

Preface to the Second Edition

This book concerns the federal income taxation of corporations. Corporate tax is a core part of the business law curriculum of most law schools, and often the first tax course taken by students after the introductory income tax course. Although the course has always been very challenging, its difficulty has been compounded in recent years by uncertainty regarding key aspects of the law as well as complicated developments in response to corporate tax shelter activity.

To help students overcome these challenges, this book emphasizes the policy choices that lend structure and coherence to the law, and distinguish it from a mere collection of rules. While acknowledging the law's flaws, we have tried to prevent these flaws from obscuring the policies and principles that constitute the underlying fabric of corporate tax. We believe this emphasis facilitates an understanding of the specific details of corporate tax as well as other tax law areas (since the policies and patterns followed in corporate tax are repeated elsewhere). More generally, it helps prepare students for the practice of law, when they will have to make informed judgments even though the applicable law is unclear or incomplete.

In general, corporations are taxed in two different ways. Nearly three-fourths of corporations (termed "S corporations") are generally disregarded for tax purposes, with the corporation's income taxed as if it were earned directly by the shareholders. The taxation of S corporations is a natural extension of principles learned in the introductory income tax course, and we build upon that common foundation by introducing the subject in chapter two. The general manner in which S corporations are taxed — commonly referred to as "passthrough taxation" because the tax items of the corporation are "passed through" and taxed to its owners — is replicated elsewhere in corporate tax (such as the taxation of intercorporate investment, including corporations filing a consolidated tax return (chapter fourteen)), partnership tax, and other areas.

Most other corporations — including virtually all publicly traded ventures — are treated for tax purposes as taxpayers separate and distinct from their shareholders. We explain in chapter three the essential features of separate entity taxation. In addition, we discuss both the policy and practical implications of the foundational choice to tax business income under either a passthrough or separate entity approach.

Beginning with chapter four and continuing through the balance of the book, we consider the tax treatment of transactions involving corporations and their shareholders, a key part of most corporate tax practice. We present this material using a building-block approach, progressing from an analysis of basic to more complex

transactions. This approach enables students to see that transactions may be structured in different ways to achieve similar economic (but potentially different tax) results, and that the taxation of complex transactions to some extent flows naturally from how simpler ones are taxed. The book prepares students to think rigorously and creatively about the kinds of problems they will encounter as practitioners of tax and business law.

One transaction carried out in many different ways is a distribution of cash or property by a corporation to its shareholders. Although we examine piecemeal the tax treatment of ordinary distributions (chapter five), redemptions (chapter six), redemptions involving related corporations (chapter eight), stock distributions (chapter nine), and, finally, liquidations and reorganizations (chapters ten through twelve), we emphasize throughout the common features of these transactions and the policy considerations dictating their tax results.

Corporate tax is marked by a number of transactions — sometimes referred to as “nonrecognition events” — in which taxpayers are generally allowed to defer paying tax on gains and losses realized. Most students will have had some exposure to the taxation of nonrecognition events in the introductory income tax course, but corporate tax provides ample opportunity to learn additional nuances. As with the material on distributions, we consider piecemeal the tax consequences of transfers to controlled corporations (chapter seven), parent–subsidiary liquidations (chapter ten), and reorganizations (chapters eleven and twelve), while highlighting their common patterns and principles. This background is helpful in understanding the tax treatment of other nonrecognition transactions, including those encountered in partnership tax.

Finally, overlaid on top of corporate tax (and, indeed, tax law generally) is the question of whether the tax consequences of a transaction follow from its “form” or its “substance.” This has always been a crucial question in corporate tax, but its significance may be more important than ever due to the codification of a judicially developed doctrine focusing on the “economic substance” of transactions. We examine this issue very early in the materials (chapter four), and repeatedly return to it throughout the rest of the course.

Throughout the book, we emphasize the core source material of the law — the statute and regulations — as amplified in interpretive administrative materials and judicial decisions. We have deliberately tried to make background explanations and illustrative examples concise without being cryptic, based on our firm belief that actively engaging students with the actual source material enhances the learning process. We have interspersed many explanations, problems, and questions to help lead the students through the material. Although corporate tax certainly deserves its challenging reputation, we are confident that students will emerge from the course equipped to analyze and evaluate the critical issues they will encounter in practice.

In preparing this casebook, we have enjoyed the luxury of starting from a clean slate, without being constrained by past editorial, organizational, or pedagogical choices. During the long genesis of these materials, corporate tax has seen dramatic

change in its rules and underlying premises. Using our combined experience in teaching, private practice, and government, we have taken a fresh look at the subject matter and tried to identify the most important issues and themes that will confront future lawyers in this area.

As a matter of editorial prerogative, we have freely edited judicial decisions and other materials to focus attention on essential analysis and holdings. Footnotes are numbered consecutively within each chapter, and many footnotes in the original sources have been deleted or renumbered. Internal citations and cross-references in cases and other authorities have been omitted without so indicating, while substantive omissions are indicated by an ellipsis (“ . . . ”).

The materials in this second edition are current as of September 2015.

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