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Review of "Monograph No. 22, Administration of Internal Revenue Laws," By The Attorney-General's Committee on Administrative Procedure

Ralph R. Neuhoff

MONOGRAPH NO. 22, ADMINISTRATION OF INTERNAL REVENUE LAWS. Attorney-General's Committee on Administrative Procedure. Washington, D. C.: Department of Justice, 1940. Two volumes. Pp. 191.

This Monograph is one of a series of studies submitted to the Attorney General's Committee by the Investigating Staff working under the Director. The Monograph itself, dealing with such a large subject matter, is already a feat in condensation, and an attempt to summarize it as a whole in this review would hardly prove profitable. The Monograph is a valuable source of information concerning the Internal Revenue Bureau and its administration, which is not obtainable readily elsewhere, if at all, in published form. The selection of the information and impressions set out below has been made not with a view of presenting an adequate picture of the entire work, but rather because of the value of the particular items of information selected.

One striking impression received from this Monograph is that, while on the one hand much more could be done by the Bureau of Internal Revenue if the man power were available, yet, on the other hand, much energy is dissipated in the probably unnecessary reviewing and rechecking, which apparently goes on within the Bureau. For example, the Monograph states[1] that the amount of investigating accomplished by the Collectors' offices is limited by the magnitude of their job and the size and ability of the available personnel, and that usually some phase of their work must be neglected because there are too many other phases pressing for attention. Moreover, the Field Staff is often too busy even to check up on the persons who fail to reply to letters asking why returns were not filed.

The procedure in connection with what is known as a closing agreement[2] for future transactions is a "horrible example" of what seems to be entirely unnecessary cumulation of supervision. Briefly, this procedure is as follows: An informal conference at the Bureau's Washington office precedes a formal application. This conference is attended by experienced men at the Bureau and a representative of the Chief Counsel whose office frequently is asked to participate. There may be several conferences as a result of which the taxpayer finally files an application. A ruling is then drafted and a closing agreement is prepared by the Bureau. This is approved in the Income Tax Unit and goes to the Commissioner's office where it is referred to the Interpretative Division of the Chief Counsel's office. Conferences normally are held between the attorneys and the Unit's men. Then these agreements go to the Commissioner's office and are passed upon by one or more of his assistants, sometimes by the Commissioner himself. The closing agreement is then executed by the taxpayer, returned to the Bureau, where it is initialed by all of the parties who considered the original ruling, and is signed by the Commissioner. Thereafter, it goes back to the Interpretative Division, which prepares and initials a form of approval for the signature of the Secretary. This goes to one of the immediate assistants of the Chief Counsel, who adds his initials. The agreement and approval then

1. P. 21.
2. Detailed on pages 77 and 78.

go to the office of the General Counsel of the Treasury, and from there to the Under-Secretary or an Assistant Secretary for signature of the approval.

The Monograph adds with unconscious humor that requests for prospective closing agreements have not been numerous.

The foregoing referred to closing agreements involving future transactions. However, the procedure detailed[3] for closing agreements as to existing tax liability, is almost, if not quite, as multifarious. One is reminded of a remark sometimes made in complicated business negotiations, "Well, it is about time that somebody begins to trust somebody."

Other consequences of repeated checking and rechecking are: (a) increased likelihood of upset of agreements made with a taxpayer, and (b) delay. The Monograph states:[4] "The occasional agreement which is upset first by the field reviewer, and then in Washington, is, of course, particularly galling to the taxpayer." That delay must result from repeated rechecking is, of course, self-evident. This means that collections are outstanding a much longer time than would otherwise be necessary.

The recent decentralization program is the subject of some interesting comments in the Monograph. It is stated[5] that apparently the decentralization program has cut down litigation. This is salutary, if true. There have been some odd results from the rather rigid formalism of the decentralization program. For example, where the division of audit in the field is required to retain jurisdiction of a case which has been placed on the Washington calendar of the Board of Tax Appeals for hearing, and the taxpayer is represented by Washington counsel, such counsel may be required to travel back and forth several times, even as far as California, if the case arose there, to deal with the Bureau about possible compromise, stipulations, *et cetera.* The Bureau takes the position that the statutory direction to the Board to fix the hearing place for the greatest convenience of the taxpayer does not mean the greatest convenience of the taxpayer's counsel, if it happens to be Washington counsel. Possibly an unconscious bias against Washington counsel is responsible for this attitude. The Monograph also states[6] that some tax practitioners complain that the decentralization program has made it more difficult to settle cases prior to trial, and this is particularly objectionable from the taxpayer's standpoint, because the attorneys who are actually charged with trying the cases are, quite understandably, believed to be more "reasonable negotiators" than the conferees, who can adopt a "hard-boiled attitude" and leave it for some other person to make it stick.

The settlement policy of the Staff Division Offices have some interesting features, which ring quite strangely in the ears of attorneys in private practice who have no rigid rule to guide them and are free to consider only the best interest of their client. We find, for example,[7] that no objec-

3. P. 68.
4. P. 28.
5. P. 88.
6. P. 49, n. 88.
7. P. 50.

tion has been voiced by the Head of the Technical Staff to the policy of trading one doubtful issue for another in arriving at a compromise, but where cases involve only one important issue, such issue is not to be compromised, if to do so would leave open the same or a related question in connection with other taxes, or with taxes for other years; it is not to be compromised in the undocketed stage, and even in the docketed stage the staff offices are to avoid taking the initiative. A case is apparently not to be compromised, if the Government is thought to have an even chance or better, and may be compromised only "if the Government's chance is too strong to surrender, but presents an exceedingly doubtful outlook, and then only if an advantageous offer is made."

Apparently[8] the Bureau's policy is against 10% or 20% settlements on the theory that, if that little doubt remains, then the taxpayer's payment ought to be 100% or nothing. It is suggested by the Monograph that a 10% or 20% settlement represents the nuisance value of a case.

As might be expected, it seems to be true that the procedure before the Bureau lends itself to dilatory tactics on the part of taxpayers.[9] Suggestion has been made that a bond be required to be posted by a taxpayer before taking an appeal to the Board of Tax Appeals. In view of the requirements of the bonding companies in such cases, this is a substantial equivalent to the requirement that the tax be paid. The Monograph recognizes the problem, but deems it without the scope of the investigation.[10] Closely coupled with the question of delay is the question of extensions of time for taxpayers in meritorious cases. The Monograph points out[11] that applications for extension of time are handled entirely apart from the original settling of the amount of the liability, and the suggestion is made that settlement would be encouraged, if, in meritorious cases, the taxpayers could simultaneously arrange for an extension of time for payment of eighteen months or less. Practitioners will no doubt recall cases which indicate that the suggestion is well taken.

A portion of the Monograph[12] deals with the Board of Tax Appeals. Those interested will be well repaid by reading this portion of the Monograph because of its detailed factual account of the operations of the Board.

RALPH R. NEUHOFF.†

CONQUEST AND MODERN INTERNATIONAL LAW—THE LEGAL LIMITATIONS ON THE ACQUISITION OF TERRITORY BY CONQUEST. By Matthew M. McMahon. Washington: The Catholic University of America Press, 1940. Pp. vi, 233.

This volume is an extremely well-written doctoral dissertation, amply documented and scholarly throughout. The writer's main thesis is that in the contemporary age there are very significant trends towards the adoption

8. P. 52.
9. P. 54.
10. Cf. Neuhoff, Our Federal Tax Predicament and What Can Be Done About It (1938) 12 Temple L. Q. 340, 356.
11. P. 57.
12. Part IV, p. 158 et seq.

† Lecturer in Law, Washington University.