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Book Reviews

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The opinion appears to be well grounded on precedent. The vulnerability of unions generally to the Sherman Act (15 U. S. C. A. Sec. 1-7) is cited by the Court as establishing the legal entity theory of unions for the service of process on their officers. See *Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762. "In their official capacity, therefore, they (union officers) have no privilege against self-incrimination. And the official records and documents of the organization that are held by them in a representative rather than in a personal capacity cannot be the subject of personal privilege against self-incrimination, even though the production of the papers might tend to incriminate them personally." In support of this proposition the Court cites the following authorities: *Wilson v. U. S.*, 221 U. S. 361, 31 S. Ct. 538, 55 L. Ed. 771 (a case involving a corporation); *Dreir v. U. S.*, 221 U. S. 394, 31 S. Ct. 550, 55 L. Ed. 784; *Baltimore & Ohio Ry. Co. v. Interstate Commerce Commission*, 221 U. S. 612, 31 S. Ct. 621, 55 L. Ed. 878; also, *Wheeler v. U. S.*, 226 U. S. 478, 33 S. Ct. 158, 57 L. Ed. 309. Other cases cumulative on this point are cited in paragraph No. 8 of the opinion.

The Supreme Court concludes by stating that union officers in their official capacity are incompetent to "insulate" the union's records against the reasonable demands of governmental authorities.

David S. Landis.

BOOK REVIEWS

AIRPORTS AND THE COURTS . . . by Charles S. Rhyne, National Institute of Municipal Law Officers, Washington, D. C., 1944.—For some time now the attorneys of America have been faced with the problems of the field of aeronautics with respect to the law. The multitude of problems which flow from this one general field are so diversified that as yet no real study of the problem has been compiled into one volume or set of volumes. There has, indeed, been very little writing in this field. Of course, it is understandable that the ramifications of the actual issue are still in an embryo stage and therefore nothing can be written in any great length on the subject.

The issue presented as a challenge to the American attorneys is: What are the rules pertaining to the law of the air at present? How were these rules arrived at? And, finally, what is to be expected in the way of change in the rules governing the law of the air in the near future and how are they to be met up with?

In this book, the author has not only attempted to collect all the decisions handed down by the courts involving airports, but, he has also analyzed all legal principles handed down by the various courts in the maintenance of such decisions.

He has delved far and wide for the information presented but the sources of most of it are the files of the National Institute of Municipal Law Officers as well as the files of the Civil Aeronautics Administration.

Among the problems considered are: First, Airport Acquisition. The problem set forth here is as follows — when a community finds itself in need of an airport, who will pay for its acquisition and maintenance. The answer proposed is that since every community needs an airport, such projects must be paid for by the community, by a scheme of taxation which will pay for its acquisition and maintenance. The fact that airports are a public purpose and as such must be included as an expense of the community is impressed upon the reader. Cases are cited where airports have been construed to have been public utilities. Thus, in the first chapter which concerns itself with airport acquisition, the author poses the problem of the necessity of acquisition and maintenance and then proposes the various methods in which such acquisition and maintenance is possible.

Secondly, the author, concerns himself with the proposition of the condemnation of property for airport purposes. This consideration is limited solely to a discussion of the use of eminent domain powers in the achievement of such purposes.

Thirdly, he takes up the subject of airport leases. The many subdivisions which present themselves here are such as the lease of municipally owned airports to private individuals and problems of that nature which are considered in conjunction with many cases on the matter.

Fourthly, the author turns to the most important topic of Regulation governing the use of Airports. The problem is viewed from the standpoint of local jurisdiction as well as that of Federal jurisdiction.

Fifthly, comes the presentation of a most complex problem and certainly a sore spot that will create a great deal of hub-bub, namely, that of the taxation of Airports. In a very few pages the author has admirably handled the situation, citing a fair number of actual cases.

In chapter six, the author turns to the consideration of the problem of damage claims against airport owners and operators. He presents cases on both sides of the fence as to the liability of the operators and tends to show that we have here a question which will be the source of much litigation in the future.

