striving to collect the correct amount due.

Plugging loopholes developed by taxpayers and their counsel has resulted in forty years of patchwork legislation, an *Internal Revenue Code* of 8023 sections, plus volumes of decisions, rules and regulations written in terms which only trained professional men can understand. Thus taxpayers are willing to pay high fees to trained attorneys to minimize their tax liability.

The United States Supreme Court in *Gregory v. Helvering*,² said:

"The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means with the law permits cannot be doubted."

To evade taxes is illegal; to avoid them is legal. The avoidance of or minimization of tax liability is an important phase of tax practice.

The tax significance of every business transaction is important under today's regulations, and the ordinary businessman cannot be aware of the results without competent advice. Whether the deal is a long-term rental agreement, an installment sale of a business or merely the payment of large medical bills, to cite a few, there are tax pitfalls that can be avoided, if the tax counselor is thoroughly grounded in the principles of federal tax law. Too often a client consults his lawyer only to assure himself that the transaction is embodied in proper legal form. The trained tax man will immediately recognize the tax consequences and will capture the admiration of his client, as well as his future business, by explaining how substantial savings may be effected by slight changes in timing the transaction or in the subject matter of it.

Income taxes are primarily based on income and expenses. The determination of ordinary income as distinguished from capital gains, when it becomes in-

² 293 U.S. 465, 55 Sup. Ct. 266, 79 L.Ed. 596 (1935).

come and when losses and expenses are applicable are the chief factors that must be considered and understood to minimize tax liability. If any of these factors, as reported, are unreal, it distorts the liability of the particular taxpayer to the detriment or advantage of the entire taxpaying group. There is solid foundation for the rule of statutory construction that doubts shall be resolved in favor of the taxpayer, but Chief Justice Stone in *Stone v. White*,³ said:

"It is in the public interest that no one should be permitted to avoid his just share of the tax burden except by positive command of law."

One of the most challenging phases of federal tax collection is dealing with tax avoidance schemes which are couched in orthodox terms, but are put in contradiction by the circumstances, conditions and reservations employed. There has been some tendency in the deft arrangements of a client's affairs to call a transaction by a label which, if it stuck, would contravene the revenue statutes by the simple expedient of drawing up papers. Care should therefore be taken in tax avoidance plans to call a gift a gift or a sale a sale, without equivocation, or be prepared to have it rejected by the Internal Revenue Bureau. A tax avoidance plan which casts doubt upon the integrity and sincerity of any branch of law tends to bring the law as an institution into disrepute.

Tax Preparation

The beauty of tax preparation is that every client that you gain, if you handle his work efficiently, will be back the next year, and, if you have saved him time, money and worry with his tax problems, he will send his friends to you. For clients who own or operate a business, the work will soon extend to filing of payroll tax reports each quarter, and, eventually, for every form, blank or other related matter he will seek your services. Every satisfied client is a source of new income. During tax filing season no subject comes in for more discussion, and the number of persons looking for competent tax aid is legion.

With the present fiscal situation in Pennsylvania there are certain to be new taxes, whether or not the present sales tax is terminated, and the probable result will be still more new tax forms to file and more work for tax practitioners, which makes for a bright future for the tax attorney. In no other branch of law is there so much repeat business as in tax work. Not only do satisfied clients bring new clients to the tax-trained lawyer, but other lawyers look to the specialist in tax work for counsel in many legal matters, such as estates, that are so greatly affected by taxes.

Although it must never be forgotten that the practice of law is a proud and honorable profession, one must not feel that prestige is lost by devoting time to the problems of the small client with only a lowly short-form to be filed. He may later become an important client. The preparation of small-income returns is just as remunerative as work for the large corporations, and often more so, and, since there are so many more in the small income group, they should not be looked upon

³ 301 U.S. 532, 57 Sup. Ct. 851, 81 L.Ed. 1265 (1937).

with disdain. The satisfaction one receives from dispelling the confusion in the mind of the little man who depends on you to straighten out his tax problems is worth the effort. Since little time and research are required for these clients, their work should be more than acceptable. No prestige is ever lost by catering to the low-income client whose requirements may also extend to deeds, wills, mortgages and leases for which he is happy to pay substantial fees.

In tax preparation, as in few other fields of law, it is possible to train office help to complete much of the work and in a well-organized office they can handle all of the small tax returns, so that the lawyer need only check them for accuracy and affix his signature. This leaves him available for the more complex matters of businesses, partnerships and corporation work. By following this procedure, many more clients can be served during the tax filing season and can be retained for the years ahead.

