THE JOURNAL OF THE AMERICAN TAXATION ASSOCIATION
Vol. 46, No. 2
Fall 2024
pp. 177–182

American Accounting Association
DOI: 10.2308/JATA-2024-005

Book Reviews

In each issue, *JATA* publishes reviews of textbooks and other books of interest to tax scholars. All book reviews are solicited by the associate editor. However, if you know of a book that you would like reviewed or if you are interested in reviewing a book, please contact the associate editor.

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STEVEN M. SHEFFRIN, *Behind Tax Policy Controversies: Social, Legal and Economic Foundations* (New York, NY: Anthem Press, 2023, $144).

Behind Tax Policy Controversies: Social, Legal and Economic Foundations is a well-written and thoughtful overview of some of today's core tax-policy issues—ranging from optimal taxation principles to tax fairness, racial bias in the tax code, and taxing the wealthy. Author Steven M. Sheffrin provides a robust foundation for understanding these policy choices and trade-offs, focusing on the underlying social, legal, and economic principles at play. Although many of these tax issues can be politically charged, Sheffrin deftly delivers an even-handed and easy-to-understand introduction to these core issues, while introducing the reader to the literature of tax policy and some of its most important doctrinal ideas.

The preface presents the animating principle for the text: namely, that "to understand taxes you need to understand all the competing tensions in our daily life—tax is a window on our society." Sheffrin explains that to understand modern tax-policy controversies, one must appreciate the role of the substructures and architecture that frame these debates, such as economics, law, psychology, and the like. Continuing this theme, he frames the nature of tax-policy controversies in Chapter 1. He notes that the most common view of a tax debate is about "who pays what," but he shrewdly notes that this is an incomplete perspective because it ignores the various social, political, and other perspectives that bear on the tax system and because it ignores the root causes of tax debates. He therefore uses an analogy that "periodic eruptions" about tax fairness and burdens are akin to the occasional earthquake that is caused by movements in underlying tectonic plates; the tectonic plates in our tax-policy debates are these social, legal, and economic substructures.

Sheffrin posits several examples of "surface eruptions"—big events that may tend to distract us from the movement of the underlying tectonic plates. For example, he explains that many Americans associate the Boston Tea Party with the timeless phrase of "no taxation without representation"—the notion that taxation ought to be connected to the will of the people. As an example of looking beneath the eruption—that is, to the tectonic-plate substructure—he argues that the proximate cause of the Boston Tea Party was not an increase of taxes on tea, but rather a relaxing of export duties that allowed the price of East Indian tea to decrease relative to Dutch tea, which undercut the "smuggling" operations of Samuel Adams and John Hancock. As he explains, the Boston Tea Party was not actually a populist revolt over British taxes, but rather a fight over the market share of tea.

Chapter 2 tackles the quintessential form of classic tax reform—a broad tax base with low tax rates. He analyzes this type of tax reform by using the Tax Reform Act of 1986 (TRA), which is emblematic of the classic model just described. Despite the key feature of lower top marginal rates and an equalization of capital gains and ordinary income rates, it did not last long, and Chapter 2 further explores why. Sheffrin first offers a political explanation advanced by Milton Friedman—that eliminating many tax preferences allowed the cycle of creating tax preferences to start anew with a clean space in which to work. The next explanation for why the reforms ushered in by the TRA did not last long was that the TRA was economically inefficient. Here, Sheffrin unpacks various concepts from the economics of taxation, such as *excess burden*—the idea that increased taxes affect market prices, resulting in reduced demand that may

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culminate in losses that exceed the amount of tax revenue collected. The impact of excess burden, of course, depends on the market response to tax changes, which gives rise to the idea of elasticity (i.e., tax sensitivity). Sheffrin explains that a broad-base, low-rate policy environment treats all activities the same, regardless of their sensitivity to tax-rate changes. He then walks through several policy examples, such as charitable contribution deductions and capital-gains tax rates, to examine the impact of tax-rate sensitivity on policy choices implemented by the TRA.

He next turns to the notion of a broad base and explores wrinkles in its application—for example, if the base includes unrealized capital gains (an issue that is particularly timely today, given recent tax reform proposals). Sheffrin closes Chapter 2's survey of modern tax reform with an overview of tax expenditures. He unpacks the historical evolution of the notion of tax expenditures, starting with Professor Stanley Surrey's work as assistant secretary for tax policy under President Kennedy. Sheffrin observes rightly that, although top tax expenditures (e.g., the exclusion for employer-provided health care and reduced rates for capital gains) would ideally be grounds for tax reform under a broad-base, low-rate policy, they are highly popular and, as such, are unlikely to be changed.