Chapter seven considers the somewhat complex and certainly flaming question of air space rights and landowners. The problem is set forth at the beginning, and then the author goes through all decisions handed down from the very first case and brings the matter up to date to show the development of this point in our courts. He also considers all statutory enactments relative to this issue. Probably the most important feature of all in this chapter, and a proposition that is of general interest to all concerned with the law of the air, is the presentation of the

five theories of Air Space Rights. Appropriate discussion and cases in point are included with the presentation of each of the theories.

The problem of Airport zoning is dealt with in Chapter eight. The main issue of the problem seems to be control of the types and heights of buildings and other structures adjoining airports. A very exhaustive study of this subject is made by the author at this point. Some consideration is given to the enacted airport zoning statutes and ordinances now on the books. He concludes the consideration of this topic by stating conclusions which can be drawn from the presentation of the facts given.

In all the book is to the attorney interested in the law of airports the same as Milton's works are to any student of literature. Though it is a basic work — a primer in airport law, if you will, — it has considered a problem heretofore left fallow. The author is to be hailed as a pioneer in a field where the law is still in a state of development and somewhat uncertain. The entire field is not limited to one or two outlooks, but a number of the appurtenant side issues are attacked. This book, too, has been written in a style that it need not be considered essentially a legal treatise — but more a work that can and should be read by any person interested in the field of air law, especially that of airport law — a field that will be much considered following the successful completion of this war.

Norbert S. Wleklinski.

AMERICAN JURISPRUDENCE, VOLUME 51: TAXATION . . . by the Editorial Staff of the Lawyers Co-operative Publishing Company, Rochester, N. Y., (1944).—Upon a first examination of the title of the volume, one is readily led to believe that it treats all phases of taxation as we have it today. However, this is not the case, as one finds as he delves into the textual material. The book itself has three definite purposes: 1, a consideration of direct property taxation; 2, taxation by the states; 3, the right of the government to levy and collect the taxes and the correlative duty of individuals to pay them. The immediate conclusion drawn is that the book considers taxation in general and not the particular problems of that field.

In achieving their purposes, the authors have divided the subject matter into eleven distinct parts, each treating some portion of the subject presented. To give the reader some idea of the book itself, it is expedient to take up each of these eleven parts as they are presented and consider each separately as well as severally.

The first field to be entered is the nature and characteristics of taxes and taxation. The tenor of this section is to present to the reader the various definitions of taxation in general, and then after the definitions are discussed, the authors present the various distinguishing fea-

tures of taxation. The basic distinction made is a consideration of taxation as against various extractions and charges which simulate taxation.

Following this, we are taken into the part in which the classification of taxes is considered. This section is broken down into four distinct parts: 1, the consideration of poll, property, and excise taxes; 2, the distinction between direct and indirect taxation; 3, the distinction between specific and *ad valorem* taxes; 4, general taxes as distinguished from special taxes. The propositions presented by this section are handled very concisely and basically.

The next section considered is: "The Power to Tax and the Constitutional Limits Thereon." The problem presented in this section is attacked dually. First, there is a general consideration of the field and secondly, we have a discussion of Constitutional requirements, restrictions and limitations. As to the second distinct part of this field, the authors have broken it down into three general topics which make a complicated problem most understandable. These three subdivisions are as follows: first, a consideration of the question generally; secondly, a discussion of the effect of the Federal constitution upon the taxing powers of the states; and finally, the effect of state constitutions is discussed.

We pass now to a consideration of the question of the validity and interpretation of the tax statutes. This field, as all others heretofore considered is broken down into several subdivisions, they are: 1, a general attack upon the problem; 2, validity of such statutes. This topic is considered generally and also, a brief consideration as to indefiniteness, uncertainty, and inconsistency; 3, "Construction," considered as to the general construction of the statutes, and "Interpretation" considered from the viewpoint of the interpretation of particular words and phrases of the statute.

We next come to the all important section dealing with the purposes for which taxes may be levied. This section is broken down into two distinct parts. The first concerns itself with the public purpose theory of taxation while the second deals with corporate purposes within constitutional provisions governing taxation for local purposes by local authorities.

The "Subjects of Taxation" and the "Places Where Such Subjects May Be Taxed," is next taken up by the authors. As to subjects of taxation, the field is limited to the consideration of property and interests taxable, while in regards to situs of taxation, the treatise is primarily concerned with the field of personal property.

