The Traynor Plan - What It Is

Stanley S. Surrey

Follow this and additional works at: http://repository.uchastings.edu/tax
Part of the Tax Law Commons

Recommended Citation
Available at: http://repository.uchastings.edu/tax/21

This Article is brought to you for free and open access by the The Honorable Roger J. Traynor Collection at UC Hastings Scholarship Repository. It has been accepted for inclusion in Taxation & Traynor by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcus@uchastings.edu.
IN THIS ISSUE

Eighth Tax Clinic—Open Forum Proceedings

Mortgagors’ Losses: Capital or Ordinary?

The Traynor Plan—What It Is

The Traynor Proposals—Some Considerations

Projected New Rules for Appeals from the BTA
and Processing Tax Board of Review

Proposed Administrative Court Review of BTA Decisions

Decentralization of the Bureau of Internal Revenue

Proper Execution of Ownership Certificates

A Stable Tax Policy

JULY • 1939
The Corporation Trust Company, CT Corporation System and Associated Cos.

...
**Contents for**

**JULY • 1939**

**Vol. 17**

**No. 7**

<table>
<thead>
<tr>
<th>General:</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgagors' Losses: Capital or Ordinary?</td>
<td>George T. Altman 387</td>
</tr>
<tr>
<td>Eighth Tax Clinic of the A. B. A. Committee on Federal Taxation</td>
<td>George M. Morris 390</td>
</tr>
<tr>
<td>The Traynor Plan—What It Is</td>
<td>Stanley S. Surrey 393</td>
</tr>
<tr>
<td>The Traynor Proposals—Some Considerations</td>
<td>E. Barrett Prettyman 397</td>
</tr>
<tr>
<td>The Projected New Rules for Appeals from the BTA and the Processing Tax Board</td>
<td>J. Louis Monarch 399</td>
</tr>
<tr>
<td>Proposed Administrative Court Review of BTA Decisions</td>
<td>J. E. Sebree 401</td>
</tr>
<tr>
<td>Decentralization of the Bureau of Internal Revenue</td>
<td>Milton E. Carter 403</td>
</tr>
<tr>
<td>Proper Execution of Ownership Certificates</td>
<td>R. H. Hatcher 405</td>
</tr>
<tr>
<td>Stable Tax Policy and Accounting Control of Profits</td>
<td>James W. Martin 407</td>
</tr>
<tr>
<td>Simplification of Forms for Individual Income Tax Returns</td>
<td>Harold A. Kuhn 410</td>
</tr>
<tr>
<td>Digests of Articles on Taxation</td>
<td>415</td>
</tr>
<tr>
<td>State Tax Calendar</td>
<td>419</td>
</tr>
<tr>
<td>Federal Tax Calendar</td>
<td>422</td>
</tr>
<tr>
<td>Washington Tax Talk</td>
<td>425</td>
</tr>
<tr>
<td>The New Internal Revenue Code</td>
<td>444</td>
</tr>
<tr>
<td>Talking Shop with Lewis Gluick</td>
<td>412</td>
</tr>
<tr>
<td>Pending State Tax Legislation</td>
<td>433</td>
</tr>
<tr>
<td>Current Books of Interest in the Field of Taxation</td>
<td>442</td>
</tr>
<tr>
<td>Interpretations</td>
<td>445</td>
</tr>
</tbody>
</table>

Published monthly by Commerce Clearing House, Inc., Loose Leaf Service Division of the Corporation Trust Company, 205 West Monroe St., Chicago

Subscription price: $3.00 per year; single copies, 50 cents

Entered as second-class matter January 13, 1939, at the Post Office at Chicago, Illinois, under the Act of March 3, 1879. Title registered U. S. Patent Office

Copyright 1939, Commerce Clearing House, Inc.
THE TRAYNOR PLAN—What It Is*

By STANLEY S. SURREY**

At the outset it is desirable to describe certain salient aspects of the existing picture with respect to the administrative and judicial procedure for federal income taxes. While the description will necessarily be brief, it will serve to bring into focus certain important consequences of our present procedure. Without this knowledge of existing problems, it is impossible to evaluate the proposals made by Professor Traynor.

