

案例教程影印系列  
CASEBOOK  
SERIES

第三版 Third Edition

# 公司与合伙的联邦所得税

## FEDERAL INCOME TAXATION OF CORPORATIONS AND PARTNERSHIPS

[美] 理查德·L·德翁伯格 (Richard L. Doernberg) / 著  
霍华德·E·阿布拉姆斯 (Howard E. Abrams)



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## 公司与合伙的联邦所得税

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# 总 序

吴志攀

加入世界贸易组织表明我国经济发展进入了一个新的发展时代——一个国际化商业时代。商业与法律的人才流动将全球化，评介人才标准将国际化，教育必须与世界发展同步。商业社会早已被马克思描绘成为一架复杂与精巧的机器，维持这架机器运行的是法律。法律不仅仅是关于道德与公理的原则，也不单单是说理论道的公平教义，还是具有可操作性的精细的具体专业技术。像医学专业一样，这些专业知识与经验是从无数的案例实践积累而成的。这些经验与知识体现在法学院的教材里。中信出版社出版的这套美国法学院教材为读者展现了这一点。

教育部早在2001年1月2日下发的《关于加强高等学校本科教学工作提高教学质量的若干意见》中指出：“为适应经济全球化和科技革命的挑战，本科教育要创造条件使用英语等外语进行公共课和专业课教学。对高新技术领域的生物技术、信息技术等专业，以及为适应我国加入WTO后需要的金融、法律等专业，更要先行一步，力争三年内，外语教学课程达到所开课程的5%-10%。暂不具备直接用外语讲授条件的学校、专业，可以对部分课程先实行外语教材、中文授课，分步到位。”

引进优质教育资源，快速传播新课程，学习和借鉴发达国家的成功教学经验，大胆改革现有的教科书模式成为当务之急。

按照我国法学教育发展的要求，中信出版社与外国出版公司合作，瞄准国际法律的高水平，从高端入手，大规模引进畅销外国法学院的外版法律教材，以使法学院学生尽快了解各国的法律制度，尤其是欧美等经济发达国家的法律体系及法律制度，熟悉国际公约与惯例，培养处理国际事务的能力。

此次中信出版社引进的是美国ASPEN出版公司出版的供美国法学院使用的主流法学教材及其配套教学参考书，作者均为富有经验的知名教授，其中不乏国际学术权威或著名诉讼专家，历经数十年课堂教学的锤炼，颇受法学院学生的欢迎，并得到律师实务界的认可。它们包括诉讼法、合同法、公司法、侵权法、宪法、财产法、证券法等诸多法律部门，以系列图书的形式全面介绍了美国法律的基本概况。

这次大规模引进的美国法律教材包括：

**伊曼纽尔法律精要 (Emanuel Law Outlines)** 美国哈佛、耶鲁等著名大学法学院广泛采用的主流课程教学用书，是快捷了解美国法律的最佳读本。作者均为美国名牌大学权威教授。其特点是：内容精炼，语言深入浅出，独具特色。在前言中作者以其丰富的教学经验制定了切实可行的学习步骤和方法。概要部分提纲挈领，浓缩精华。每章精心设计了简答题供自我检测。对与该法有关的众多考题综合分析，归纳考试要点和难点。

**案例与解析 (Examples and Explanations)** 由美国最权威、最富有经验的教授所著，这套丛书历

经不断的修改、增订，吸收了最新的资料，经受了美国成熟市场的考验，读者日众。这次推出的是最新版本，在前几版的基础上精益求精，补充了最新的联邦规则，案例也是选用当今人们所密切关注的问题，有很强的时代感。该丛书强调法律在具体案件中的运用，避免了我国教育只灌输法律的理念与规定，而忽视实际解决问题的能力培养。该丛书以简洁生动的语言阐述了美国的基本法律制度，可准确快捷地了解美国法律的精髓。精心选取的案例，详尽到位的解析，使读者读后对同一问题均有清晰的思路，透彻的理解，能举一反三，灵活运用。该丛书匠心独具之处在于文字与图表、图例穿插，有助于理解与记忆。