In Chapter 3, Sheffrin turns to a classic tax-policy question: Should we tax income or consumption? Economic theory, he notes, suggests that consumption taxes may provide more economic efficiency; however, he continues to note that fairness considerations, psychological factors, and administrative burdens make it difficult to implement an ideal consumption tax. Indeed, he further states that, although the United States claims it has an income tax, it has a hybrid system that incorporates some consumption-tax elements. He briefly traces some of the historical thought concerning consumption taxes, ranging from Thomas Hobbes's *Leviathan* to Nicholas Kaldor's work in the 1950s and the proposal informally known as Treasury I under President Reagan.

After unpacking types of consumption taxes, Sheffrin reviews the economic-efficiency arguments in favor of consumption taxes. Here, he introduces the classic two-period economic model and discusses ideas such as consumption smoothing, positive time preferences, and the cheaper cost of future consumption. After surveying some of the academic literature here, such as the *Judd-Chamley model*, he concludes that there is general acknowledgment that consumption taxes are more economically efficient because income taxes distort savings-consumption decisions. But as with many topics in the text, he fairly presents the other perspective. For example, he notes some of the arguments against consumption taxes, such as the distributional issues (e.g., wealthy taxpayers tend to save more, which can result in a shift in tax burdens). In response to those objections, he advances the notion that a consumed income tax likely satisfies many of the concerns raised. Pragmatically, he notes that any new system of taxation that departs from the current system faces a "high burden." Indeed, he avers that consumption-tax proponents face an even greater burden because of the administrative burdens and the need to persuade the public to exempt returns from savings and capital income from taxation. Dealing with the reality that the United States will need additional revenue sources in the long run, he notes that a consumption tax is a possible solution. Echoing the theme of the text, he further notes that the consumption-tax debate nicely illustrates the range of underlying factors that drive tax-policy debates, such as psychological and fairness considerations.

In Chapter 4, Sheffrin looks beyond purely domestic issues and across the ocean to examine the debate over taxing multinational corporations. As he notes, this topic has been particularly salient in the last decade, given the dramatic changes in the international taxation norms that were established in the 1920s. He adroitly explains that two factors combined to precipitate these changes—the global financial crisis, which forced many governments into austerity measures, and reports of the "elaborate and byzantine strategies" used by multinational companies to reduce their taxes (e.g., the "Double-Dutch Sandwich"). He then summarizes three responses to the need for updated international tax norms: (a) the Base Erosion and Profits Shifting (BEPS) project sponsored by the Organisation for Economic Co-operation and Development (OECD); (b) the recent legislative changes in the United States (such as the Global Intangible Low-Taxed Income, or GILTI); and (c) other efforts by the OECD, such as the Inclusive Framework, Pillar 1, and Pillar 2.

After unpacking these contemporary responses, he proceeds to explain the policy justifications for taxing corporate income generally. He explains the traditional rationale for corporate taxation (i.e., to prevent corporations from serving as tax shelters), but he also explains alternative rationales, such as the separate legal identity of the corporation (i.e., an entity perspective). He also posits that, with respect to recent trends, two fundamental facts of corporate taxation are indisputable—namely, that corporate revenues are relatively stable and that corporate tax rates have generally declined.

Sheffrin also walks the reader through the intricacies of transfer pricing, which is one of the more nettlesome aspects of international taxes. He lucidly points out some of the problems with the "arm's length basis" principle of transfer-pricing regimes; for example, it may be difficult to identify comparable market transactions for pricing purposes. The more complex dimension, he explains, is that arm's length transactions may be fictions that are not meaningful for transactions between affiliated companies. Invoking the work of Ronald Coase, Sheffrin notes that large businesses organize themselves to provide cost savings or synergies so that there may be no principled way to divide profit between related

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entities. In addition to the theoretical discussion of transfer pricing, Sheffrin illustrates some of the practical legal issues using the litigation from the Amazon case in the United States Tax Court and the U.S. Court of Appeals for the Ninth Circuit, which focused on some of Amazon's international tax planning with intangible assets.

