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Tax Factors in Real Estate Operations (2d ed.), by Paul E. Anderson

Arnold W. Reitze Jr.

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BOOK REVIEW

TAX FACTORS IN REAL ESTATE OPERATIONS (2d ed.). By Paul E. Anderson. Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1967. Pp. xii, 436. $15.00.

This text was first published in 1960. It was revised in 1965 and a third printing was produced in 1967. As taxation materials become outdated rapidly, the fact that a text several years old is reprinted without revision would seem to warrant comment.

In each generation a few books appear which can be said to be unique and, therefore, will continue to be reprinted. In the tax field, for example, the late Louis Eisenstein[1] produced such books. The question, therefore, that can be posed is: Does this text fall into such a category? Unfortunately, it does not. Moreover, the nature of the text is such that it cannot since it does not attempt to challenge one's mind or to present ideas, but, rather, is a survey text of the federal taxation law that is applicable to real estate operations. As such, it must be evaluated for its capacity to present accurate information to anyone seeking knowledge of the subject. Presumably the audience for this information includes not only lawyers but also nonlawyer accountants, real estate dealers, and those with the ability to earn large amounts of money in real estate without knowing why.

Perhaps this latter class, or at least those who would join it, are the audience that the writer is interested in reaching, for the discussion which opens the volume compares the relative returns after taxes to investors in real estate and common stocks. The important difference in tax treatment is dramatically illustrated. However, the comparable disadvantages of real estate investments, such as the additional risk of the investment, the greater management burden, the inability of a small investor to diversify, the effect of leverage in a declining market, and the lack of liquidity of a real estate investment are ignored. One, therefore, must resist the urge to buy real estate, in order to progress through the book.

The text opens with a preface which informs its readers that significant changes in the tax laws have required revisions to keep the book up to date. There is a good table of contents, followed by 1,194 grams of pre-1965 tax law. Even assuming that law of this vintage is of interest to the reader, this book suffers from the superficial coverage that necessarily inheres in any one-volume work

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1 *E.g.*, L. EISENSTEIN, THE IDEOLOGIES OF TAXATION (1961).

on this subject. It is comprehensive, as claimed, dealing with the usual tax problems relating to the purchase and sale of real property as well as the more esoteric problems found in real estate investment trusts, cooperatives and condominiums, and in the compromising of mortgage debts. With this inclusive approach, the thoroughness of treatment given to the various aspects of real estate taxation differs.

Areas of the field covered particularly well in this volume are mortgage foreclosures and cancellations, the use of leases, the means of taking title, and hybrid financing. The most superficial coverage is that devoted to corporations. Attempting to survey all of the tax problems of corporations dealing with real estate transactions in 44 pages is patently inconsistent with an in-depth approach. This chapter is so cursory that its utility is marginal at best. For example, the problems of cooperatives and condominiums are covered in 5 pages and subchapter S corporations[2] are disposed of in 1 page. Of course, section 1378 of the *Internal Revenue Code*, added in 1966, is not mentioned, although this section places additional limitations on electing corporations. Some of the other subjects covered in this short chapter are: tax-free incorporation and taxable incorporation, thin incorporation problems, accumulated earnings, personal holding companies, dividend treatment, collapsible corporations, liquidations, and reorganizations. It is a dramatic but ill-fated cavalry charge.

Another weakness of the book is the discussion of depreciation found in chapter 3 entitled "Ownership and Operation of Real Property." Factors adversely affecting its effectiveness are the changes in the law,[3] plus the inadequate treatment of the investment credit provisions.[4] The material on soil and water conservation, as well as agricultural real estate problems in general, is sketchy, and will be inadequate for some readers.

The text thus avoids the criticism of lack of comprehensive coverage by being superficial. One of these criticisms is inevitable. However, more important to the professional reader is accuracy.

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[2] INT. REV. CODE OF 1954, §§ 1371-77 [hereinafter cited as CODE].

[3] For example, Fribourgh Navigation Co. v. Commissioner, 383 U.S. 272 (1966) now controls depreciation in the year of the sale.

[4] Investment credit, CODE § 46, and accelerated depreciation, CODE § 167, were suspended (Pub. L. No. 89-800 (Nov. 8, 1966)) and then returned March 10, 1967. Also of interest is the use of investment credit provisions to lower personal income taxes by purchasing appropriate property and leasing it to corporations by persons with a tax bracket exceeding that of corporations (48%). *See* Rock, *Equipment Leasing and the Investment Credit*, 46 TAXES 4 (1968).

This book has no provision for regular supplementation, yet it deals with a rapidly changing field of learning. For example, the author deals with the question of whether a dealer can hold real estate for investment[5] without mentioning *Malet v. Riddell*,[6] a relevant and important case decided by the United States Supreme Court prior to the book's third printing. There is certainly no mandate that the publisher keep his texts up to date, but he can at least print books that are current at the time of printing.[7] This book, then, can be recommended to anyone seeking a superficial, general survey, of selected portions of the pre-1965 federal taxation of real estate operations.

The title page of the 1965 edition quoted Aldous Huxely: "Every man who knows how to read has it in his power to magnify himself to multiply the ways in which he exists to make his life full, significant and interesting." In the third printing this was removed. It is the only discoverable change. Perhaps this is significant!

ARNOLD W. REITZE, JR.*

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5 P. ANDERSON, TAX FACTORS IN REAL ESTATE OPERATIONS 18 (2d ed. 1967).

6 383 U.S. 569 (1966).

7 20 ABA TAXATION SECTION, July 1967, at 278-82; 19 ABA TAXATION SECTION, July 1966, at 252-55 illustrate many more changes in the volatile substantive law of the taxation of real estate.

* Associate Professor of Law. Case Western Reserve University.