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Tax Laws Deserve Sound Administration

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RESOLVED: That we heartily welcome other refugees from Illinois and will do all in our power to make them realize that they are sojourning in a City of Angels, where their hearts will be irrigated by the healing waters flowing from the perennial fountains of health, happiness, and longevity.

CHAIRMAN FEIGENBAUM: Thank you very much, Mr. Spaeth.

Your principal speaker today, ladies and gentlemen, is a native of Utah transplanted to California. A graduate of the University of California and its Law School, he subsequently became a Professor of Law at the Law School of the University of California, a Deputy Attorney General of California, a tax consultant to the California State Board of Equalization and to the United States Treasury Department. He has been an Associate Justice of our highest court, the California State Supreme Court, since 1940. He is one of the great judges not only of California but of the Nation, a student of law and of government, my friend, the Honorable Roger J. Traynor!

TAX LAWS DESERVE SOUND ADMINISTRATION

HONORABLE ROGER J. TRAYNOR

Associate Justice, California Supreme Court

As a former tax man, I find it a great pleasure to meet with you again. As I look around at you who are old friends, it is a delight to note that the years leave you halier and heartier than ever, ruggedly weatherbeaten but not bowed. As I look at you of a younger generation, it is equally pleasant to note that you too look undaunted.

One gets perspective on what has happened to taxes in the passing years by jumping back a few decades to 1930. In that year, as a young law professor, I pleaded for the privilege of giving a course in taxation. I had to plead hard. Taxation was a newcomer, to be viewed with suspicion as a possible trespasser in a learned profession. Every hour spent in learning about taxation would mean one hour less spent in learning about fines and common recovery, one hour less in pulling out plums from the pudding of *stare decisis*. Almost in vain did I invoke the opinion of established scholars that the measure of a civilization is the way it collects and spends its revenues. Taxation was suspect as not only a vulgar form of learning, but a luxury. Why teach a course that a lawyer would probably not make use of more than once or twice in a lifetime?

With the fervor of the young, I believed all the signs that pointed to the future importance of taxation. The years proved me not too reckless, but too sober. Had I been able to imagine then what I have seen come to pass, I would have given a low whistle and shouted: "Brother, what a future!"

At the recent dedication of the new law school building at the University of Illinois, I heard Judge Goodrich note that one out of every eight lawyers is now dedicated to public service and Professor Denis Brogan of Cambridge University meditate the awesome fact that quite a few thousand of them are dedicated to the Federal Government alone. Statistics are all things to all men. Judge Goodrich mused about what these figures mean to law school education, what they mean to a professor counting heads and realizing that every eighth head is going to be turned by a government offer. As a one-time tax professor who had now and again to reckon in an advisory capacity or on the front lines with the fearful problems of the revenues—how to levy them justly and how to collect them—I felt a little sorry for that eighth man. After all, there were still seven who were going to come swinging in on him from all directions. Instead of looming large, he loomed rather small.

Denis Brogan, on the other hand, thought that all the small ones added up to a formidable collection, and his concern was not how to go about educating them, but how to keep them from drafting too many laws after they were turned loose on the world. His worry seemed to be that they might be carried away by enthusiasm for looking after their fellow-citizens. He spoke wistfully of Scotland, which, he assured us, had the best of all possible legal systems because it was quite unintelligible to everyone, including the lawyers, who discreetly kept their ignorance to themselves. Scotland sounded enchanting, rather like the South Sea Islands of the story-books. The United States sounded like a collection of great white capitol buildings thronging with public servants who were impressively solemn but definitely not enchanting.

As he conjured up his pictures from the statistics, I recalled a pleasant month in Salzburg this summer, where I had the privilege of addressing some lawyers and judges from various countries of Europe. I did my best to explain the case system in a kind of *ad hoc* Esperanto. Thereafter a judge from one of the smallest and most peaceful countries came up and asked with intense earnestness: "Is there not some way that your great country can disencumber itself of its truly monstrous legal system?" Thereafter he brought forth the codes of his land, indicating to me their few well-chosen words on bankruptcy. "You see how simple it is in code," he said. "How it liberates the mind from confusion."

