

A TAX PROGRAM FOR THE UNDERGRADUATE LAW SCHOOL

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The ranking partner of a large Chicago law firm recently remarked that taxation has become so important in the *general* practice of law that, in his judgment, every law student should undergo a course in taxation during *every* term of his law school career. While this remark probably was influenced by the large corporate and trust practice enjoyed by the particular firm, it clearly indicates the restiveness which is growing among members of the bar over the inadequate tax programs generally being offered by our law schools. Indeed, the criticism does not stop there. Mr. John W. Burrus, Assistant Chief Counsel for the Bureau of Internal Revenue, who is in charge of hiring the Bureau's tax attorneys, has stated that most of the applicants for positions in his office have had one three-hour course in taxation, "which has done nothing except arouse their curiosity." With the continuing accent among the membership of the Association of American Law Schools on reorientation of the law curriculum to meet post-war needs,¹ coupled with a realistic suggestion that we look to practicing lawyers for guidance,² it would seem that the time has arrived to determine how the inevitable increase in tax instruction should be accomplished.

Most of us would probably agree that the objective of undergraduate law school instruction in *taxation* is to provide the student with a foundation that will enable him to meet the demands of clients (or employers, if he obtains a position as a junior attorney in a law firm, corporation, or department of the government) and to satisfy his responsibilities, as a lawyer, for public service³—in so far as the field of *taxation* is concerned. This, of course, should not be confused with the objective of the American Law Institute's program of continuing legal education: keeping *lawyers* "continuously abreast of the developments in the law."⁴ The law student should have enough tax background when he graduates to enable him to "keep abreast" of developments in tax law after he becomes a lawyer. He should not, as is often the case now, be forced to acquire such background after graduation. In the first place, there will not be time enough for him to do so;⁵ and, in the second

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¹ See Pemberton, *Report of the National Law Student Conference on Legal Education*, 1 J. LEGAL ED. 73 (1948).

² Harno, *Legal Education: Convictions and Perplexities*, 1 J. LEGAL ED. 99, 100-101 (1948).

³ See Dean Griswold's Foreword to *Report of the National Law Student Conference on Legal Education*, 1 J. LEGAL ED. 64, 67 (1948).

⁴ *American Law Institute: "Silver Anniversary" Meeting*, 34 A.B.A.J. 634, 637 (1948).

⁵ A few fortunate graduates who desire to specialize in the tax field may have time for a year of graduate study at New York University, which offers a unique twenty-four-hour program leading to the degree of Master of Laws in Taxation.

place, he will be meeting the competition of his contemporaries from other law schools which have provided their graduates with an adequate tax background.⁶

What comprises an "adequate tax background" for the student who does not intend to specialize in taxation is now the question. The answer will probably fall somewhere between the three-hour "curiosity course" and the three-year program recommended by the Chicago attorney referred to above. Above everything there must be enough instruction in federal income taxation to enable the law student to prepare his own income tax return—not to mention the returns of partnerships, fiduciaries, and individual clients.⁷ This instruction should cover not only the technique of filling out returns and computing the tax, but should impart a *working* knowledge of the tax law pertaining to every item that may be included in those returns—adjusted gross income, long-term capital gains, net operating loss carry-backs, inventories, income from partnerships, rents, royalties, depreciation, and all the rest. There must also be enough instruction to enable the law student to *recognize* the income tax consequences of marriage and divorce settlements, and the more common types of business transactions of partnerships, corporations, proprietorships, and farmers; and to enable him to *realize* that there may be income tax consequences in less common transactions, such as corporate distributions, dissolutions, and reorganizations. Finally, the student should receive a *working* knowledge of the "tools of the tax trade"—tax reports, tax treatises and periodicals, tax services, the Internal Revenue Code, Treasury Department Regulations, Cumulative Bulletins, and the like. Four semester hours will just about get the job done.

We can expect our graduates to be called upon to prepare wills within a reasonable time after graduation; and a good many of them will probably be called upon for estate planning. This, of course, implies a *working* knowledge of estate and gift taxation, for a client wouldn't dream of letting anyone draw his will or a deed of trust unless that person had a professional understanding of the estate and gift tax significance of the marital deduction, the terminable interest rule, contemplation of death, the charita-

The program includes: Advanced Income Taxation, Federal Tax Procedure, Estate and Gift Taxation, Seminar on Tax Problems of the Fiduciary, Seminar on Federal Taxation of Corporations and Partnerships, Problems in Corporate Income Taxation, State and Local Taxation, Research in Taxation, Public Finance, and Fiscal Policy and Intergovernmental Finance. Most law school graduates will not be able to take this program, so the problem of providing adequate instruction in the tax field falls to the undergraduate law schools.