Survey of Existing Problems

The first of these is the present delay in the disposition of cases. A survey of one-third of the income tax cases closed by the Board of Tax Appeals in 1934, revealed that on the average a case spent three years in the Bureau, three years in the Board, two years in the Circuit Court of Appeals, and one year in the Supreme Court. This is an overall period of nine years of controversy. On this basis, a substantial number of the contested liabilities for the year 1938 will not be disposed of until 1947 or later. Congress must legislate on the tax problems of 1939 when the judiciary is just commencing to inspect the Revenue Acts of 1932 and 1934. The bulk of this litigation is impressive—at the end of the 1937-1938 fiscal year, there were pending before the Board and the courts that review its decisions, about 8,500 cases involving over $500,000,000.

The second aspect is the large number of Board of Tax Appeals dockets settled by agreement. On the average, 70 percent of the dockets of the Board of Tax Appeals are settled by agreement without ever reaching a trial. These cases, through the filing of a petition, had supposedly crossed the line dividing the administrative from the judicial stage. Nevertheless, they were disposed of administratively without judicial determination.

The large number of last minute settlements before trial—50 percent of the Board dockets settled by agreement—indicates that the taxpayer or the Commissioner, or both, are only too often willing to prolong a controversy, the Commissioner at one stage pausing for a moment to issue a deficiency letter, the taxpayer pausing at another stage to file a petition to the Board, until at last the day of the trial approaches and there is no escape from taking a decisive step. As Professor Traynor states:

“It is a serious commentary on the existing system that many of the important cases can be delayed year after year by the taxpayer, and at times by the Government, and then settled within a few days by shrewd negotiation with one eye on the adversary, and the other on the Board member who will hear the case if the trading breaks down.”

The Board keeps functioning, however, only because of such administrative settlements. The average number of cases closed by decision of the Board after hearing is a little over 20 percent. Consequently, the Board machinery would break down unless 80 percent of the 5,000 petitions filed annually with the Board are settled by administrative action.

Furthermore, the collectibility of deficiencies is seriously affected by the delayed disposition of disputed cases. Aside from the hit-and-miss method of jeopardy assessments, while a case is pending before the Board the Government has no security that the tax finally determined will actually be paid. As a consequence, for the fiscal year 1937, over 11 percent of the total amount assessed as a result of Board decisions after trial was found to be uncollectible.

The number of petitions to the Board involving small amounts is a serious commentary on the existing situation. Of about 8,500 dockets pending at the end of

---

* Remarks before the Eighth Tax Clinic held under the auspices of the Committee on Federal Taxation of the American Bar Association, Washington, D. C., March 25, 1939. These remarks are a summary of the proposals and discussion contained in an article by Professor Traynor, on which Mr. Surrey collaborated, published in the December, 1938 issue of the Columbia Law Review (digest of which appears at page 417 herein). The views set forth are those of Professor Traynor and Mr. Surrey and in no way indicate the views of the Treasury Department.

** Assistant Legislative Counsel, United States Treasury Department.
the 1938 fiscal year, 15 percent involved deficiencies of less than $500; 26 percent involved deficiencies of less than $1,000; 40 percent involved deficiencies of less than $2,000; and 57 percent involved deficiencies of less than $5,000. The relatively small amounts involved in these cases make it imperative, in the interests of economy with respect to both taxpayer and the Government, that a simpler procedure be devised for their disposition.

So much for the highlights of the existing picture. We may now briefly consider the fundamental defects in the present procedure which have brought about these results.

Effect on Proposed Deficiencies of Administrative Review of Controversies

You are all familiar with the elaborate machinery for the administrative review of tax controversies which existed previous to the Treasury Department's decentralization program. That program will materially simplify the administrative consideration of proposed deficiencies. It is important, however, to consider the fate of those deficiencies under the former procedure. On the basis of statistics for the last three fiscal years, it is observed that the conferences in the Income Tax Unit conceded, on the average, 50 percent of the deficiencies recommended by the audit division; that the Technical Staff and the Appeals Division conceded between 65 and 70 percent of the deficiencies asserted in the 90-day letters; that the Board of Tax Appeals, after hearing the unsettled cases on their merits, reduced the asserted deficiencies by 75 percent. Under those circumstances, taxpayers had much to gain and little to lose by contesting claimed deficiencies.