**案例教程系列 (casebook series)** 覆盖了美国法学院校的主流课程，是学习美国法律的代表性图书，美国著名的哈佛、耶鲁等大学的法学院普遍采用这套教材，在法学专家和学生中拥有极高的声誉。本丛书中所选的均为重要案例，其中很多案例有重要历史意义。书中摘录案例的重点部分，包括事实、法官的推理、作出判决的依据。不仅使读者快速掌握案例要点，而且省去繁琐的检索和查阅原案例的时间。书中还收录有成文法和相关资料，对国内不具备查阅美国原始资料条件的读者来说，本套书更是不可或缺的学习参考书。这套丛书充分体现了美国法学教育以案例教学为主的特点，以法院判例作为教学内容，采用苏格拉底式的问答方法，在课堂上学生充分参与讨论。这就要求学生不仅要了解专题法律知识，而且要理解法律判决书。本套丛书结合案例设计的大量思考题，对提高学生理解概念、提高分析和解决问题的能力，非常有益。本书及时补充出版最新的案例和法规汇编，保持四年修订一次的惯例，增补最新案例和最新学术研究成果，保证教材与时代发展同步。本丛书还有配套的教师手册，方便教师备课。

**案例摘要 (Casenote Legal Briefs)** 美国最近三十年最畅销的法律教材的配套辅导读物。其中的每本书都是相关教材中的案例摘要和精辟讲解。该丛书内容简明扼要，条理清晰，结构科学，便于学生课前预习、课堂讨论、课后复习和准备考试。

除此之外，中信出版社还将推出教程系列、法律文书写作系列等美国法学教材的影印本。

美国法律以判例法为其主要的法律渊源，法律规范机动灵活，随着时代的变迁而对不合时宜的法律规则进行及时改进，以反映最新的时代特征；美国的法律教育同样贯穿了美国法律灵活的特性，采用大量的案例教学，启发学生的逻辑思维，提高其应用法律原则的能力。

从历史上看，我国的法律体系更多地受大陆法系的影响，法律渊源主要是成文法。在法学教育上，与国外法学教科书注重现实问题研究，注重培养学生分析和解决问题的能力相比，我国基本上采用理论教学为主，而用案例教学来解析法理则显得薄弱，在培养学生的创新精神和实践能力方面也做得不够。将美国的主流法学教材和权威的法律专业用书影印出版，就是试图让法律工作者通过原汁原味的外版书的学习，开阔眼界，取长补短，提升自己的专业水平，培养学生操作法律实际动手能力，特别是使我们的学生培养起对法律的精细化、具体化和操作化能力。

需要指出的是，影印出版美国的法学教材，并不是要不加取舍地全盘接收，我们只是希望呈现给读者一部完整的著作，让读者去评判。“取其精华去其糟粕”是我们民族对待外来文化的原则，我们相信读者的分辨能力。

是为序。

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## PREFACE

This book traces its ancestry back to Professor Bittker's one-volume Federal Income Taxation casebook, published in 1955. Over the years, virtually every section of the Internal Revenue Code has been amended, almost always in the direction of greater complexity. Professor Bittker's original work has split three-for-one with separate volumes on individual, transfer, and corporate taxation. This book is the third edition of the volume on corporate taxation. With the increasing importance of partnership taxation in the world of commerce, this third edition combines both corporate and partnership taxation in a single volume that can be used to teach corporate taxation, partnership taxation, or a course that combines both areas.

Ironically, increasing complexity in the world of tax demands a more principled and straightforward treatment of teaching materials than ever before. It is no longer possible (and certainly not desirable) in an introductory business taxation course to tame the sea of minutiae that now comprise subchapters C, K, and S. Instead, it is our hope that through a thoughtful and orderly presentation of the themes that permeate the taxation of business entities, readers will develop the sophistication and expertise necessary to confront new challenges in the practice of law.

We have tried to listen to recommendations of past users in writing the third edition. To that end, we have updated every chapter of the book, interspersing new examples and problems throughout. Recent legislative and administrative developments have been integrated into the discussion. New cases and rulings have been added where helpful, and outdated cases and rulings have been removed. The materials selected for the book are deliberately noncomprehensive. We have tried to choose illustrative cases that not only describe typical commercial transactions but also emphasize major themes that run through the provisions dealing with entity taxation. It is our belief that the book can be covered in a three- or four-hour course, but it can easily be adapted to a two-hour course as well.