The most interesting topic probably to all concerned is next examined, namely, "Exemptions from Taxation." This section involves a very thorough discussion of the subject of Exemption, going as far as to list the persons and property exempt.

The question now presented is that of the levy and assessment of taxes. On this point a very exhaustive study is made of all material relevant. The focal point of the whole section is the procedural elements of the levying and assessment of taxes.

"The Taxation of Corporations and Particular Business Enterprises" is the heading of the next section. As to the aspect of corporations the discussion is limited to the various manners of taxing corporations. The particular business enterprises considered here are enterprises of public character. A grouping of the methods of taxing such enterprises is also listed.

The problem of the payment, enforcement and collection of taxes is next discussed. As to the payment and collection features, the discussion is for the most part one in which the methods employed in these two topics is presented. Concerning the enforcement angle the discussion is limited to a discussion of tax liens and the sale of land for non-payment of taxes.

"The Remedies for Wrongful Governmental or Official Action" is the next heading we examine in this most exhaustive study. The two propositions considered are as follows: 1. A remedy provided is the awaiting of a refund of the payment of such illegal taxes; and 2. Injunctive relief restraining the enforcement of the illegal tax.

After considering all these various points and propositions falling within this field, the authors proceed to give a section in conclusion in which there is a brief consideration of all the high-spots covered in the various general sections and the conclusions to be drawn from these.

All that can be said for this volume is that it lives up to the reputation that has already been accorded to this series. It is a most exhaustive study, true to form of all other volumes in this series, of a most complex field of the law and one which is changing as constantly as the various legislatures formulate new ideas and modes of taxation. It is to be highly commended in the sense that it has integrated this phase of taxation into a volume of the size we have.

Eugene Charles Wohlhorn.

PRODUCTION, JOBS AND TAXES . . . by Harold M. Groves, First Edition, McGraw-Hill Book Company, New York, 1944.—In the trying times we are now experiencing and the crisis in our history that we are approaching, the Federal Tax System is necessary in order to bring some order out of the chaos brought about by the unavoidable extravagance of fighting a war. The necessity for raising large sums of money has brought about increases in the tax assessments of all kinds

causing much complaint from the taxpayers generally. While the complaints now are heard, it may be expected that there will be much discussion of the issue when the present tax system is continued after the end of the war.

Many economists are advocating changes in the tax structure and maintain that if these changes are not forthcoming, there will be mass unemployment and a great economic depression after the war. Out of all this controversy came the appointment of a committee for economic development which looked into the matter and they have set down their views and the suggested remedies for the situation in this book "Production, Jobs and Taxes."

The main thought of the committee was to develop and preserve adequate business incentives for the postwar world and still assure the government of sufficient revenue to pay the cost of operation. To begin with, there should be an elimination of the duplication in corporate and personal income tax assessments, by an integration of the two. Doing this will result in a reduction of prices of commodities or an increase in wages or an increased peace-time corporate profit.

The excise profit tax should be repealed within a year after the end of the war, because it would almost eliminate large peace-time risks, and there should also be an exemption from advance payment on retained income for small businesses who are just beginning operation. This would encourage the circulation of money, creating more production and more jobs, and give the small businesses a chance to get started.

A longer time would be allowed for carrying over net business losses and more latitude should be given in taking deductions for depreciations. Thus income taxes would not be paid out of capital because there would be a longer time to make up for these losses.

After these suggestions for helping business, the committee turned to the individual taxpayer. The people in the lower class should be helped more by eliminating or reducing Federal sales taxes and widen the field of personal taxation in general to shift some of the burden from business to personal taxes.

There should be longer carry-over periods for losses instead of treating them as accruing from a single year's operations. An adjustment for fluctuations in income should be provided for because under the present system one year a person is greatly overtaxed, and the next year his taxes may be substantially reduced in direct opposition to the income of the two years.

Death taxes should be based on the value of the estate at the time of death or the amount realized in liquidation, whichever is less. The taxes should be strengthened and both estate and gift taxes should be combined.

Post-war sales taxes on necessities of life should be discouraged or done away with completely. However, to control inflation after the war the committee suggested a continuation of price control for a period of time.

Thus the committee for economic development have put forth their views and suggestions, embodying them in a workable postwar tax system, with the main purpose of higher production and more jobs in mind.

J. M. Chrisovergis.