Inability of Commissioner to Obtain Necessary Factual Information

This high percentage of abandoned deficiencies—nearly 70 percent in amount—suggests a deeper evil. Obviously the Commissioner not only stands to gain little by asserting unsupportable deficiencies but also runs the risk of losing the taxpayers' respect and cooperation. The difficulty lies in obtaining the facts. Fundamentally, the income tax procedure is based upon the principle of self-assessment. Yet experience has clearly demonstrated the need for an audit of the returns by the Commissioner. Not possessing the facts, he must proceed initially by individual investigation. As such an investigation on a broad front, involving thousands of taxpayers, is bound to be unsatisfactory, the Commissioner finds himself in a dilemma—he can proceed so cautiously as to forego additional assessments which might well have been collected or he can assert claims which might prove to have no foundation in fact. The first choice would afford to many taxpayers an inequitable escape from a tax liability justly due, thereby throwing an unfair burden on other taxpayers. The second choice forces the Commissioner to undertake litigation that is expensive and lengthy.

As a result of this early breakdown of the principle of self-assessment, the time and money of the taxpayer, the Commissioner and the Board are all being spent in the effort of the Commissioner to obtain facts which the taxpayer could and should readily provide. It would seem but a corollary of the principle of self-assessment that the taxpayer should immediately disclose the facts and circumstances upon which he based his return when it is called into question. Yet the present procedure, by assuming that the duty of self-assessment is ended when a return is filed, and by substituting thereafter investigation by the Commissioner, or cross-examination before the Board, makes impossible a fair and expeditious determination of tax liabilities.

Original Jurisdiction in Income, Estate and Gift Tax Cases

Turning our attention to the judicial procedure, we may first consider the forums having original jurisdiction in income tax cases. When the Board of Tax Appeals was established, jurisdiction over refund suits was retained by the Federal District Courts and the Court of Claims. While perhaps wise at the time, today such retention has become an anachronism. Taxpayers have resorted to the Board in such large measure that the vast majority of income tax controversies are now passed upon by that tribunal. As there is no essential difference between the issues in a proceeding contesting a deficiency and the issues in a refund suit, where the item in dispute is the same, there is no rational basis for having the one heard by the Board and the other by the federal courts. The retention of jurisdiction in the Federal District Courts and the Court of Claims has made it impossible to obtain uniformity in tax cases. Instead of being a tribunal to whom both taxpayers and the Commissioner can look for authoritative guidance, the Board is merely one of 87 tax tribunals of original jurisdiction. Moreover, the present system of recovery by suit for refund consists of a hodgepodge of suits against collectors in the District Courts, suits against the United States in the District Courts, suits against the United States in the Court of Claims and proceedings against the Commissioner in the Board of Tax Appeals. Certainly the suit against the collector—described by the Supreme Court as "an anomalous relic of bygone modes of thought"—has no present justification.

Appellate Review in Income, Estate and Gift Tax Cases

An even more striking defect in judicial procedure is presented by the method of appellate review of Board decisions. The normal judicial procedure distributes original jurisdiction among many courts and confines appellate review to a smaller number of courts, with final review in one court. The Board of Tax Appeals procedure is practically upside down. Original jurisdiction is confined to one court and appellate review is distributed among eleven courts. The work of the Board is seriously handicapped by this system of review. Subject to eleven masters constantly quarreling among themselves, the Board is left without authoritative guidance.

The method by which the Supreme Court selects cases for review adds further confusion.
finality is impossible until the Supreme Court considers the issue, that Court will rarely grant certiorari in the absence of a conflict among the Circuit Courts of Appeals. But a decision of one Circuit Court of Appeals and a denial of certiorari by the Supreme Court together do not settle an issue. If the taxpayer is the defeated party, other taxpayers in other circuits are still free to litigate the same question. If the Commissioner is the defeated party, he cannot abide by the decision but must litigate in other circuits in the hope of developing the prerequisite conflict. The present system of appellate review is thus an open invitation to litigation, and tax law differs from circuit to circuit until the Supreme Court decides the issue.

Remedies Suggested

It is these defects in administrative and judicial procedure which the so-called "Traynor Plan" is designed to remedy. The remedies suggested have two fundamental objectives:

(1) With respect to the administrative procedure, to bring about an objective analysis of controversies in the administrative stage, thereby increasing the number of cases settled in that stage and stopping the flood of petitions to a Board which cannot possibly handle all of them.
(2) With respect to the system of judicial review, to establish a simplified structure which will insure certainty and uniformity in tax decisions.

