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BOOK REVIEW

STATE AND LOCAL TAXATION: CASES AND MATERIALS

by Jerome R. Hellerstein; Prentice-Hall, Inc., New York, 1952, pp. 871.

State and local taxation as a separate course in the law school curriculum has never received the attention to which that subject is entitled. If it is considered at all, it is a minor part of a course in taxation devoted primarily to the federal income tax and estate and gift taxation. One doesn't have to ponder at great lengths to discover the reasons for this slight.

As a practical matter, more time is devoted to those taxes which take the biggest bite from the taxpayer's purse, and those, of course, are the federal taxes. If the purpose of a course in taxation is to make a student conscious of the tax ramifications in the problems of general practice, over-emphasis on federal taxes may tend to obscure the significance that state taxes may have in planning. Federal income taxes are the same regardless of the state where a corporation is formed or does business, and the estate tax doesn't change materially depending on the state in which a decedent lived and died. These are just two of many examples to be cited for this proposition. Furthermore, as the state tax collector searches desperately for new sources of revenue, this dollar gap between federal taxes and state taxes is decreasing. It will never close.

A second reason for the neglect of state and local taxes is that in no other field are there such variations among the states as to the substantive tax law and tax procedure. Those problems common to the laws of all states are touched upon in other courses. The commerce clause and equal protection clause of the Constitution as applied to taxation are left to constitutional law courses; due process in a course on conflicts of law; state death taxes in a course in decedent's estates, or as an introduction to the federal estate tax; corporate taxes in a course in corporations or business associations. Many of these variations exist in the administration of state and local tax laws. No amount of formal instruction is worth the return when one considers those tax statutes in the books which are ignored or those taxes where the amount of the tax is arrived at by a form of horse trading between the taxpayer and the taxing officials. The problem is magnified in the so called national law schools in which the student body is composed of students from forty-eight states, and conversely the problem decreases in the state university or local law school in which the law of one state is emphasized. The law schools cannot give instruction in every problem to which the practicing attorney must give his attention, and when the line is drawn, state and local taxation is left to practical experience.

Another reason for the slight may well be the dearth of comprehensive teaching materials for a course in state and local taxation—materials which minimize the problem of local peculiarities and emphasize the broad problems common in

all state and local taxation. Probably the lack of a case book devoted solely to state and local taxation is the result of, and not the reason for, this inattention to state and local taxation in the usual three year law school curriculum. All of which brings us to the topic at hand, which is the new casebook on this subject, *State and Local Taxation, Cases and Materials* by Professor Jerome R. Hellerstein.

The author of this book is Assistant Professor of Law at New York University School of Law. The book is the product of his experience in teaching a course in state and local taxation in the Graduate Division of that law school, and this fact alone is a fine recommendation for the book. Before his own case book was available, Professor Hellerstein used a compilation of cases in mimeographed form along with the statutes and regulations of students' states as a starting point for the study of a state tax. As he points out in his preface, comparison and analysis can then be made of the various state laws, their common problems and the peculiarities inherent in each system, as brought out by the student who has chosen that particular state's statutes for his own study. Class room discussion is supplemented by practical problems in tax planning and application of the law to a set of facts. It is for this system that the author has written this case book, and if so used the result should be a rewarding experience in legal analysis, even in the hands of a teacher less skilled in the art of teaching and less learned in the law of taxation than Professor Hellerstein.

Turning to the book itself, the first subject taken up is the constitutional limitations on state and local taxation, the most controversial of which is, of course, the restriction of the commerce clause. The conflict between the needs of the states for revenue and the traditional freedom of interstate commerce from state restrictions is not now, nor probably ever will be, fully resolved. Problems of classification and the problems arising under the equal protection and privilege and immunities clauses of the constitution are taken up there. Professor Hellerstein then moves on to consider the various specific taxes. Under the heading of business taxes the franchise, capital stock, sales and documentary stamp taxes are treated. The personal income, death and gift taxes are then considered. Chapter VI analyzes the problems of ad valorem property taxes, and Chapter VII goes at length into the exemptions from taxation of charitable and religious organizations, and public functions and property. Last, but certainly not least, are the problems of assessment, collection and the judicial remedies available to the taxpayer who chooses to contest his tax liability, and there are a good many of them these days, which problems rightly receive the attention of one complete section of the book. With each of the taxes the author contemplates that the student will be using the cases in the book as a point of departure for the study of the statutes and regulations of his own state.

The sum total of this is a much needed volume of materials for the study of state and local taxation, one which commends itself highly to those schools which

would consider a separate course on the subject as a regular part of the curriculum, as an advanced seminar or as part of graduate instruction in law beyond the usual three year course.

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