

FUNDAMENTALS OF CORPORATE TAXATION

CASES AND MATERIALS

SEVENTH EDITION

STEPHEN A. LIND

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DANIEL J. LATHROPE

JOSHUA D. ROSENBERG

FOUNDATION PRESS

75TH ANNIVERSARY

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SEVENTH EDITION

by

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© 2008 By THOMSON REUTERS/FOUNDATION PRESS

395 Hudson Street
New York, NY 10014
Phone Toll Free 1-877-888-1330
Fax (212) 367-6799
foundation-press.com

Printed in the United States of America

ISBN 978-1-59941-386-0



TEXT IS PRINTED ON 10% POST
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To our families

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PREFACE

Since the Sixth Edition of *Fundamentals of Corporate Taxation* was published in 2005, the unrelenting pace of change that has made tax textbooks one of the world's most perishable commodities slowed just a bit. Congress extended individual tax rate reductions through 2010, further widened the eligibility gates for S corporation status, tinkered with its patchwork quilt of anti-abuse rules, and disagreed over whether corporate tax rates should be reduced. The IRS was busier, achieving much success in its assault on corporate tax shelters and issuing several important regulations projects affecting corporate acquisitions and divisions. These developments, along with the usual trickle of cases and published rulings, prompted this Seventh Edition while offering another opportunity to cure a few viruses that infected our earlier efforts.

The periodic barrage of tax legislation and complex regulations presents an ongoing challenge to instructors who seek to provide manageable coverage of an overwhelming body of material. Although some level of detail is unavoidable in a corporate tax course, we pause at the outset to remind ourselves and others of the importance of teaching the “fundamentals” by the problem method. As we said in the Preface to the First Edition:

* * * [I]n our collective experience, we have been troubled by a common denominator in the many fine corporate tax casebooks and texts: their sheer bulk. In this book and a previously published companion volume, *Fundamentals of Partnership Taxation*, we attempt to chart a different course by bringing the “fundamentals” philosophy to the teaching of taxation of the business enterprise. *
* * [T]he fundamentals approach involves selectivity of subject matter, emphasis on basic concepts, avoidance of esoteric detail and realistic depth of coverage. To those ends, this volume is the product of self restraint—although perhaps not enough. At times, we opted for over inclusion to accommodate the varied teaching biases and favorite cases and topics of experienced instructors (including ourselves). We have continued, however, to select and edit cases with care. Lengthy citations, obscure questions and meanderings into minutia have been avoided. Throughout the book, we have made an effort to remember what it was like when we studied corporate tax; this volume is designed as a teaching book, not the defin-

itive treatise. And so, of course, we expect students to do the reading!

We also believe that the most effective way to teach and learn tax fundamentals is by the problem method. This book thus contains a comprehensive yet manageable set of problems to accompany every major topic. The problems are designed to help students decipher the statute and apply it in a wide variety of alternative fact situations. Some are “building block” problems with specific answers. We are mindful, however, of the tendency to become preoccupied with technical trivia and have also included some more sophisticated (and realistic) problems with a planning orientation.

The primary sources in any tax course are the Code and Regulations. But the statute frequently is unintelligible when read out of context. To provide a foundation of understanding, this book includes extensive explanatory text to accompany the problems and a selection of cases, rulings, legislative history and other materials. The goal of the text is not merely to paraphrase the Code. In addition to describing the *workings* of the statute, we have attempted to explain *why* it works the way it does. If presented as a purely mechanical exercise, the problem method can degenerate into a mindless series of computations, leaving one without insights into the function of the statute, the relationship between sections and the broad principles governing the taxation of corporations and shareholders. By first explaining the “why” as well as the “how,” we hope that even the computational problems will serve as launching pads for the discussion of more important policy and planning issues.

Turning to organization and emphasis, the Seventh Edition retains the pedagogically proven “cradle to grave” organization of its predecessors. Chapter 1 provides an introduction to business enterprise taxation, offering perspective on the influential policies that have shaped Subchapter C and analyzing the profound changes that have occurred over the past several decades. Chapter 1 also surveys the corporate regular and alternative minimum taxes and highlights contemporary policy issues, including proposals to “integrate” the corporate and individual income taxes and efforts to curb abusive tax shelters. Chapters 2 and 3, which examine corporate formations and capital structure, set the stage for a study of Subchapter C’s double tax regime and the bias in favor of debt that has helped taxpayers avoid its full impact.