The taxation of business entities is a difficult subject even under the best of circumstances. We have tried not to “hide the ball.” Our approach is to make liberal use of examples and to simplify some of the intricacies. We have no doubt that, notwithstanding our approach, students will be left with plenty to ponder. We have tried to clear away some of the underbrush so that students can contemplate the forest. In addition to the cases and note materials, the book features problems in almost every chapter. They can be used to lead students through the fundamentals of the tax provisions and can form a centerpiece for discussion of the cases and notes.

In exploring the tax consequences of business entities, the third edition is divided into three parts. Part I deals with the classical double tax system: tax at the corporate level, and tax at the shareholder level, embodied in subchapter C. Bridging Parts I and III is Part II’s discussion of subchapter S, which contains elements of both subchapters C and K. Part III addresses the pass-through paradigm of partnership taxation laid out in subchapter K, where partners are taxed directly as the partnership earns income.

Each part unfolds in a manner calculated to help students master the concepts within. Part I uses a “cradle-to-grave” approach to reveal the mysteries of subchapter C. Starting with the formation of a corporation, including the capital structure, this part discusses the tax implications of corporate operation at the corporate level. Then nonliquidating distributions are considered, followed by liquidating distributions. Part I considers the world of corporate acquisitions and other reorganizations, both taxable and nontaxable. Several chapters on important aspects of corporate operation such as penalty provisions wrap up Part I.

Part II first looks at the operation of S corporations with no subchapter C history, then turns to the treatment of S corporations that had previously been C corporations and have elements of both subchapters C and S.

Part III explains the taxation of partnerships. Starting with the structure of partnership taxation, this part turns to the seminal issue in partnership taxation—determining distributive shares. It then proceeds to discuss the treatment of distributions, a partner’s transactions with the partnership, acquisition and disposition of partnership interests, and a variety of partnership-level issues.

Students of taxation must possess an eye-hand coordination not required of other students. Not only must they read and study the casebook, but at the same time they must consume the Internal Revenue Code and corresponding regulations. The ability to read two or more things at the same time is a residual benefit one receives from the study of taxation. The book refers to the Code constantly. Rather than reproducing its splendor, the authors rely on students to study the Code as they study the book.

Students should not hesitate to consult additional references when interested. Bittker and Eustice’s *Federal Income Taxation of Corporations and*

*Shareholders* (6th ed. 1998) with supplementation is a student's ready companion, offering lucid and more detailed explanations of all areas of corporate taxation. For partnership taxation issues, students may want to consult McKee, Nelson, and Whitmire, *Federal Taxation of Partnerships and Partners* (3d ed. 1997) with supplementation.

A few ministerial comments are in order at this point. First, the book makes ample use of cross-references because corporate tax provisions do not operate in a vacuum. As students learn more and more pieces of the subchapter C puzzle, the pieces will begin to interrelate and form a pattern. Second, the cases have been edited to feature the salient points. We have endeavored to indicate the omissions, but readers should be aware that citations and footnotes in the cases have often been omitted or abridged. Third, we have tried to incorporate some of the themes developed in the individual tax course. Assignment of income, the value of deferral, the interplay of the original issue discount rules with the installment sales rules, and the concepts of recapture are often invoked in the context of corporate transactions. Fourth, while we hope the book has a certain timeless quality to it, we would be remiss if we did not note that it is current through July of 1999.

The authors are greatly indebted to Professor Boris Bittker and Lawrence Stone who were co-authors on previous editions of this book. We express our gratitude to Mr. Fred T. Witt for his insights into the complex issues surrounding cancellation of indebtedness generally as well as his great help in the section on bankruptcy reorganizations more particularly. Lori Brenner, Seth Finkell, Allison Myers, and David Voss provided able research assistance. Finally, we would like to thank the American Law Institute for permission to reprint an excerpt from the Reporter's Study of Corporate Tax Integration (Federal Income Tax Project 1993). Copyright © 1993 by the American Law Institute. Reprinted by permission.

Howard E. Abrams  
Richard L. Doernberg

August 1999



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