⁶ Virginia offers its undergraduate law students thirteen hours of taxation; Harvard offers eleven; Duke and Notre Dame offer ten; and Columbia offers nine.

⁷ The author is not unmindful of the fact that certain tax specialists pride themselves on being too busy with corporate reorganizations to "bother" with the small fees from tax returns. Some of our law students may hope eventually to practice in the same ivory tower with these masters of the business-purpose doctrine. But during the first few years after graduation all of them, and during the remaining years of practice most of them, are going to find income tax returns not only a source of income but a very effective entrée to other types of law business. Inability to handle returns will simply mean that additional income and law business will go to someone else.

ble remainder, and reservation of powers. It will take two semester hours to provide this background.

Much has been written of late regarding the responsibility of law schools to develop in their students an understanding of the institutions and problems of contemporary society along with an ability to participate in solving those problems.⁸ In this connection, one of the most critical problems is the financing of present state and local governments. One reason why the problem has become critical is the general absence of sound and uniform tax laws upon which the financing of these governments depends. A hodgepodge of overlapping and duplicating income, property, sales, and other excise taxes lies in wait for our law school graduates to wrestle with. The prospect here is not so much one of serving clients⁹ as it is of serving the public—either as one of the law-makers or as adviser to the law-makers.¹⁰ How can that function be performed without a *working* knowledge of such concepts as assessment, equalization, situs, allocation, doing business, and multiple burdens? It will take more than a few leading cases out of the course on constitutional law to provide this knowledge.¹¹ Two semester hours will be needed to cover state and local taxation properly.

⁸ Fuchs, *Legal Education and the Public Interest, 1948*, 1 J. LEGAL ED. 155, 162 (1948).

⁹ Occasionally a case involving state and local taxes that will merit a sizable fee will come along. Most of the time the cases will not amount to enough to warrant the trouble of litigation. However, the client will still expect his lawyer to devise legitimate means of minimizing state and local taxes.

¹⁰ "Even when the lawyer . . . is not himself formally a 'policy-maker,' he is 'the one indispensable adviser of every responsible policy-maker of our society.'" Fuchs, *Legal Education and the Public Interest, 1948*, 1 J. LEGAL ED. 155, 168 (1948).

¹¹ See Lasswell and McDougal, *Legal Education and Public Policy*, 52 YALE L. J. 203, 245 (1943) ("Truly effective education for policy-making must . . . strive for more than the cultivation of attitude. Its curriculum must offer *skill*, including informational background and appropriate drill as well."). Columbia appears to be the only law school which has provided a course directed at training in policy-making in the field of federal taxation. This is a two-hour seminar offered jointly by the School of Law, the School of Business, and the Department of Economics, in which the students examine the effects of current tax problems on business policies and practices. Such training could be provided as a regular part of the courses in Federal Taxation, however. For example, consider the possibilities arising from a discussion of the following: "Perhaps the time has come when in the interests of wise tax administration, Congress might well eliminate the issue of contemplation of death entirely, by providing that all gifts made before (say) two years of death should be subject to the gift tax only, while all made within two years of death should be included within the measure of the estate tax." ERWIN N. GRISWOLD, *CASES AND MATERIALS ON FEDERAL TAXATION* 155 (2d ed. 1946). "The methods for taxing corporate income have varied considerably through the years since 1913; and the problem of devising an equitable plan does not yet appear to be solved. . . . The majority of [the Committee of the National Tax Association on Federal Taxation of Corporations] recommends that, so far as possible, the partnership method of taxing profits be applied; 'if necessary, that the constitution be amended so as to permit the taxation of the individual shareholders upon their distributive shares of corporate profits.'" ROSWELL MAGILL AND JOHN M. MAGUIRE, *CASES ON TAXATION* 945 (4th ed. 1947). "Since most gratuitous assignments of income are made between members of a family group, we are naturally led to some consideration of the family as a taxable unit." PAUL W. BRUTON, *CASES ON TAXATION* 594 (2d ed. 1948).