Chapters 4 through 6 cover operating distributions, stock redemptions, and stock dividends (including Section 306 stock). For a brief time after passage of the Tax Reform Act of 1986, these chapters lost much of their vitality because ordinary income and capital gains were taxed at the same rate. Then, as many predicted, a meaningful capital gains rate preference was restored, breathing new life into these operational chapters and validating our decision to retain textual discussion and problems even when the stakes were low. And now, with the decision—not yet permanent—to tax

qualified dividends and long-term capital gains at the same reduced rate, it is *deja vu* all over again. Where the historical agenda was to avoid dividend treatment and “bail out” corporate earnings at capital gains rates, now the major advantage of a capital gains bailout is recovery of basis. As we await the outcome, if any, of the long-promised “fundamental tax reform” (and the 2008 elections), this is yet another “transitional” edition that does its best to discuss the planning implications of the current unstable landscape. Mindful that nothing is certain, some traditional materials have been retained, just in case Congress leads us back to earlier times. It will be up to instructors to decide how much emphasis to give to characterization issues in view of the (temporarily?) altered stakes in corporate-shareholder transactions.

Complete liquidations and taxable acquisitions are addressed in Chapters 7 and 8. The discussion of taxable stock acquisitions offers selective coverage of Section 338 without getting too bogged down in arcane minutia. Chapters 9 through 12 cover the still vibrant topics of tax-free reorganizations and divisions, including the rules and limitations affecting carryovers of corporate tax attributes. These chapters incorporate many recently issued regulations on a variety of topics, and several new published rulings have been added to enrich the transactional as well as doctrinal coverage.

Chapter 13, covering affiliated corporations, was extensively updated and revised in an earlier edition. Depending on time and interest, many instructors may choose not to cover this material. For those who wish students to achieve literacy, not mastery, this chapter offers what we hope is a coherent primer on the intricacies of multiple tax benefits, Section 482 allocations, and consolidated groups.

Chapter 14, which examines the accumulated earnings and personal holding company penalty taxes, remains at the end of Part II. These taxes have not yet been repealed, but their significance has diminished almost to the vanishing point whenever most dividends and long-term capital gains are taxed at the same rate. Although this chapter remains intact and ready to spring into action at a moment's notice, it is a historical relic as we speak and not worthy of extensive coverage except in tax history seminars.

Part Three (Chapter 15) is devoted to S corporations, which remain a popular alternative for businesses whose structure can accommodate to a simpler pass-through taxing regime. Similar surveys of Subchapter S are included in our companion volume, *Fundamentals of Partnership Taxation*, and in *Fundamentals of Business Enterprise Taxation*, an alternative text for a combined course on corporate and partnership tax. Tax professors continue to debate whether S corporations are best covered in corporate tax, a course on pass-through entities, or a combined business enterprise taxation course offering. Our books accommodate any of these approaches.

Turning to matters of style, we assume that the text will be assigned with the most recent edition of the Code and Regulations. Suggested assignments to these sources are provided for each topic. Instructors should review these assignments carefully, editing when necessary to ensure that

they are consistent with the desired coverage. Deletions from cases and other authorities have been made freely, with asterisks used to denote substantive omissions, but citations and internal cross references in excerpted materials have been deleted without so indicating. Editorial additions are in brackets. Footnotes to the original text are numbered consecutively within each section, and many footnotes have been deleted from cases without renumbering those that remain. The text is current as of April 1, 2008.

The authors extend special thanks to Professor Bruce McGovern for his many constructive suggestions and invaluable assistance in updating several chapters on an earlier edition when he was an LL.M student at the University of Florida College of Law. We remain indebted to many former students who assisted on prior editions, particularly: Ted Brooks, Mitch Salamon, Ray Kawasaki, Terri Murray, Jim Potratz, Jeff Anthony, Garo Kalfayan, Steve Vogelsang, Julie Divola, Joe Bartlett, Marilyn Cleveland, Chris Detzel, and Jeffrey Essner.

We also express our gratitude to Steve Lind and Josh Rosenberg, who no longer participate as co-authors, for their thoughtful contributions to the development of this text and its many previous editions. And, as always, we are indebted to the administration of Hastings College of the Law for its research support.

STEPHEN SCHWARZ
DANIEL J. LATHROPE

San Francisco, California
May, 2008

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