
The
JOURNAL of
AMERICAN
TAXATION
ASSOCIATION



Main Articles

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Robert F. Gary

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David G. Harris and Emre Kilic
Discussion: David A. Guenther

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Summaries of Papers in This Issue

Book Reviews

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Editor

Richard C. Sansing
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Associate Editor for
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Jay A. Soled
Rutgers University

A PUBLICATION OF THE TAX SECTION OF THE AMERICAN ACCOUNTING ASSOCIATION

Volume 31, Number 2

Fall 2009

Contents

MAIN ARTICLES

- The Effects of the Capital Gains Tax Rate and Expectations of Subsequent Firm Performance on CEO Stock Ownership
Robert F. Gary. 1
- Bilateral Implicit Taxes and Anti-Competitive Banking Regulation
David G. Harris and Emre Kilic. 45
Discussion: David A. Guenther. 75
- The Effects of Rate Limits on Property Tax Revenues and School Expenditures: Evidence from Texas
Elizabeth Plummer and Robert J. Pavur. 81
- Summaries of Papers in This Issue. 109

BOOK REVIEWS

- MARK L. ASHER AND ROBERT T. DANFORTH, *Federal Income Taxation of Trusts and Estates: Cases, Problems, and Materials*
Jay A. Soled. 113
- STEVEN A. BANK, KIRK J. STARK, AND JOSEPH J. THORNDIKE, *War and Taxes*
Sheldon D. Pollack. 114
- RICHARD BIRD AND PIERRE-PASCAL GENDRON, *The VAT in Developing and Transitional Countries*
Andrew Lymer. 117
- ALVIN RABUSHKA, *Taxation in Colonial America*
Darwin L. King. 119

or (2) skip some of the book's less important topics (e.g., the section of the book that covers the assignment of income doctrine) or cover some topics much more lightly (e.g., Chapter 5, which pertains to taxpayers' attempts at manipulating Subchapter J).

There are several items about this edition of the book that are outstanding. First and foremost, the problems that the authors craft are very heuristic in nature. They help students understand and conceptualize the issues at hand. What complements the problems set forth in the text is an excellent teacher's manual that thoroughly explains each problem and, furthermore, is sprinkled with valuable chapter insights. Another item about this book that should not be overlooked is the thoroughness of the authors' research: each book chapter is replete with citations to a plethora of cases, administrative rulings, and private letter rulings. Finally, kudos to the authors in their case selection: they have culled the most authoritative Subchapter J decisions available.

The book does not suffer from any specific deficiencies, but there is some room for improvement. While some might consider it sophomoric, the authors should seriously consider adding a series of short problems involving a simple trust with no capital gains, a simple trust experiencing capital gains, a complex trust, an estate, and a grantor trust and demonstrate how the outcome of these problems would appear on accompanying Forms 1041 and K-1. Completion of these returns would punctuate the course material with life, greatly assisting students with Subchapter J mastery. With respect to the next edition, the authors also should consider jettisoning Chapter 5, which does not have too much relevance for most practitioners, and replacing this material with a chapter on charitable trusts. Although charitable and noncharitable trusts are different in nature, understanding their similarities may help students better comprehend the entirety of Subchapter J.

The book's second edition was completed more than ten years ago in 1996. This new edition represents an excellent update. But I, like many others, have high expectations that with the two current brainpowers at the helm, the fourth edition (whenever it is released) can leapfrog this book to an even higher plateau.

JAY A. SOLED
Professor

Rutgers University

STEVEN A. BANK, KIRK J. STARK, AND JOSEPH J. THORNDIKE, *War and Taxes* (Washington, D.C.: Urban Institute Press, 2008, pp. 1–224, \$26.50).

Tax law is produced in the United States through a complex process that involves Congress (especially the two tax-writing committees) as well as the White House, which is the source of numerous legislative initiatives implementing fiscal policies from the president's political agenda. Furthermore, the porous legislative process provides countless opportunities for input (i.e., influence) from organized interest groups. In the end, most of the tax legislation generated by this process involves "tinkering at the margins"—i.e., marginal adjustments to existing law. The kind of omnibus tax legislation that has been commonplace since the 1970s is largely a hodgepodge compilation of marginal tax adjustments. Accordingly, political scientists use a pluralist-incremental model to describe the "normal politics" of the federal income tax.

The problem with the pluralist-incremental model is that it fails to explain the many sudden departures from the normal politics that otherwise characterizes the tax legislative

process. Tax policymaking is characterized by stable normal politics marked by periodic breakpoints—what political scientist Walter Dean Burnham refers to as “punctuated equilibria.” Dramatic events such as the Tax Reform Act of 1986 cannot be explained by the pluralist-incremental model or a majoritarian model of party politics. TRA 1986 was a once-in-a-lifetime event as the Republican majority (including supply-side “policy entrepreneurs,” pro-investment Republicans, and antitax conservatives) joined forces with liberal Democrats and southern conservative Democrats in an unprecedented coalition for reform that *both* lowered marginal tax rates and eliminated a host of preferences that had crept into the tax code during preceding decades. This historic legislation was outside of the pluralist politics and incremental decision making that otherwise has characterized postwar tax policymaking.