It would probably not be over-optimistic to hope that one-fourth of our law graduates will handle federal tax cases beyond the return stage.¹² Here is where all the substantive law in the Code will be worthless unless they know *how* to make that law work for their clients. They will have to have a *working* knowledge of federal tax practice, including such matters as thirty-day letters, deficiency notices, protests, conferences, settlements, penalties, compromises, rulings, closing agreements, assessment and collection procedures, tax liens, claims for refund, and statutes of limitation. It would also be helpful to have at least an acquaintance with Tax Court procedure, the basic rules of suits for refund, and the fundamentals of handling fraud cases. Here, to a large extent, the laws and regulations revolve around forms, which the student should see and feel if he is to learn their legal significance. Practice in preparing a protest, negotiating a settlement, drawing up a petition to the Tax Court, or filling out a claim for refund can be dispensed with—provided the student receives “the core of the process” of drafting and negotiating in his other courses.¹³ Adequate instruction in federal tax practice will, nevertheless, require two more semester hours.

Ten semester hours of tax instruction is the minimum needed to provide an “adequate tax background.” The next question is how best to present that instruction.¹⁴ In as much as federal taxation cuts across so many fields of law, it would seem both possible and desirable to integrate at least some of the tax instruction into other law courses. A step in this direction has been taken at Michigan and Duke, where two-hour courses in Estate Planning correlate such fields as property, trusts, future interests, and estate and gift taxation. Michigan also has a course in Fiduciary Administration, which would appear to afford the ideal opportunity for acquainting students with the complex *income* tax problems of estates and trusts. A course on Receivership and Corporate Reorganization would seem to present a very unrealistic picture for students unless considered in the light of the income tax consequences which these situations entail. Integration might, however, lose some of its effectiveness unless preceded by a basic tax course of some kind.¹⁵

¹² This does not imply that they will become full-time tax lawyers; rather that they will be active enough in the field to become qualified to take care of most of the tax cases that come to them.

¹³ Professor Fuller, in his fine analysis entitled *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL ED. 189, 197 (1948), suggests that it would take ten years to educate a lawyer unless some “common core” can be found in the drafting and negotiating processes.

¹⁴ It is not proposed here to undertake a discussion of the merits of the case method as against the problem method, or the use of texts or services as supplements to cases or problems. The ability of the instructor will usually determine the effectiveness of a tax program. However, it might be mentioned that Professors Cary and Pedrick of Northwestern are reportedly achieving excellent results with the problem method. The case method, supplemented by articles from periodicals and problems, appeals to the author as best suited to instruction in federal tax practice, because the factual situations set forth in cases involving tax procedure are, on the whole, replete with procedural steps before the Bureau of Internal Revenue. A study of such factual situations is often more valuable than the holding itself—from the standpoint of inculcating knowledge and skill pertaining to this part of the tax field.

¹⁵ There is, of course, the possibility of utilizing the tax courses as a means of providing a synthesis of the whole law school curriculum. Tax problems that cut

Adoption of a tax program calling for ten semester hours of instruction will not make specialists of law students. Anyone who thinks so merely betrays unfamiliarity with the tax field. Such a program will necessitate cutting into other courses, if not eliminating some of them entirely. However, this is more of a problem in diplomacy for the dean than anything else. One or two professors are going to be hurt, but the students will benefit.¹⁶

across the fields of property, trusts, future interests, corporations, partnership, insurance, domestic relations, sales, and constitutional law would go far toward providing the comprehensive survey that many educators advocate. Compare Hanna, *Subject Matter in the Third-Year Curriculum*, 1 J. LEGAL ED. 104 (1948). Professor Hanna apparently overlooked Taxation when he commented that probably no course equals Creditors' Rights or Security in providing a synthesis of the whole law school curriculum.

¹⁶ Anyone who wonders where and how to start cutting should recall the case cited by Esther Lucile Brown in *LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE* 97 (1948), where Professor Sunderland of Michigan consolidated seven courses totaling fifteen hours in one four-hour course in Judicial Administration. The consolidated courses were: Common Law Pleading (five hours); Code Pleading (two hours); Equity Pleading (two hours); part of Trial Practice relating to jurisdiction (one hour); Extraordinary Legal Remedies (two hours); Federal Practice (two hours); and Legal Ethics (one hour).