It set me to dreaming until I looked at a map. The small and peaceful code country was about as large as a good-sized county in California, or perhaps half a county in Texas. I thought of California and then of the 47 other states, including Texas, and of the wild array of 48 state insolvency laws all existing in the shadow of the federal bankruptcy law. I thought of the vast production and consumption in these United States, vaster by far than anywhere else in the world. I stopped dreaming about simple codes. On the way home via Ireland,

perspective was completely restored by the Dublin airline agent who observed without looking up from the reservations he was filling in: "So by morrow you'll be hurtling back to reality."

No one knows better than you, whether you are tax men in government service or in private practice, the reality of our complicated economy. No one knows better than you its unpredictable ways and their repercussions on the revenues. No one of you will have the luxury of writing, as did Sir George MacKenzie in the 17th century, of "The Just And Solid Foundations Of Monarchy in General, And More Especially Of The Monarchy of Scotland." Or as did his contemporary, the Lord of Dirleton, who wrote quite simply of "Dirleton's Doubts And Questions On The Law Of Scotland, Resolved And Answered." No one of you, nor all of you together, will be able to produce revenue codes that completely reduce the problems of a complicated economy to sweet and simple formulas. No magician could do it either.

Looking back on some notes of long ago for a meeting of the county assessors of California, I found the statement that "In the field of revenue administration, there is no longer such a thing as a simple tax law. Complex problems require complex laws, and complex laws are made to protect all taxpayers alike." The year was 1940. The statement holds more than ever true today.

This acknowledgement that there can never be easy or final solutions to tax problems is no declaration of despair. On the contrary, anyone who has known the work of your association over the years can make a declaration of confidence that you can accomplish practically anything short of magic.

There is a truism that the legislatures make tax law and the courts interpret it. The occupational habit of inquiry leads me to question so absolute a statement as I recall Josiah Stamp's observation that "Many a giant fact or generalization has feet of clay—often pretty good clay, but clay nevertheless."¹ Actually it is the tax administrators who have the key responsibility for the rational development of tax law. For better or worse, what they do affects tax law immediately and significantly.

I no longer have the credentials of a specialist, but perhaps I can speak to some purpose from the vantage ground of a judge who continues to be deeply concerned with what is now an all-important subject in the general law. I have been reflecting on it more than usual since drafting an address on judicial administration for a conference at the University of Chicago last week, a job that compelled clarification of ideas that grow out of experience on how judges can best do their work.

One thing emerged from that clarification: we cannot afford the extravagance of second-best administration anywhere in government.

¹ Stamp, *We Live and Learn* (London: MacMillan and Co. Ltd., 1938), p. 21.

No doubt the wonderful one-hoss shay served all right to get from one town to another, but we would be foolhardy indeed if we set out in it today to get from one end of Los Angeles to another—particularly in view of the most recent statistics that tell us Los Angeles is now absorbing annually a new population akin to that of Salt Lake City, along with an additional hundred thousand cars and 50,000 incinerators.² All those thousands of new people a year must be having quite a time figuring out where to put up their cars, where to burn up their rubbish, and where to pay up their taxes. But they have the advantage of numbers, and when they once find the tax man, my sympathies will be all with him.

The courts must pace their work accordingly. In our State we sift out carefully the cases we take for review. I need hardly add to this audience that the tax cases are wont to compel review because of the public interest in maintaining equitable distribution of tax burdens. The cases we take on are usually classics of complexity.

I set forth the thesis at Chicago that we cannot tolerate less than the best possible judicial administration if we are to get our work done properly. I set forth here the supplementary thesis that we cannot tolerate less than the best possible administration in other agencies of government, notably in the tax agencies, whose operations touch every single citizen all the time.

Of course this is easily said and more than hard to get done. To begin with, tax administrators do not have ideal working conditions. Despite a notable improvement in the technical assistance available to legislatures for the drafting of laws in the public interest, the revenue laws inevitably bear the marks of compromise, the tug and pull on the lawmakers by interested groups who would edit the laws to conform to their special interests. The run of mankind, willing to spend conspicuously for personal badges of success, count out reluctantly the dollars that go for community purposes. Yet there are signs that we are becoming increasingly insistent, though not always successfully so, that revenue laws emerge, not from the heat of battle, but from objective thought for the morrow. And for their part, courts struggle to give a rational pattern of interpretation to whatever laws travel the long road to a judicial hearing.

