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Editors' Preface - Symposium: Federal Taxation

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EDITORS' PREFACE

Tax Symposium.—This issue includes the *Review's* seventh annual *Symposium on Federal Taxation*. The articles are based on lectures presented in November 1964, at the Annual Cleveland Regional Tax Institute sponsored by the Cleveland Bar Association with the cooperation of the Western Reserve Law School and the Cleveland Bar Foundation. The *Review's* staff thanks its contributors for preparing the articles and for their cooperation while these articles were processed for publication. The staff is especially grateful to Harold E. Friedman of the Tax Institute Publication Committee for his assistance in preparing the articles for publication.

This year the *Symposium* covers three areas of Federal Taxation which are of pressing interest to tax attorney and general practitioner alike. The first part of the *Symposium* is devoted to a depth analysis of a topic characterized by many tax experts as the most important single factor in estate planning today — the marital deduction. The first article in this part discusses when and how to use the marital deduction. Following this is an examination of marital deduction pitfalls and drafting problems. Here, the author devotes particular attention to terminable interests, which he describes as “the most prolific cause of marital deduction litigation.”

Another important and controversial development in the federal estate tax in recent years involves the application of Revenue Procedure 64-19 to pecuniary formula marital deduction bequests. Mr. Sugarman discusses this subject in the third article on current marital deduction problems. After setting out the Service position with respect to Rev. Proc. 64-19, the author offers a few timely suggestions as to possible steps to be taken in light of that position. As an aid to draftsmen, an appendix is provided at the end of this article containing, among other things, examples of basic pecuniary and fractional share formula language and typical forms of agreement to be executed by the surviving spouse and by executors or trustees pursuant to Rev. Proc. 64-19. This is followed by the fourth article which is directed to a discussion of the limitations and restrictions imposed by certain sections of the 1954 Code on a widow's rights or interests in property which can materially affect the marital deduction. Administrative problems involving marital deduction gifts comprise the subject of the fifth and final article in the series on marital deduction problems. Here, the author focuses attention generally on operational matters involving the marital deduction which occur after

a decedent's death and in particular on the impact of Rev. Proc. 64-19 with respect to certain fiduciary administrative practices in the funding of marital deduction gifts.

The second part of the *Symposium* is directed to an analysis of adjusted personal holding company income concepts under the Revenue Act of 1964. The presentation here re-examines the requirements for classification as a personal holding company and the dividends paid reduction for liquidating distributions in light of the 1964 Act. Certain relief provisions, including deduction for payment of qualified indebtedness and special liquidation rules, are also explored in the concluding portions of this part of the *Symposium*. The third part of the *Symposium* presents an article dealing with new treatment of multiple corporations under the 1964 Act. In this article, the authors examine Congress' attempt in the 1964 Act "to encourage corporations that are part of a single corporate family to be treated on a unified basis for federal income tax purposes." The authors' conclusion on this point is that the new act presents a multi-corporate enterprise with numerous and difficult alternatives, particularly the traditional hurdles of sections 61, 269, 482, and the expanded section 1551.

Ohio's Physician-Patient Privilege.—In addition to the tax *Symposium*, this issue of the *Review* contains two articles of general interest. In his article on physician-patient privilege, Mr. O'Neill reveals how the Ohio privilege works in real life. He states that "there is a crisis in the administration of justice in civil jury cases," and "the physician-patient privilege lies close to the heart of that crisis." The solution: Reform. Accordingly, the author commends "to the good graces of all those concerned with the effective administration of justice in the personal injury field" a draft of a bill to amend the physician-patient privilege statute in Ohio. Mr. O'Neill admits, however, that plaintiffs' counsel may react adversely to such a bill. The *Review*, therefore, takes this opportunity to extend an invitation to plaintiffs' counsel to present a rebuttal in a future issue.

Private Trusts.—The final lead article in this issue presents a thorough examination of the duration and indestructibility of private trusts. The author first discusses the problem of trust duration and the policy underpinnings of a rule limiting direct or indirect restraints on interests held in trust. The second portion of the article focuses attention on the question of indestructibility; more specifically on when a trust is destructible, and on the effect of the rule against prolonged indestructibility. In toto, this article explores an area of the law on which there has been very little written. The *Review* is therefore confident that it will prove to be an invaluable aid to both trust attorney and general practitioner.

Symposium: Federal Taxation

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