Preliminary Conferences

The present preliminary conferences in the office of the local revenue agent would be continued but their efficacy would be strengthened and their importance clearly emphasized. The conferees representing the Commissioner should be such as to insure the taxpayer of a responsible consideration of his case. The great bulk of tax controversies must continue to be disposed of in these conferences. The subsequent administrative procedure should be designed to encourage both taxpayer and the Commissioner to reach a solution of the controversy in this stage.

Protest Procedure

If the controversy is not disposed of in the preliminary conference, the Commissioner would notify the taxpayer of the proposed deficiency and of his opportunity to file a protest containing a complete statement of the transactions involved. The protest, in writing and under oath, would contain: (a) the grounds of protest; (b) the relevant facts; (c) a list of relevant documents; and (d) a list of persons having knowledge of the facts, together with a brief statement of their connection with the transaction. Failure to file the protest would result in immediate assessment of the deficiency, as in the case today of a failure to file a petition to the Board. This protest would be considered in a conference in the field, at which every effort would be made to settle the matter, or failing such settlement, to eliminate all factual issues. The conferees representing the Commissioner would be the most capable tax technicians in the Bureau.

Findings of Fact by Commissioner

If the controversy is not settled in the conference on the protest, the Commissioner would issue his final notice of deficiency. This notice would contain specific findings of fact on the matters involved, so that the taxpayer will have definite advice of the case against him. At the same time, the Commissioner will thus be compelled to evaluate the facts objectively.

“Decentralization of the Board would be accomplished by dividing the nation into five districts. From a center in each district a Board Division of three members would travel to various cities in its district to hold hearings. These could be held by a single member, but the decision would be made by the three members jointly. Each Division would in effect be a separate Board having exclusive jurisdiction within its own district.”

Scope of Board Review

After receipt of such notice of deficiency and findings of fact, the taxpayer, if he desired, would file his petition with the Board of Tax Appeals. The consideration of the case in the Board would be subject to the following limitations:

(1) The taxpayer in his proof before the Board would be limited to the grounds, documents and facts outlined in his protest.

(2) The Commissioner in his proof would be limited to the issues and facts contained in the findings of fact. He could no longer present a claim before the Board for an additional deficiency.

(3) The taxpayer, as at present, would have the burden of proving that the findings of fact were erroneous.

(4) To insure the collectibility of any deficiency found by the Board, it may be desirable to require the taxpayer to post a bond or other security at the time of filing his petition with the Board.

On the basis of recent figures, by reason of the proposed changes in administrative procedure the requirement of a bond or other security would affect only 15 percent of the taxpayers now filing petitions with the Board. Moreover, the Board would be permitted to waive such requirement when it seemed clear that the Government would incur no loss as a consequence.

In short, the requirement of a protest would force disclosure of the facts either in the protest itself or in the preliminary conference preceding it, in view of the taxpayer’s knowledge that the facts would have to be disclosed later in any event. The findings of fact would force the Commissioner to make a realistic appraisal of his case in the administrative stage. The limitations on proof before the Board would serve to insure the efficacy of both protest and findings of fact. The present decentralization of the Technical Staff and the Appeals Division will provide a competent
force in the field to consider the protests and to prepare the findings of fact.

It has been said, with particular reference to the findings of fact, that this procedure gives complete control to the Commissioner, that the facts would be determined entirely by the Treasury, that the Board would be no check upon the findings of the Commissioner. This view of the proposal is completely erroneous. It is definitely not suggested by Professor Traynor that the findings of fact be considered final if supported by evidence. It is not intended to introduce into the tax field the system of administrative finality that exists with respect to the Interstate Commerce Commission, the Federal Trade Commission, and so on. The Commissioner’s findings of fact, as far as the taxpayer is concerned, would be no different in their finality than the present notice of deficiency. Their whole purpose is to serve as a check on the Commissioner, for he and not the taxpayer is limited before the Board to these findings of fact. The taxpayer is limited in his proof to the matters in the protest—a document prepared by him—and not to the findings of fact. Subject to the limitations in the proof that may be adduced, the Board would continue as it does now to weigh the evidence and to reach its own conclusion.