In Chapter 5, Sheffrin tackles a critical topic in popular debates surrounding tax policy—the issue of tax fairness. Indeed, he correctly notes that, at bottom, policy controversies tend to center on different views of fairness. He surveys various philosophical approaches to tax fairness, such as optimal tax theory (e.g., the works of Frank Ramsey and James Mirrlees) and maximizing social welfare (e.g., Rawls and his work *A Theory of Justice*). Sheffrin also explores the work of Robert Nozick, which focuses on a more libertarian framework that Sheffrin summarizes as "rights-based," in contrast to the Rawlsian end-state views. After this background, he turns to the perspectives of individuals, who, he argues, are more concerned about process and procedure—that is, procedural justice—than purely distributional outcomes. In addition, he also explores how *equity theory*—the view that individuals are satisfied when rewards are related to their inputs—informs attitudes toward taxation. Equity theory, Sheffrin argues, would indicate that taxpayers view taxation as a painful experience because it severs the relationship between work and rewards (pre-tax income). He also discusses *desert theory*, which proposes that an individual deserves an outcome based on a criterion. After introducing desert theory, he explores tax policies that are consistent with it—for example, he explains how desert theorists would reject various distributional arguments.

In Chapter 6, Sheffrin turns to one of the most socially salient and important issues of our day—namely, that of racial bias. Sheffrin indicates that no existing data explicitly match tax records and race information; nevertheless, he observes, other data sources can offer reasonable approximations to demonstrates various disparate racial impacts. He notes that racial groups differ in important characteristics, such as income and asset holdings, which will have a direct bearing on their tax liabilities. For example, families with higher wealth likely have more capital gains, which offsets the built-in progressivity of the tax code, and families with higher incomes are more likely to itemize their deductions and can take advantage of tax preferences, such as the mortgage-interest and the charitable-contribution deductions.

After noting some of these differences, he unpacks the legal literature on disparate impacts as a framework to analyze these differences. He explains that this framework can help answer when instances of disparate impact constitute illegal discrimination. He traces some of the major jurisprudence here, such as *Griggs v. Duke Power*, *Washington v. Davis*, and *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*. Turning to the tax domain, he astutely comments that, unlike other domains in which disparate-impact analysis has been used—such as housing and employment—there are no general historical legacies concerning tax discrimination. He properly observes that the poll tax could be one such example, but poll taxes have been held unconstitutional and are no longer a facet of our current tax system. Sheffrin perceptively recognizes that much of the existing tax literature focuses on distributional patterns. Importantly, he also critically assesses some of the measurement issues inherent in studying the racial impacts of taxation—for example, how to define "taxes" (e.g., how to treat refundable tax credits). Sheffrin also deftly considers tax expenditures and disparate impacts, including marriage penalties, the mortgage-interest deduction, and capital income preferences.

Sheffrin addresses taxing the very wealthy in Chapter 7. After reviewing some of the societal context in the wake of the global financial crisis and the Occupy Wall Street movement, he discusses the main thesis of Thomas Piketty and his book *Capital in the Twenty-First Century*—namely, the size of the economic wealth concentrated in the top 1 percent. He notes that recent scholarship casts doubt on some of these core claims about the 1 percent, but, in any event, Sheffrin recognizes that modern tax systems do a poor job of taxing the "truly rich." Sheffrin also tours the history of top statutory rates, focusing on the work of political scientists Kenneth Scheve and David Stasavage; they proffer *compensation theory*, arguing that increases in top rates are to compensate society for the burdens they suffer during major wars. Sheffrin notes that although Scheve and Stasavage provide "solid evidence" for their theories, open questions remain—for example, some modern examples of top statutory rate changes in the United States did not coincide with major wars (e.g., top rates increased before World War II).

After discussing some of these theoretical and historical points, Sheffrin turns to contemporary ideas for taxing the rich, such as the wealth-tax proposals advanced by Senators Elizabeth Warren and Bernie Sanders. He explains some of the thorny constitutional issues accompanying such taxes, and he also addresses accrual taxes, proposed by Senator Ron Wyden. He also discusses modernizing the estate- and gift-tax regimes and eliminating step-up basis at death.

In Chapter 8, Sheffrin concludes by revisiting the theme of the book—namely, that underlying tax controversies are important social, legal, and economic factors. For example, he emphasizes that tax policies can be driven by "irreconcilable social perspectives," such as differing views of justice and morality. He reiterates that legal frameworks likewise affect tax regimes, citing as an example the possible constitutional issues with wealth taxes. And, last, economic forces inform taxes by affecting market behavior. He also looks ahead, focusing on some of the challenges that the U.S. tax system will face, such as burdens on the Treasury and IRS and the gap between federal spending and revenue. He

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concludes with an exhortation that world governments should not forget the underlying forces that drive and frame tax policies; to do so, he admonishes, may give rise to political earthquakes.

