

January 1951

Current Developments in Taxation

Albert J. Gould

Kenneth L. Smith

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Albert J. Gould & Kenneth L. Smith, Current Developments in Taxation, 28 Dicta 114 (1951).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

of the Denver Bar

THE REVENUE ACT OF 1950

Rates: An individual in the lowest bracket will pay about 5% more on his 1950 return than he did on his 1949 return, and about 20% more for 1951 than he did in 1949. Trusts and estates pay at the same rate as individuals.

Exemptions: An individual—\$600 for himself, \$600 for his spouse on joint return, and \$600 for each dependent. No change in definition of dependent. Additional exemptions of \$600 for blind persons and \$600 for persons 65 years of age or over still in effect.

Death of spouse: Surviving spouse can make joint return for self and deceased if survivor does not remarry before close of his taxable year where no executor has been appointed before last day for filing return by survivor. If executor has been appointed survivor can make joint return with executor or administrator.

Estimated tax: No change in requirements for filing declaration of estimated tax and no penalty for under-statement if same results from increase in rates.

New corporation rates: For taxable year beginning after July 1, 1950, 25% on all normal tax net income. 20% on surtax net income over \$25,000. This means that the corporation tax on incomes of \$25,000 or less is 25% instead of the former graduated rates.

Corporation liquidated in 1951: Section 112 (b) (7) IRC, as amended by Section 206 of the 1950 Act, permits complete liquidation in any one month of 1951 of a corporation and payment of income tax under normal rates only on earned surplus account. Do not be misled: The earned surplus account is taxed without reference to whether it is represented by cash or has been incorporated in the tangible assets. Where the earned surplus account is not too large this section may be of value. See rulings under similar provisions applicable in 1944.

Depletion: The base has been broadened to include transportation of ores or minerals in some instances. See Section 207 (a) amending IRC Section 114 (b) (4) (B).

Extra month for return of fiduciary: Any estate or trust, the taxable year of which ends after September 23, 1950, has three months and fifteen days after expiration of said taxable year within

which to file return. A decedent's estate may pay in four installments commencing with the filing date of the return. A trust must pay in entirety on or before the due date of return.

Redemption of parent's stock by subsidiary: If interested, study carefully this new Section, which is intended to plug a loop-hole.

Redemption of stock to pay death taxes: Section 209 (a) gives special relief where stock is redeemed solely for the purpose of paying estate, inheritance, legacy or succession taxes resulting from deceased owner's death.

Capital gains and losses: Literary, musical, artistic or similar works are no longer capital assets. Section 210.

Collapsible corporation: Section 212 adds Section 117 (m) (2) (A) which defines a collapsible corporation as one which is formed or availed of principally to manufacture, construct or produce property with a view to sale of its stock or distribution to its shareholders before the corporation can realize a substantial part of the net income which will arise from such property. This provision is not as all inclusive as it might seem. We recommend careful study.

Amortization of emergency facilities: As in the second World War, emergency facilities may be amortized in 60 months by obtaining a certificate from a certifying authority which will be created for that purpose.

POST-MARITAL PROPERTY SETTLEMENT

In *Cornelia Harris*, the majority of the U. S. Supreme Court held that a post-marital property settlement agreement is not subject to gift tax if it is based upon a decree of a divorce court, and held that a separation agreement incorporated in a divorce decree is "based upon a decree."

Comment: Because this was a 5 to 4 decision, caution is in order, and the agreement should be incorporated in the decree.

ADMINISTRATOR HELD LIABLE FOR INTESTATE'S INCOME TAX

In *L. T. McCourt*, 15 Tax Court No. 96, the administrator was held personally liable for the intestate's income tax because the administrator distributed all assets, remaining after payment of debts, to the widow.

CORPORATE PROPERTY AS DIVIDEND

In *Trinity Securities*, T. C. Memo, 24803, the Tax Court held again that a corporation pays no tax on its property which has increased in value and is distributed in kind as a dividend.

EXCESS PROFIT HIGHLIGHTS

Effective July 1, 1950. Income for entire year 1950 computed and divided for purpose of excess profits tax. Resulting income

and excess profits tax for 1950 about 57%; for 1951 about 77%. Generally speaking all income above 85% of the average of the incomes of the best three out of four years of the 1946-1949 period constitutes excess profits, taxable at 30%. Generally speaking, also, new corporations have a credit of 12% of invested capital and 75% of borrowed capital. Instead of \$10,000 exemption as in the last World War, now all corporations have an exemption of \$25,000 for excess profits tax purposes. IRC Sections 45 and 129 permit the Commissioner in certain instances to combine incomes of associated companies where division lacks a business purpose.

PROBATE INSTITUTE SCHEDULED FOR GREELEY

Probate problems of the average-sized estate will be the subject of the 1951 spring institute sponsored by the Weld County Bar Association for the benefit of Northeastern Colorado lawyers. This year's institute is scheduled for Saturday, March 31 in the Court-house at Greeley beginning at 1:00 p. m.

The institute panel is being furnished by the Colorado Bar Association Legal Institute Committee under the chairmanship of Charles H. Haines, Jr., and will be moderated by the Honorable C. Edgar Kettering, Denver county judge. Charles A. Baer will speak on recent decisions affecting administration, Barkley L. Clanchan will discuss practical administrative problems, Hubert D. Henry will cover actual drafting of a will for the average-sized estate, and Merrill A. Knight will explain the various devices for the transfer of assets without administration.

William H. Southard, chairman of the Weld County Bar Association committee sponsoring the institute, has announced that a social hour and dinner at the American Legion Home will follow the panel discussion. Chancellor Albert C. Jacobs of the University of Denver will be the dinner speaker.

The Weld County association has been holding these institutes for many years, and as usual expects to draw a large attendance from other associations in Northeastern Colorado, particularly the Boulder, Larimer and Thirteenth Judicial District bars.

PREACHER LONG SPREADS THE GOSPEL

Lawrence A. Long of Denver, lively chairman of the state association's Unauthorized Practice committee, has made a number of trips to local bar association meetings in the past several months as part of his campaign to alert lawyers to the dangers of unauthorized practice. On February 20 Mr. Long addressed a monthly meeting of the El Paso County Bar Association in Colorado Springs, and on March 6 he was the principal speaker for the semi-annual meeting of the Larimer County Bar Association in Fort Collins.