Nevertheless, even ideal legislation and ideal judicial interpretation are greatly discounted if there is faulty administration of the tax laws. There need not be. The American taxpayer frequently computes his own tax, and has earned a world-wide reputation for his general honesty. The tax administrator, far from being his enemy, is at his service to facilitate accurate compliance with the law. Perhaps his greatest responsibility is that of encouraging and maintaining the cooperation of all the taxpayers by his impartial and conscientious administration.

² *Wall Street Journal*, Oct. 15, 1956.

I have said of judicial administration that there is a vast foolishness in the clamor of lawyers against the failings of the judiciary when they remain barbarously indifferent to programs for securing and retaining good judges. I would say here that there is an equal foolishness in the clamor of taxpayers against the failings of tax administration when they remain barbarously indifferent to the necessity of supplying that administration with enough funds and manpower to concentrate on thorough and intelligent administration that would reduce litigation to a minimum.

To take an example close to home: For years property taxes in California have been unevenly levied, many on the basis of assessments that represented only a fraction of the market value specified by the Constitution. The Legislature, recognizing the need of strengthening property tax administration, directed the State Board of Equalization to survey the practices and procedures of county assessors. The board, whose Dixwell Pierce is known to all of you for his devoted public service, has just completed a report on the 58 counties, whose preface reads:

Everyone in California pays property taxes, either directly or indirectly. But not everyone pays his fair share. The reason is often simple: The assessor cannot possibly do a good job with the tools and personnel provided.

The remedy usually can be just as simple. If the citizens take an interest in finding out what the assessor lacks in the way of equipment and manpower, then see that his budgets provide what he needs, they deserve, and have every reason to expect, a fair distribution of the property tax burden.

The State Board of Equalization's Research Division is also studying auditing procedures for the sales and use tax. Its chief, Ronald Welch, who incidentally has served for more than ten years as secretary of your association, has produced two reports and a journal article on sample audit programs which are being used for deployment of the board's audit staff and for preparation of budget requests.³

Such projects recognize that only adequate administrative boards can work effectively, boards at least as well staffed, quality- and quantity-wise, as private offices with a comparable volume of work. If we achieve that ideal—a big if, but not an impossible one—we can rightly expect such boards to carry the brunt in the settlement of tax controversies. I say settlement advisedly rather than litigation, cooperative effort rather than matching of wits for victory. No taxpayer can properly regard the tax laws as fair game, just as no tax administrator can properly regard a particular taxpayer's pocketbook as fair game, merely because of the accident of controversy. What happens to one taxpayer is of the greatest concern to all others; their burdens vary accordingly. A tax controversy should not be a mere

³ *The California Sales Tax Sample Audit Program*, Feb. 1954; *The Second California Sales Tax Sample Audit Program*, June 1955; "Measuring the Optimum Size of a Field Audit Staff," *National Tax Journal*, Vol. 7, pp. 210-221 (Sept. 1954).

private contest with concealed weapons or concealed weaknesses on either side. What is the net worth of such a game of hide-and-seek? What is gained by concealment at the administrative stage when disclosure is inevitable before a court? Whatever its defense as a delaying tactic, it is so unseemly as to compel us to find reasonable alternatives. The more so when we reflect that whatever a taxpayer pays for litigating a controversy realistically adds to his tax bill, whether he wins or loses, even though it does not become part of the revenues.

We might make a great advance in the settlement of tax controversies if we squarely accepted in practice what we cannot reasonably reject in theory—that the taxpayer and the administrator have a common interest in early settlement. The taxpayer should feel free at the outset to make full disclosure without fear of reprisal. The administrator with whom he deals should have the authority and the grace to yield forthwith and forthrightly when the fully disclosed facts bear out the taxpayer's contentions, whether the amount at stake be large or small. Moreover, if his own investigation discloses overpayments, he should take the initiative in securing prompt refund to the taxpayer. Actually, many administrators outspokenly advocate such a policy. Thus Ronald Welch, in the article mentioned earlier, states that "it is as important to correct over-assessments as to correct under-assessments." Once assured of the fairness of the tax administrator, the taxpayer can give the best assurance of his own good faith by full disclosure.

This excursion into the most mundane of subjects has also been a sentimental journey to old haunts. I know of no harder-working or more interesting professional group in the country than the National Tax Association. It is like old times to be at your conference today.

CHAIRMAN FEIGENBAUM: Thank you, Judge Traynor.

Thank you, Mr. Pierce for the honor which you have afforded me.

Thank you, ladies and gentlemen, for your presence and for your kind attention.

The meeting is adjourned.