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Current Developments in Taxation

Albert J. Gould

Kenneth L. Smith

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Current Developments in Taxation

A MESSAGE FROM THE PRESIDENT OF THE COLORADO BAR ASSOCIATION

Although custom might require a fire-side chat from time to time, your president has not felt that he needed to be prolific in his dictation to *Dicta* for the reason that the Colorado Bar Association has such a talented group of committee chairmen that these gentlemen keep you advised of their activities in their own articles much better than the information could be relayed to you by me.

I have been and am enjoying my term of office and am pleased with my visits to local bar associations. There are only a few that I have not seen.

One matter of current interest deserves special mention; that of the selection of judges. The organized bar ought to assume responsibility for supplying the governor with the names of competent persons for appointment to the bench and we have had that opportunity recently.

Governor Dan Thornton has promptly called upon this association and the Denver Bar Association for advice in connection with his recent appointments to the Supreme Court and the District Courts. We greatly appreciate his consideration and have tried to respond in the most impartial manner, but firmly indicating our views as to qualifications and avoiding all political suggestions. Of course, he had much other advice, but we are pleased that the appointments were in line with our recommendations as to fitness.

It is my hope that the bar associations will have future opportunities similar in nature and, to meet these situations, some thought must be given to the problem of bar primaries. In Illinois there has been a situation which has called for careful consideration of and use of the bar primary and we may benefit from the experience there.

Our convention time approaches—October 25th, 26th and 27th. Look forward to another beneficial program at the Broadmoor.

Yours truly,

EDWARD G. KNOWLES

August 31, 1951

CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

of the Denver Bar

SALE OF LAND WITH GROWING CROPS

The Tax Court held in four cases (*Watson*, 15 TC No. 104;

McCoy, 15 TC No. 106; *Owen*, Docket No. 23638, 12-12-50; *Miller*, Docket Nos. 23192, 23193, 3-9-51) that part of the income on the sale of land is allocable as ordinary income to a growing crop on the basis that it constitutes property held for sale to customers. The United States District Courts of Florida (*Irrgang v. Fahs*, U.S.D.C. S.D. Fla., dec. 12-14-50) and California (*Cole v. Smyth*, 96 F. Sup. 745) have held that a growing crop is a capital gain item in that taxpayers are in the business of selling a mature product and therefore an immature crop sold with the land does not constitute property held for sale to customers.

This problem is presently pending on appeal to the 5th, 9th and 10th Circuits of the United States Court of Appeals, which should be followed with interest.

**GAIN REALIZED BY LESSEE UPON SURRENDERING AN UNEXPIRED
LEASE TO THE LESSOR**

In *Isadore Golonsky, et al*, 16 TC 177, lessee occupied certain premises under a year-to-year lease, which had three months to run. A new owner lessor gave notice of termination at the end of the current term and the lessee agreed to vacate the premises and terminate the lease for \$7,500.00. Commissioner contended that this amount was ordinary income. The Tax Court held that the income received was in the nature of the proceeds of a sale and hence taxable as capital gain.

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