Beyond the difficulty in explaining such periodic breakpoints as major tax reform legislation, the pluralist-incremental model fails to explain the significant structural changes made to the tax regime during periods of war. The dynamics of wartime tax policymaking is markedly different than that of the normal politics that prevails during peacetime. The impact of war on the tax code has not gone unnoticed in the academic literature, but, fortunately, we now have a single volume devoted to the major tax legislation enacted during the major military engagements fought by the United States. In *War and Taxes*, Steven Bank and Kirk Stark (both of UCLA School of Law) and Joseph J. Thorndike (a historian who serves as the director of the Tax History Project at Tax Analysts) provide a detailed account of how the federal tax laws have been regularly restructured during periods of “total war.” Based upon their investigation, Messieurs Stark, Bank, and Thorndike conclude: “War has been the most important catalyst for long-term, structural change in the nation’s fiscal system.”

While the authors offer no alternative model for how tax policy is made during war, they do provide a thorough history of wartime legislation and draw several important conclusions. In particular, they refute the common perception that wartime tax increases in the U.S. have been facilitated by a “strong tradition of wartime fiscal sacrifice.” In fact, the historical record is considerably more complex.

War and Taxes begins with a short chapter on the American Revolution and the War of 1812. The national government suffered severe revenue shortages during the Revolution and subsequently during the Confederacy. The weak revenue powers of the national government under the Articles of Confederation was a major catalyst for the movement to draft a new constitution that would enhance the fiscal capacity of the national government. The new tax powers granted to Congress under the Constitution of 1787 were put to good use during the War of 1812, when a host of wartime internal taxes were enacted to support the federal military. But that military engagement had little long-term impact on the fiscal system of the United States. On the other hand, the Civil War had a profound influence on the subsequent development of the American states. Chapter 2 describes how the fiscal powers of the federal government were greatly expanded during the four years of total war fought to preserve the Union.

Competent chapters on tax policy during World War I and World War II follow. This territory has been covered before (most notably by Elliot Brownlee and John Witte). Nevertheless, the authors provide a useful summary of the important tax legislation enacted during the two world wars and is worth reading. Contrary to prior experience, the changes enacted during World War II (e.g., broadening the tax base and lowering personal exemptions to subject a majority of Americans to a new “mass” income tax) were not withdrawn after the war, as they had been following the Civil War and World War I. Furthermore, additional tax increases were enacted during the Korean War as the Ameri-

can military remained fully mobilized in the early 1950s. The great military conflicts of the 1940s and 1950s established the parameters of tax policymaking in the postwar era.

The chapter on tax policy during the “limited wars” fought in Korea and Vietnam is a particularly welcome addition to the literature, as the impact of these military conflicts is often slighted in the standard histories of federal tax policy. The authors contrast Harry Truman’s vigilant efforts to raise taxes for the war in Korea with Lyndon Johnson’s reluctance to raise taxes for the Vietnam War. Johnson’s attempt to have both “guns and butter” belies claims that America sacrifices during periods of war by raising taxes. Johnson did not want to divert funds from his Great Society programs and delayed tax increases (a 10 percent surtax) for nearly two years. The authors conclude that politicians face a short window of opportunity during which they must “strike while the iron is hot” before bipartisan support for tax increases dissipates. In the later case, Johnson waited too long.

Perhaps the most original contribution of this book is the final chapter on “9/11 and the War in Iraq.” Here, the authors evaluate from a broader historical perspective the Bush tax cuts, which were unusual in that they were enacted *after* the terrorist attacks on the United States and the commencement of military operations in Afghanistan and Iraq. The stated purpose of the Republican tax cuts was to stimulate the domestic economy, and there is little doubt that they did that to some extent. But the critical issue is whether such benefits were offset by the negative consequences from the related increase in the public debt. The budget surplus enjoyed in fiscal year 2000 (as well as the Congressional Budget Office’s projection of a forthcoming \$2.4 trillion dollar surplus) immediately disappeared, and the national debt soared in the wake of reduced public revenue. A good deal of the deficit was attributable to increased military expenses devoted to the war effort. But according to a report from the Center on Budget and Policy Priorities, more than half of the deterioration of the budget position from 2001 to 2006 was attributable to the Bush tax cuts. Based on this, the authors conclude that Bush’s policy of “aggressively reducing federal tax revenue while simultaneously pursuing a war abroad” was unprecedented in American history. It is too early to fully comprehend the long-term economic consequences of this fiscal policy, but it is clear that it contrasts sharply with prior experience when policymakers relied on a combination of loans and tax increases to finance America’s participation in major military conflicts. In an insightful conclusion, the authors identify the factors that led politicians down this path: historically low inflation rates, a decreased concern with budget deficits, and the elimination of the draft (which, in the past, was used to justify increased taxes on corporations and those who did not serve). Apparently, in the new political environment, war and taxes need not go together hand in hand.

War and Taxes is a useful addition to the literature on U.S. tax policy. It would be suitable for an undergraduate course on income taxation as well as a law school course on federal tax policy. Political scientists who otherwise study the “normal politics” of federal taxation will want to read this informative study of how tax policy is made during periods of war.

SHELDON D. POLLACK

Professor

University of Delaware