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Current Developments in Taxation

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CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

of the Denver Bar

DEDUCTIBLE EXPENSES BY CORPORATE EMPLOYEES

In *Henricks*, TC Memo, 11-8-49, a salesman was allowed to deduct expenses made by him out of pocket for which he was not reimbursed. Although he was employed by a corporation, it was within the purview of the contract of employment that he should make said expenditures and his salary was established upon that basis.

The court found: "There are many expenses incidental to selling which the salesman is not expected to recover from the Company on top of his salary . . . Management does not expect an expense account to contain every phone call, every taxi ride, every luncheon, and every drink bought by a salesman in the course of his business, and social existence."

The above decision is important because the Bureau ordinarily insists that expenditures made by a corporate officer out of his funds are not deductible.

NEW TAX BILL

One of the most important provisions of the new 1950 tax bill permits complete liquidation of a corporation in any month in the year 1951, subject to certain conditions which should be studied carefully.

Briefly, complete liquidation of a corporation in any month of the year 1951 may be accomplished if the earned surplus account is treated as a dividend. In many cases, the income tax to be paid on the earned surplus account treated as a dividend will be much less than the capital gains tax, which is postponed until the assets received in liquidation are disposed of.

NEW EXCESS PROFITS TAX—MAYBE NOT

The Bureau of Internal Revenue opposes a new excess profits tax because of difficulty of administration and because it is inflationary and promotes extravagance by corporations subject to the tax. The President's counsel of economic advisors is inclined to agree with the Bureau.

It seems likely that increased corporate tax rates, at least on larger corporations, may be adopted in lieu of excess profits tax.

REFUND AFTER WAIVER

Section 322, IRC, has been amended to grant the taxpayer the same time to file claim for refund as the Commissioner has to propose a deficiency after waiver of the statute of limitations by the taxpayer.

THIN CORPORATION

In *Isador Dobkin*, 15 T. C. No. 6, a doubtful decision, the Tax Court in effect transferred to capital a payment by the taxpayer to the corporation which the taxpayer intended should be a loan. If sustained, this decision would establish the principle that a large disproportion between debt and risk capital in a new corporation is improper. There is no statute to sustain this conclusion.

This most unusual decision should be studied carefully by any attorney contemplating incorporation of a company with small invested capital in which a large debt or loan is to provide capital known to be necessary at the time of incorporation. We believe this decision turns upon facts not ordinarily present in the organization of a small closed corporation.

FROM THE EDITOR'S MAIL BAG

Hon. Floyd F. Miles, D. J. (Ret.)
 State House, Secretary,
 The Colorado Board of Law Examiners.
 Dear Sirrah:

Herewith is a letter from one Mr. X inquiring as to the possibilities of being admitted to the Colorado bar on a correspondence school diploma. The merits of his case I leave to your infinite wisdom, but I would have you note that his letter was forwarded to me from Miss Merritt of the National Conference of Bar Examiners. Evidently she is unaware that you, Sire, are the Lord High Executioner on bar admission requirements. And thus we have Merritt to Miller to Miles, which, at least alliteratively, is far superior to that old baseball combination Somebody to Evers to Chance.

Respectfully yours,
 W. B. MILLER.

W. Miller, Esquire,
 Plenipotentiary Extraordinary Without Portfolio,
 Colorado Bar Association.
 My Dear William:

Had you devoted your life to the acquiring of ignorance in baseball lore, you could not have graduated with higher honors. The man's name was "TINKER" T-I-N-K-E-R. Write that down so you will not forget it. "Tinker to Evers to Chance."

Concerning Brother X who wishes to become a lawyer by way of a correspondence school of law: He doesn't sound promising to me, although he might develop into pretty fair material for a Bar Association Secretary. I shall write to him and suggest that he stick to the Real Estate business, since in that way he can, and no doubt will, follow the path carved by his associates in the business and practice law without the necessity of going to college and taking the bar examination.

Believe me, Sir, your most humb'l and ob'dt ser'vt,

FLOYD F. MILES.