

STATE AND LOCAL TAXATION

CASES AND MATERIALS

Eighth Edition

Jerome R. Hellerstein

Walter Hellerstein

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STATE AND LOCAL TAXATION

CASES AND MATERIALS

Eighth Edition

By

Jerome R. Hellerstein

*Late Professor of Law Emeritus, New York University
School of Law*

Walter Hellerstein

*Francis Shackelford Professor of Taxation,
University of Georgia School of Law*

Contributing Author

Joan M. Youngman

Senior Fellow, Lincoln Institute of Land Policy

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610 Opperman Drive

P.O. Box 64526

St. Paul, MN 55164-0526

1-800-328-9352

Printed in the United States of America

ISBN 0-314-15376-4



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



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*Jerome R. Hellerstein, the senior author of this casebook,
passed away on September 23, 2000. This book reflects
his life's work. It is now dedicated to his memory.*

*

Preface

The first edition of this casebook was published over half a century ago in 1952. Since that time, the field of state and local taxation has undergone dramatic changes. Tax revenues collected by state and local governments have increased almost fifty-fold, rising from some \$21 billion in 1952 to \$968 billion in 2004. These astronomical tax increases, which reflect comparable increases in state and local government expenditures, are attributable in part to inflation. But a substantial portion of the increase is also attributable to the broadening of the nature and scope of state and local government services. Beyond augmenting their tax collections to meet the increased costs of traditional services such as education, welfare, and police protection, states have been required to raise revenues to fund additional services such as Medicaid and environmental protection. In so doing, state and local governments have been compelled not only to raise tax rates under existing levies, but also to enact new taxes.

Fifty years ago, state sales taxes were in force in 34 states, were confined largely to sales of tangible personal property, and their rates averaged between two and three percent. Today state sales taxes are in force in 45 states, they apply to an increasing number of services, and their rates average between five and six percent. Fifty years ago, 33 states imposed general personal income taxes and 35 states imposed general corporate net income taxes. Today, 41 states impose general personal income taxes and 44 states impose general corporate net income taxes. Moreover, during the past 50 years, states have enacted a variety of new taxes on admissions, occupancy, unincorporated businesses, and other activities. There has also been a proliferation of local tax levies—including income, sales, and business license taxes—as local governments have reached out for new sources of revenues to meet recurring fiscal crises. As a consequence, taxpayers in many states pay not only state income, sales, and selected excise taxes, but also similar levies to literally thousands of cities and other local government subdivisions.

The increasing significance of state and local taxation has generated considerable conflict between taxpayers and taxing authorities and with it a substantial body of case law. The U.S. Supreme Court has handed down an extraordinary number of significant decisions delineating the scope of state taxing authority under the Commerce, Due Process, Equal Protection, Import-Export, and Supremacy Clauses. There has likewise been an outpouring of important state court decisions construing state statutory provisions addressed to state taxation.

The growth of state and local taxation in fiscal terms, coupled with the legal controversies that such growth has spawned, has created a strong demand for lawyers with expertise in state and local taxation. As more and more business taxpayers discover that their state and local tax issues and

liabilities equal or exceed their federal tax issues and liabilities in dollar terms, they are increasingly looking for legal advice and assistance in state and local tax planning and controversy work. Law firms across the country have responded to this demand by forming state and local tax groups (along with their traditional federal tax groups), and accounting firms (often staffed with lawyers) have rapidly expanded their state and local tax consulting practices. Furthermore, lawyers are often involved not only in the day-to-day problems of state and local taxpayers, but also in the formulation of tax policies, the enactment of legislation, the drafting of statutes and regulations, and the administration of levies.

The current edition of the casebook takes account of the key developments in the law of state and local taxation over the past several years and emphasizes issues that are likely to command the attention of state and local tax lawyers over the coming years. In particular, we have focused throughout on the novel issues raised by state taxation of electronic commerce, and we have included the most recent material on fundamental sales tax reform embodied in the states' Streamlined Sales Tax Project.

As in prior editions, we have made a concerted effort to design the casebook as a teaching tool rather than a comprehensive description of the law of state and local taxation. Accordingly, we have emphasized the principal cases and have raised a large number of structured questions designed to induce the student (and the teacher) to focus on the critical issues raised by the cases and materials. For a more expository examination of many of the subjects covered in the casebook, we would refer readers to JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, *STATE TAXATION* (3d ed. 1998) (supplemented semi-annually). This two-volume treatise contains an extensive treatment of the law of state taxation for tax practitioners, courts, and scholars. The treatise does not, however, cover the important subject of property taxation, to which Chapter 4 of the casebook is devoted.

Although we have been generous in retaining citations to cases and statutes in the opinions that we have reprinted or quoted, where we have omitted such citations we have done so without so specifying. All omissions of text are indicated by asterisks. The courts' own omissions of quoted text are indicated by the more traditional ellipses. We have eliminated footnotes from cases and secondary materials without so specifying. Where we have reproduced such footnotes, we have retained their original number. Our own footnotes are indicated by letters.

WALTER HELLERSTEIN
JOAN M. YOUNGMAN

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