

The Law of Federal Income Taxation

Reviewed by Robert W. Wood

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Rosenberg and Daher, *The Law of Federal Income Taxation* (2008, 694 pages, \$75), is available from Thomson West at <http://www.west.thomson.com>.

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I recently received a copy of Thomson West's new treatise, *The Law of Federal Income Taxation*, written by two University of San Francisco Law School professors, Josh Rosenberg and Dominic Daher, who is a former colleague of mine. I found myself thumbing through it again and again, finding much of its scope and discussion useful. It is one-stop-shopping for the fundamental principles (and many of the details) of our federal income tax system.

The primary target audience for this hornbook is law students and others taking federal income tax courses. Because I am not an academic, I began thinking about the genesis of the term "hornbook," since this green hardback volume is part of the Thomson West Hornbook Series.

The hornbook moniker seems largely a lost epithet, perhaps meaning different things to different people. Wikipedia says hornbooks are primers for study, originating in England in 1450. Today, we're told, a hornbook is a text that gives an overview of a particular area of law.

Other sources describe hornbooks as guides for teaching youngsters the alphabet and other basics. Sometimes a hornbook now refers to anything for young adults. Such antiquated terminology reminds me of Baedekers, guidebooks named for a 19-century German bookseller. Some tax books have been called Baedekers in the past, a term I remember Tax Analysts' founder, Tom Field, favoring.

Whatever you call it, *The Law of Federal Income Taxation* is an impressive piece of work. Although I'm probably not part of its target audience, I found it clear, concise, demystifying, and extraordinarily thorough.

Building Blocks

The book begins with the history of American taxation and a short discussion of how tax laws are made and administered. The authors cover such fundamental topics as the tax base, fairness, the differences between progressive and flat rates, and marginal versus effective rates. I doubt many practicing tax lawyers need an explanation of the time value of money (or other such basic principles), but it is all laid out here nicely.

The book then moves on to gross income, covering windfalls, barter exchanges, valuation methods, imputed income, prizes, realization versus recognition, and many other topics. The authors then cover the litany of exclusions from gross income, including gifts, inheritance, life insurance proceeds, discharge of indebtedness income, settlements for personal physical injuries, and so on. The list of exclusions also covers qualifying educational benefits, transfers incident to marriage or divorce, certain fringe benefits, some meals and lodging, and even some gains on the sale of residences.

The book next covers the panoply of tax deductions, laying out some of the relevant history. There's a current "hit list" of all the major tax deductions. Issues easily explored by experienced tax professionals (like depreciation, depletion, and amortization), but that often cause considerable angst to students, are handled with aplomb. Several chapters cover accounting issues (including inventories, cash versus accrual, tax benefit concepts, annual accounting, installment sales, etc.), and an entire chapter is devoted to the assignment of income doctrine.

The taxation of property transactions — including basis, adjusted basis, and the various ways one can compute it, and amounts realized — is handled well. Nonrecognition provisions are examined, with extensive discussion of section 1031 exchanges, involuntary conversions under section 1033, and the more exotic nonrecognition provisions. This leads naturally into a long discussion of capital gains and losses, holding periods, dealer versus investor status, and different types of property, including goodwill.

Chapter 11 was a bit of a surprise, and for me a most pleasant one. In it the authors look at tax issues related to litigation recoveries and settlements — a subject about which I am hardly dispassionate. I found it gratifying to see this topic given significant scope. Rosenberg and Daher cover the subject thoroughly, including basic topics, attorney fee deductibility issues, and the controversy over section 104 exclusions.

The book also contains excellent explanations of losses on business or investment property and deferred compensation. The chapter on deferred compensation is one from which many practitioners (including me) can benefit. In about 40 pages, it highlights a number of deferred compensation arrangements, including a modicum of

detail about just about everything, with many tidy overviews that would be hard to find elsewhere. Although this is only an introduction to the topic, it is a darn good one.

Coup de Grace

All of this brings me to the last chapter. Forebodingly, Chapter 14 is titled “Tax Shelters and Tax Avoidance.” I think this chapter reflects considerable wisdom. It caps a tax reference book that tries to do the almost impossible task of laying out the landscape of our tax system for introductory tax courses, neither as a nutshell-like précis, nor as an OED-like encyclopedia. I know I was confused in my first tax class, exciting though it was. I wish my study had been accompanied by this hornbook 30 years ago.

Yet I’m not sure I would have enjoyed reading this chapter on tax shelters. For the students who get to this last chapter (and the many other readers, including me, who should keep a copy of this book on their shelves), I found it a useful and concise primer. It is, of course, not a how-to manual. Instead, it is a warning — about what some shelters are, what they are designed to do, and what one should avoid.

It would be difficult to write a prologue about what shelters are and what has happened; about what they can

legitimately do, and what they should not; about what the at-risk rules are; how the passive activity loss rules work; and, perhaps most juicily, how to identify sham transactions with the substance-over-form, business purpose, and step transaction doctrines. Rosenberg and Daher’s discussion of tax shelters is a laudable attempt at demystifying what is indisputably a messy and volatile area.

Conclusion

In my tax practice, I rarely think about how my little piece of the tax world fits into the larger puzzle. For that matter, I rarely think about what taxes do, what our system is all about, how it grew, and how taxes fit into our society. Without getting mushy, I have to credit Rosenberg and Daher’s *The Law of Federal Income Taxation* with rekindling some of those thoughts. This treatise may be primarily intended as a guidebook or reference work for law students, but I hope its publisher will sell many copies of this work to practicing lawyers and accountants too.

I recommend that you pick up a copy, paging through its 600 or so pages when you can. This admirable book serves as a clear survey of our tax forest, yet it includes plenty of detail of the bark on each tree. I guarantee you’ll learn something. Besides, at \$75, it’s a steal.