In summary, Sheffrin packs a big punch in a short book. He ably summarizes and synthesizes some of the most pressing issues in modern tax policy, and he does so in an even-handed way, taking care to integrate history, philosophy, and empirical work. In doing so, he makes an important contribution for the lay reader and the beginning student of tax policy. His main theme—that our modern policy disputes are really about underlying social, legal, and economic factors—is important for all readers and policymakers to keep in mind. Indeed, his thesis is helpful in other domains beyond tax policy.

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JAMES R. REPETTI, WILLIAM H. LYONS, and CHARLENE D. LUKE, *Partnership Income Taxation*, 7th Edition (St. Paul, MN: Foundation Press (West Academic), 2023, $57.00; eBook $42.75).

James Repetti, William Lyons, and Charlene Luke's *Partnership Income Taxation* is intended to provide the "simplest possible" introduction to the taxation of partnerships and their partners for students and junior practitioners.[1] Given the complexity of the subject matter, they do an excellent job organizing and triaging the material, while noting, both above and below the line, areas for future exploration. Especially well done throughout the volume is the integration of Section 199A (and, in particular, the Regulations promulgated thereunder),[2] which demonstrates by example the complexities of the intersection of general tax rules, initiatives, and policies with the fabric of Subchapter K. That addition, as well as expanded discussion of disguised sales, remedial allocations, and family partnerships and overviews of the Regulations promulgated under Sections 752 and 1061, distinguish this edition from the prior edition released in 2018. This is a "Concepts and Insights" text, rather than a traditional casebook with cases. Accordingly, those looking for an additional presentation of the material and a plethora of crisp examples/practice problems would be well served by this volume (though it could be used as a primary text if an instructor wished to do so). The chapters generally follow the lifecycle of a partnership, but instructors could map the material onto the order of their courses without too much adaptation (or student confusion), since chapters generally minimize interdependence and instead summarize previously presented material.

Partnership Income Taxation begins in Chapters 1, 2, and 3 by addressing foundational aspects of partnership taxation. Chapter 1 opens with a discussion of choice of entity, introducing the "flow-through" nature of a partnership, income allocations, and distributions of appreciated assets. The second half of Chapter 1 considers the definition of "partnership" for tax purposes, including the check the box regime and publicly traded partnerships. Significantly, Chapter 1 also introduces Section 199A, with the basic mechanics laid out in a lengthy footnote.

The book recognizes that the "flow-through" concept is a fundamental paradigm shift for students, whether arriving straight from a course in individual income taxation or from a course in corporate taxation. Accordingly, Chapter 2 helpfully elaborates on the actual flow-through mechanics introduced in Chapter 1, including timing of income, partnership duration (including touching on the pre-2018 technical termination rules), and partnership-level audits under the BBA Rules.[3] Notably, Chapter 2 also introduces the general partnership antiabuse rules. Although instructors may want to defer discussing these rules until after allocations are thoroughly covered, the discussion of "flow-through" treatment is generally sufficient to understand these rules here. Finally, echoing Chapter 1's choice of entity discussion, which included S corporations, and setting the pattern followed throughout *Partnership Income Taxation*, the final section of Chapter 2 compares the Subchapter K rules discussed in the chapter with comparable Subchapter S rules, to the extent that they exist. Presenting the comparison piecemeal in each chapter makes it digestible, and it also makes it easy to bracket off in courses that do not touch on Subchapter S.

Chapter 3 completes the trilogy of foundational aspects of partnership taxation by considering partnership basis, including the relationship between partnership debt and basis. Although inside basis and outside basis exist in any entity-based system, their relevance and relationship in Subchapter K is a thread that students should reference

[1] See https://www.westacademic.com/Repetti-Lyons-and-Lukes-Partnership-Income-Taxation-7th-Concepts-and-Insights-Series-9781685613716

[2] All section references are to the Internal Revenue Code of 1986, as amended, unless otherwise specified, and all regulations references are to the U.S. Department of the Treasury regulations promulgated thereunder.

[3] Codified at Section 6221 *et seq.*

throughout studying partnership taxation. This early, standalone discussion is particularly helpful in that regard. Chapter 3 also presents various limits on deductibility of partnership losses, both from inside and outside of Subchapter K. In the interest of time, an instructor may not cover, for example, passive losses. Nevertheless, since tax shelters have historically capitalized upon leveraged partnerships to generate (often artificial) losses, this discussion is both worthwhile and edifying.

