

FEDERAL ESTATE AND GIFT TAXATION. By Charles L. B. Lowndes and Robert Kramer. New Jersey: Prentice-Hall, Inc., 1956. Pp. xxii, 1028. \$25.00.

OCCASIONALLY a book is published which evidences such scholarly research and careful, lucid exposition that it merits the highest praise of its reviewer. Lowndes and Kramer's one-volume treatise on *Federal Estate and Gift Taxation* is such a book.

In their introduction the authors set forth these objectives:

"To the experienced practitioner, we have attempted to present a compact text to refresh his recollection. To the general practitioner, who is not a tax specialist, we have tried to offer a convenient means of familiarizing himself with the tax considerations he must have in mind properly to plan an estate, draft a will or a trust, or act as attorney for an estate. To the student beginning his studies, we have sought to supply an introduction to the basic principles of the federal estate and gift taxes and of tax planning for estates."<sup>1</sup>

The authors' approach to this ambitious project divides the book into three parts. The first part is devoted to the federal estate tax.<sup>2</sup> Two general introductory chapters discuss the nature of the tax; other chapters are devoted to constitutionality, to a thorough analysis of substantive features and to the procedural problems of filing returns and payment. The second part of the book adopts a similar approach to the federal gift tax,<sup>3</sup> and the third part treats some of the general problems that arise in the tax planning of an estate.<sup>4</sup>

In the first two parts of the book, the authors offer an excellent text on the basic principles of federal estate and gift taxes. Their discussion fills a void that has existed in legal literature since changes in the Internal Revenue Code made other treatises obsolete. None of the significant problems of federal estate and gift taxation is overlooked. In each section the authors have provided a complete analysis; moreover, the various sections of the book are drawn together by a careful examination of the interrelationship between the sections of each tax. Penetrating analysis is focussed upon the leading cases, and thorough research precedes any assertion of a general trend in the law. In the unsettled areas, dogmatic generalizations are carefully avoided in favor of the development of competing arguments which surround the issue.

For the most part, the authors succeeded in presenting a text useful to both the expert and the student. Clear, compact style and skillful exposition of the difficult technical problems is responsible for their success. The novice is introduced to the complexities of the tax through brief introductory paragraphs and an excellent treatment of the history of the sections that comprise the patchwork legislation of Chapter 11 of the Internal Revenue Code. Of particular merit in this regard is the chapter devoted to the transition of a single sec-

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1. P. v.

2. Pp. 3-620.

3. Pp. 623-825.

4. Pp. 829-971.

tion of the estate tax that taxed transfers intended to take effect in possession or enjoyment at or after death into three complicated sections taxing transfers with a reservation of a life estate, transfers dependent on survivorship and revocable transfers.<sup>5</sup> The clear and penetrating analysis of the cases from *Shukert v. Allen*<sup>6</sup> through *Spiegel's Estate v. Commissioner*<sup>7</sup> and the discussion of the legislative attempts<sup>8</sup> to repair the damage caused by the Court are particularly helpful in understanding a part of the Code that otherwise approaches the incomprehensible. The more subtle problems that are ordinarily the exclusive concern of the expert are effectively explained to the student through simple illustrations, liberally used throughout the text. While these introductory sections contain enough detail to serve the purpose of the student, they are so compact that they do not restrict the pace of the book. The exposition is maintained at a level of sophistication that commands the respect and the interest of the expert.

The third part of the book is concerned with the problems that arise in the tax planning of an estate. The authors do not attempt to offer a series of detailed forms as a panacea for all planning problems. They accomplish their purpose by presenting an introduction to the procedures involved in the tax planning of an estate and an analysis of the important dangers that exist in the careless or naive use of the more obvious devices which may be invoked in formulating an effective tax plan. One of the most significant contributions of this part of the book is the section entitled, "Some Iconoclastic Reflections on the Mathematics of the Marital Deduction."<sup>9</sup> In this section, and in similar comments dispersed throughout Part III, the authors dispel a great deal of the myth of value surrounding many of these tax saving devices. They place the tax planning problem in its proper perspective in relation to the major problem of disposing of the estate so as to carry out the wishes of the owner in the most efficient way possible.

Nonetheless, as a text on tax planning the book is subject to some criticism. Part III of the book is premised upon a working knowledge of the federal income, estate and gift taxes. This understanding of the federal estate and gift taxes is more than adequately supplied by the first two parts of the book, but with the exception of an occasional reference, the book supplies no similar understanding of the ramifications of the relevant sections of the income tax. To the extent that the authors fail to discuss these relevant income tax materials, they fall short of fulfilling their promise to provide the general practitioner with a convenient means of familiarizing himself with the tax considera-

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5. Pp. 84-105. The original section was Revenue Act of 1916, § 202(b), 39 STAT. 777, which burgeoned into INT. REV. CODE OF 1954, §§ 2036-38.

6. 273 U.S. 545 (1927).

7. 335 U.S. 701 (1949).

8. See, e.g., Joint Resolution of March 3, 1931, 46 STAT. 1516; Technical Changes Act of 1949, 63 STAT. 891.

9. Pp. 890-92.

tions he must have in mind to plan an estate.<sup>10</sup> The authors explain this limitation in terms of the decision to limit the treatise to a single volume.<sup>11</sup> Once these spatial limits were determined, the authors made the eminently sound decision to present an exhaustive analysis of the estate and gift taxes rather than an incomplete treatment of the three taxes. But it is unfortunate that the decision to limit the text to a single volume prevented a similar scholarly treatment of the relevant income tax materials.

The announcement of the publication of a paper-bound student edition of *Federal Estate and Gift Taxation* makes available an additional choice of teaching materials for a course in this field. The value of the book in such a course will depend upon the ends the instructor hopes to attain. If he chooses to deal with each tax separately, and to teach the traditional skills of legal analysis with primary emphasis on filing returns and the formulation of arguments on issues arising out of either tax, the book offers a very adequate alternative to the casebooks now in use. On the other hand, if the instructor is persuaded that he should take advantage of the unique opportunity to emphasize the planning skills required in a successful practice of law, the book presents some difficulty. To teach effectively a course in tax planning of estates—the creation of alternative methods of arranging an estate and an evaluation of these methods in the light of all relevant tax criteria—requires a simultaneous examination of the income, estate and gift tax consequences of a particular type of transaction. The organization of the text into compartmentalized treatments of the estate and gift tax makes this approach impracticable. The authors have attempted to integrate the estate tax and the gift tax by numerous references in the text relating each tax to the relevant materials in the other; but it is at least doubtful that this flash back method is as effective a teaching technique as an integrated organization of the materials. It is clearly more repetitive and time consuming.

In fairness, the book was originally published as a reference work for practitioners and students, and an integrated organization of the text might impair the facility with which it could be used for that purpose. Perhaps this criticism merely indicates that the achievement of a teaching technique as well is extremely difficult, if not impossible. Although some of the more imaginatively organized publications offer a better choice of teaching materials for a course in tax planning, this treatise will serve a useful function as a source of collateral reading, permitting the instructor to devote a great deal of time previously spent in analysis of the substantive provisions of the estate and gift taxes to a treatment of problems of policy, relevant income tax materials and the interrelation of the three taxes.

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10. See note 1 *supra*.

11. P. 944.

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