Original Jurisdiction in Tax Cases

The refund jurisdiction of the District Courts and the Court of Claims would be transferred to the Board of Tax Appeals, so that the Board would have complete original jurisdiction in income, estate and gift taxes. The number of refund cases is comparatively few—245 were decided in the last fiscal year—and as the suggested administrative procedure contemplates a reduction in the number of petitions to less than 1,000, the Board could easily handle these additional cases. This transfer would go far to reduce the present lack of uniformity in tax decisions. It would also serve to eliminate the present confusion caused by suits against the collector and suits against the United States, as all proceedings would be against one person, the Commissioner, and before one tribunal, the Board of Tax Appeals.

Decentralization of the Board of Tax Appeals

In order that the Board of Tax Appeals may exercise its increased jurisdiction more effectively, it would be decentralized into five divisions. Such decentralization of the Board is really made imperative by the current decentralization of the Bureau. Already, over 90 percent of the Board’s cases are heard outside of Washington. However, the Bureau and the tax bar will probably urge that the frequency of circuit hearings should be increased and this can only be accomplished by a decentralized Board. Furthermore, needed reforms in the procedure of the Board, similar to those accomplished for the District Courts by the new Rules of Civil Procedure, can only be provided by a decentralized Board, since these reforms are dependent upon prompt and elastic handling of preliminary motions and other procedural matters. Finally, such decentralization would make possible the expedient trial of petitions filed with the Board and thereby serve to encourage settlement of controversies in the administrative stage.

Single Court of Tax Appeals

This proposed decentralization of the Board would not be possible under the present system of appellate review. Decentralization will undoubtedly result in some conflicts among the Divisions of the Board, but these conflicts would not be harmful if they could be resolved easily and swiftly. As decentralization of the Bureau and the Board would broaden the jurisdictional base and permit tax cases to be fully considered locally, centralization of appellate review in a single court is both practicable and necessary. Consequently, the present appellate jurisdiction of the Circuit Courts of Appeals in income, estate and gift taxes would be transferred to a Court of Tax Appeals established in Washington. Appeals to this Court from the Divisions of the Board would be a matter of right, while appeals to the Supreme Court would be by certiorari. This concentration of appellate review of Board decisions in a single court would remedy most of the difficulties inherent in the present system. Once this court had decided an issue and certiorari were denied, the issue would be settled for the entire country and the Commissioner and all taxpayers would necessarily acquiesce.

It has been stated that this proposal means the virtual abolition of the Board of Tax Appeals, and that the plan was designed to this end. In answer, it may be pointed out that Professor Traynor in his article expressly stated that abolition of the Board would not solve the present difficulties. Moreover, the mere statement of his proposal supports the conclusion that far from abolishing the Board, it on the contrary, would strengthen the Board and for the first time since its creation permit it to function effectively.

How the Court of Tax Appeals may be established is a matter of detail. Perhaps a new court could be created. If that is not thought desirable, the jurisdiction of the present Court of Appeals for the District of Columbia could be enlarged and this court in effect made the Court of Tax Appeals. Similarly, the Court of Claims could be constituted the Court of Tax Appeals. Figures have been presented by Professor Traynor indicating that either of these courts, with the addition of one or two new members, could easily handle the increase in jurisdiction. Or, if the United States Court of Appeals for Administration provided for in the Logan Bill (S. 916) were established, such court would in effect constitute the Court of Tax Appeals as respects the tax cases within its jurisdiction. It may also be added that Professor Traynor in his article answers the contention that tax cases today usually involve issues turning on local substantive law, and that therefore the present system of appellate review by the Circuit Courts of Appeals is desirable. He points out that a survey of the decided cases for the fiscal years 1936 and 1937 indicated that only 9 percent of the cases involved such local issues. In view of the specialized nature of tax law, the whole structure of appellate review should not be designed just to accommodate these few cases. Moreover, a decentralized Board could adequately dispose of such questions. (Continued on page 441)
Conclusion
An admirable suggestion of the article is that both Commissioner and taxpayer be forced to acquiesce in a decision of the new Court of Appeals if certiorari be denied. We all have in mind the classic but apochryphal tale of the official who asserted the Commissioner's non-acquiescence in a decision of the Supreme Court.