In actual preparation of tax returns is the real opportunity to prove to the client the worth of your services. From the first day of January until the last filing date, confused clients will expect their returns to receive the attention required to file it free of errors and legal snarls and with every tax-saving device employed. They realize that expert advice may save them many times the fee charged. Quite often proper handling of tax work results in contacts and favorable regard worth more than the ample fees received.

In addition to the knowledge, a tax man should have his office organized so that a reputation is soon established for prompt attention to every client's work, and the office should have on hand at all times a stock of every tax form that is likely to be needed. They cost nothing. The government furnishes them free of charge. The public soon discovers that the office that has every form needed also has the knowledge of taxes that they need. Many people go to an office to see if they can obtain a tax form and remain to have it prepared when they learn of the fine service that is offered.

The young lawyer should be cautioned to always impress his clients that he is not "filling out a form", but is preparing a statement for the United States Government, under the penalties of perjury, based on his knowledge and practice of law. The inept practices of untrained and self-styled "tax experts" have, in some cases, belittled the importance of tax preparation, with a resultant lower of fees. The young lawyers should, at the outset, decide to adhere to professional rates, based on time spent with each client, in establishing his fees. For the bargain-hunting taxpayer, the stock answer should be, "We have no argument with anyone whose fees are less than ours; they should know what their services are worth".

In tax preparation, one meets an entire cross section of the public, many of whom will want to try all of the old and some new tax dodges. The best answer is, "We are selling you our services, not trouble. Would you rather be unhappy now, or two years from now when these unallowable deductions cause you to receive a tax deficiency notice, plus interest?" In a very few instances an insistent tax

evader must be rejected as a client. The great majority, however, will value your advice and send others to you.

Tax preparation is not confined to the original filing of returns. Many times a refund is due on a previous return and it will be necessary to file Form 843, "Claim for Refund". Tentative carry-back and carry-over returns, amended returns and many others form a part of the trained tax man's work, to give him a big advantage over others in this field.

Practice Before the Revenue Bureau

In the current fiscal year more than two million tax returns will be audited by the Internal Revenue Bureau's T-men. Last year \$40,000,000 in claims for refunds were disallowed, based on improper reporting of income, expenses and illegal claims for dependents. Errors were found in one out of every four returns filed. Every T-man turns up \$20 in extra taxes for every dollar the government spends on examination of returns. This program may be expected to be accelerated as the need for more government funds grows.

When errors, resulting in deficiencies, are found, the taxpayer is notified. If he does not agree and is not satisfied after an informal conference with the Group Chief, he will receive a 30-day letter. He may then pay the tax, submit a protest to the Appellate Division or do nothing, after which he will receive a 90-day letter. The matter may then be settled before the Appellate Division or, by petition, may go to the Tax Court.

Before an attorney may appear before the Group Chief or Appellate Division on behalf of a client, he must be enrolled to practice before the Treasury Department. Every tax practitioner should be enrolled, as he is then in a position to engage in many additional services for his client. Since many disputed tax liabilities are resolved partially or fully in favor of the taxpayer, this is a source of much income to the well-trained tax man. He should be acquainted with the procedures, forms and other details needed for this type of work.

Practice Before the Tax Court

If a tax case is not settled at the Appellate Division level, it may be taken by appeal to the Tax Court of the United States. It may also be paid and suit entered in the United States District Court or the Court of Claims for refund. From these courts appeals are allowed to the circuit courts or by writ of certiorari to the United States Supreme Court. The attorney must be accepted for practice before the Tax Court before he may represent a client in any action before it. Attorneys may be admitted to the Tax Court without examination, by presenting a current certificate of admission to practice before the United States Supreme Court or the highest court of any state, and filing T.C. Form No. 1.

Even in Tax Court cases approximately forty per cent are won by the taxpayer. Practice before the Tax Court is the most lucrative field for the successful tax law-

yer. It involves technical procedures and filing of exacting petitions and briefs, all of which must be familiar to the practitioner. Very often cases are taken on a contingent fee basis and result in very substantial income to the well-prepared tax attorney. Tax Court practice should not be attempted until after several years have been spent in other tax matters and one is completely at home with tax law and proceedings. Many of the cases which go to the high courts result in decisions that are masterpieces in stripping away a heavy disguise. Taxation seems to lend itself readily to technically elegant arrangements which are laid bare by a discerning court.

Summary and Conclusion

The possibilities in the field of tax practice for the young lawyer are limited only by his initiative, his industriousness and his desire both for financial success and for public esteem and prestige which will result from the service he can offer through continued study and research of the law.

His large clientele would be well served if both the government and the tax lawyer would be guided by the following from Luke 3:12-13:

“Then came also publicans to be baptized, and said unto him, Master, what shall we do? And he said unto them, exact no more than that which is appointed you.”

Clifford A. Johnston,
Member of the Junior Class.