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Stephens, Maxfield, and Lind: Federal Estate and Gift Taxation (3d ed.)

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BOOK REVIEWS

FEDERAL ESTATE AND GIFT TAXATION (3d ed.). By Richard B. Stephens, Guy B. Maxfield, and Stephen A. Lind. Boston: Warren, Gorham and Lamont. 1974. Pp. xxvi, 679.

Since publication in 1967, *Federal Estate and Gift Taxes* (2d ed.) has proven to be a useful tool and is well received¹ among tax law students and their teachers. The work is a succinct but thorough treatment of the law, guiding beginners through the maze without being superficial. However, my initial impression of the recently published third edition left me uneasy. The revision seemed designed more to be salable to the practicing bar² and less to aid students. The immediately noticeable difference between the second and third editions is a substantial increase in length. The prior work was 379 textual pages, and the current revision is 679 textual pages. As a tax law teacher, I was apprehensive that the new edition would be so minutia laden as to substantially impair its usefulness for beginners.

My apprehension proved unfounded. The authors correctly state in their preface that:

[T]he attempt at simplicity which was characteristic of both earlier editions of this book, is not abandoned as an objective in this edition. A reader with some tolerance for inescapable complexities, will see that an effort has been made to maintain the text in a form that is manageable by one not well acquainted with the field of estate and gift taxation.³

Over half the increase in length results from an expanded discussion of the gross estate and federal estate tax deductions. This expansion has enhanced the book's thoroughness and depth without creating an un-navigable sea of detail. In fact, the clarity and highly visible structure of the prior edition have been retained.

The new edition is not without flaws, however. The 31-page initial chapter, entitled "An Overview⁴ of Federal Estate and Gift Taxation," provides sparse information while raising, but not answering, numerous issues discussed later in the text. This "introduction" is too long and un-informative for the beginner and is insufficiently detailed for the sophisticated reader. A bare-bones orientation of no more than 5 pages would have been sufficient.

A more significant flaw is the book's minimal income tax coverage.⁵

¹Comerford, Book Review, 39 BROOKLYN L. REV. 252 (1972).

²See R. STEPHENS, G. MAXFIELD, & S. LIND, FEDERAL ESTATE AND GIFT TAXATION iii (3d ed. 1974) [hereinafter cited as STEPHENS].

³*Id.*

⁴*Id.* at 1-1.

⁵See *id.* at iv. The book does, however, have a helpful discussion of the section 2054 loss deduction's income tax consequences. *Id.* at 5-30 to -31.

There is no discussion of the interrelationship of sections 303 and 6166,⁶ nor any significant coverage of the income tax consequences of private annuities and the widow's election — transactions that cannot be properly evaluated without a substantial consideration of gift, income, and estate taxes.⁷ The book's usefulness to both students and practitioners is impaired because income tax coverage of these matters is omitted.

Like the prior edition, the third is arranged in order of Code sections, thus giving the book an added degree of accessibility. One result of this structure might have been that the estate and gift tax consequences of given transfers were covered in widely separated portions of the work rather than in an integrated discussion. However, the authors have largely avoided this defect with a section delineating areas in which the two taxes overlap.⁸

A new feature of the third edition that will increase its utility to practitioners is an appendix discussing common errors in preparing estate and gift tax returns. Information for this discussion was developed from conferences with IRS personnel. This anthology of common blunders can be read profitably by all preparers of forms 706 and 709, but particularly by beginning lawyers and accountants.

However, the feature that will earn the third edition a wide readership among practitioners, teachers, and students is the terse and lucid textual exposition that also characterized the second edition. This is not to say that the new book is a collection of black letter rules; it contains ample discussion of legislative history,⁹ ambiguities in the statute and case law,¹⁰ policy underpinnings of the law,¹¹ and areas warranting legislative reform.¹² But throughout, the text effectively strikes at the jugular of problems and avoids verbosity — as is illustrated in the following summary of the developing case law on inter vivos transfers of life insurance policies:

More often premiums remain payable after a transfer, and we turn now to that problem which is discussed on the basis of four possibilities, assuming in each instance that the transfer was death-motivated.

- (1) The decedent transfers the policy more than three years before his death and the beneficiary pays all the premiums that subsequently come due. Nothing is included in the decedent's estate.
- (2) The decedent's transfer is within three years of his death, but

⁶See, e.g., Rev. Rul. 72-188, 1972-1 CUM. BULL. 383.

⁷See, e.g., Midgley, *Federal Income Taxation of Private Annuities*, 40 GEO. WASH. L. REV. 679 (1972); Patterson and Schaefer, *The Widow's Election: A Coming of Age*, 112 TRUSTS AND ESTATES 164 (1973).

⁸STEPHENS 9-33 to -36.

⁹See, e.g., STEPHENS 4-210 to -211.

¹⁰See, e.g., STEPHENS 4-162 to -164.

¹¹See, e.g., STEPHENS 4-38 to -39.

¹²See, e.g., STEPHENS 4-246.

again the beneficiary pays all posttransfer premiums. A part of the proceeds is includible in the decedent's gross estate. The includible part of the proceeds is determined by subtracting from the full proceeds a percentage of that amount equal to the percentage of the premiums paid by the beneficiary.¹³

- (3) The decedent's transfer is within three years of his death, and he pays all the premiums that subsequently come due. The entire proceeds are includible in the decedent's gross estate.
- (4) The decedent's transfer is made more than three years before his death, but he continues to pay all posttransfer premiums. The proceeds are entirely excluded from his gross estate, but of course the amount of the premiums paid within the three-year period is includible, assuming the premiums were paid in contemplation of death.¹⁴

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¹³But note the Commissioner's appeal pending before the Second Circuit in *Estate of Morris R. Silverman*, 61 T.C. 338 (1973).

¹⁴STEPHENS 4-235 to -36.

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