In concluding, let me say as I said in the beginning, that if we have been more direct or more frank than the occasion permits, it is because we rejoice in the directness and frankness of the approach to this problem by Professor Traynor and Mr. Surrey, who by their attitude have led us to believe that the Treasury wishes frank discussion of its proposals to the end that a remedy be found for a problem vitally affecting us all.

The Traynor Plan—What It Is
(Continued from page 396)

This, in brief, is the "Traynor Plan." Its sole purpose is to provide a procedure that will effectively and expeditiously determine controversies between the taxpayer and the Commissioner, and at the same time will operate with fairness to each party. The word "plan" may be misleading, for it connotes an inflexible program, whereas the proposal is subject to whatever change is necessary to accomplish this purpose. The proposal was formulated only after critical and objective appraisal of the present procedure. Criticism of the proposal should be made on the same objective plane, for without such objectivity it will be impossible to achieve a procedure that is equitable to Commissioner and taxpayer alike. It is to be hoped that the tax bar, possessing as it does a special and intimate acquaintance with the problems to be solved, will bring its knowledge and training to bear on these problems to the end that we may finally obtain an improved tax administration.

Taxation of Judges' Salaries
(Continued from page 422)

had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of Article III, §1. To subject them to a general tax is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow citizens the material burden of the government whose Constitution and laws they are charged with administering.

Miles v. Graham

Miles v. Graham is obliterated in a brief sentence: "But to the extent that what the Court now says is inconsistent with what was said in Miles v. Graham, 268 U. S. 501 [1 USRC f 138], the latter cannot survive."

Evans v. Gore

There remains the question of taxability in those cases where the judge took office before the 1932 Act or before any taxing statute. Evans v. Gore, supra, prohibited taxation of the salary in such case. However, the decision on that question may not require a repudiation of that case although it may require a repudiation of its principle. The reason is found in the Public Salary Tax Act of 1939. That Act provides that salaries of Federal judges who took office before June 6, 1932, are taxable. But Sec. 209 of that Act provides that such tax may not be retroactively imposed. Consequently, the issue will arise in connection with the constitutionality of this provision in the Public Salary Tax Act. However, the decision on that issue will involve the same principle as was involved in Evans v. Gore, and the Supreme Court's comment on that case may have an important bearing on the Court's future attitude. The opinion clearly discredits the earlier case. For example: "However, the meaning which Evans v. Gore imputed to the history which explains Article III, §1 was contrary to the way in which it was read by other English-speaking courts. The decision met wide and steadily growing disfavor from legal scholarship and professional opinion. Evans v. Gore itself was rejected by most of the courts before whom the matter came after that decision."

Here discussion of the case stops. But it is reasonable to conclude that the principle of the case has been thoroughly devitalized, as the result of which it is equally reasonable to conclude that the provision of the Public Salary Tax Act taxing salaries of judges who took office before June 6, 1932 will also be upheld. Certainly, if the status of judges appointed after that date "does not generate an immunity from sharing with their fellow citizens the material burden of government," there seems to be little reason why judges appointed before that date cannot be called upon to share similarly the burden of government.

Dissenting Opinion

Mr. Justice Butler wrote a lengthy and scholarly dissenting opinion. He traces the constitutional history of Art. III, §1. He concludes:

For one convinced that the judgment now given is wrong, it is impossible to acquiesce or merely to note dissent. And so this opinion is written to indicate the grounds of opposition and to evidence regret that another landmark has been removed.

Excise Tax on Toilet Preparations

In Campana Corp. v. Harrison recently decided by the District Court for the Northern District of Illinois, the issue was whether the excise tax on Italian Balm should be based on the price at which the manufacturer (taxpayer), Campana Corporation, sold the toilet preparation to Campana Sales Company or on the price at which the latter company sold the product. The Court held that the sales by the taxpayer to the selling corporation were at fair market prices, and at prices for which the articles involved in such sales were sold in the ordinary course of trade by manufacturers or producers thereof. It was therefore held that the Commissioner erred in basing the tax on the price for which the selling company sold the product. Neither corporation held stock of the other and stockholders owning stock of each corporation did not hold the stock in substantially the same proportions.

* Page 12,289, 1939 CCH Index Vol. 441
* Sec. 3 of the Public Salary Tax Act.
* 394 CCH f 9505.