Chapter 4 begins discussing the lifecycle of a partnership in earnest with consideration of contributions to partnerships. With regard to contributions of property, Chapter 4 marches through the basic rules of basis, holding period, encumbered property, depreciation recapture, and character. It then turns to a detailed discussion of capital interests and profits interests, including Section 1061 and the Regulations thereunder, to present the tax ramifications associated with contributions of services to partnerships. Instructors may well choose to spend less time on the history of *Diamond* and *Campbell* than is presented, but as with loss limitations in Chapter 3, the discussion is cogent and efficient. Chapter 4 then concludes by considering disguised sales under Section 707, with cameos from Sections 704(c)(1)(B) and 737, both of which are examined further in Chapter 7. Instructors may group Sections 707; 704(c)(1)(B); and 737 into a single unit, but the book's heuristic approach aptly distinguishes (1) the contribution versus sale question from (2) the distributions and allocations questions.

Chapters 5–8 of *Partnership Income Taxation* examine the challenging issue of partnership allocations.

Chapter 5 presents capital accounts, walking through the substantial economic effect rules, including helpful history and context. Insofar as those rules are the heart of partnership taxation, it is not surprising that Chapter 5 is the longest chapter. A lengthy portion of Chapter 5 is dedicated to depreciation, including nonrecourse allocations. Notably, this comes before an extensive discussion of debt, partnership debt, and its allocations in Chapter 8. Chapter 5 concludes (before the standard Subchapter S comparison) with a brief introduction to targeted allocations and distribution waterfalls. Given the prevalence of targeted allocations in practice, instructors may spend more or less time on the debates surrounding their use.

Building upon the rules found in Chapter 5, Chapter 6 considers assignment of income problems, including gifts of partnership interests and varying partnership percentage interests under Section 706(d). It also considers the intersection of partnership antiabuse rules (first introduced in Chapter 2) with the mechanical rules of Section 704(b).

Chapter 7 is dedicated to Section 704(c). Appropriately the second-longest chapter of the book, the chapter walks through the basic rule, the traditional method and ceiling rule, curative allocations, and remedial allocations, first with nondepreciable property and then with depreciable property. This step-by-step approach makes the conceptually complex material digestible. Numerous examples also lay out capital accounts over time to facilitate student understanding. The balance of Chapter 7 considers four further complexities: the rules for built-in loss property under Section 704(c)(1)(C), reverse 704(c) allocations, mixing bowl rules, and a newly minted discussion of Section 199A's intersection with Sections 704(c) and 737. Reverse 704(c) allocations are given the most attention of the four, which underscores and reinforces the rest of Chapter 7's content.

Chapter 8 discusses the complex rules regarding allocation of partnership debt under Section 752. After presenting the crucial distinction between recourse and nonrecourse debt, the chapter walks through allocations of each in turn. Due consideration is given in each discussion to the effect of guarantees of debt and contributions of encumbered property. Notably, the book includes a helpful footnote regarding bottom-dollar guarantees of nonrecourse debt, drawing on the Regulations promulgated in 2019 (Section 1.752-2, etc.). The chapter concludes with a discussion of obligations that are outside of Section 752, a fascinating, but murky, topic that instructors may emphasize to varying degrees.

After almost 100 pages on the intricacies of allocations (that may only scratch the surface!), *Partnership Income Taxation* turns in Chapter 9 to transactions between partnerships and partners. This serves as a helpful bridge from allocations to sales of partnership interests and partnership distributions in the following chapters. The difference between and rules of distributions of distributive shares, guaranteed payments under Section 707(c), and Section 707(a) payments are clearly presented, with the incentives, consequences, and policy considerations overlaid throughout (Section 707(b) is considered briefly toward the end of the chapter).

Chapter 10 provides a detailed examination of sales of partnership interests. In discussing the seller's consequences, the crucial—and often confusing—mechanics and terminology of Section 751(a) are laid out at some length, which will likely be of significant assistance to students. When Chapter 10 turns to the buyer's consequences, the Section 743(b) adjustment's mechanics are presented. Both of these difficult topics are discussed with numerous helpful examples. Chapter 10 concludes with brief, but useful, discussion of Section 732(d)'s pseudo-Section 743(b) adjustment and another summary of the pre-2018 technical termination rules. Although sales of partnership interests could trigger those rules, an instructor that covers technical terminations could alternatively choose to reference old Section 708(b)(1) when discussing retiring partners (Chapter 13) or the death of a partner (Chapter 15).

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Chapters 11–14 of *Partnership Income Taxation* consider partnership distributions.

Chapter 11 presents the general rules that apply to partnership distributions. After presenting nonrecognition, basis adjustment and allocation, and Section 735(a)'s character taint rules, it turns to situations where there is recognition of gain or loss. Given the prevalence of investment partnerships, the discussion of Section 731(c)'s rules for distributions of marketable securities is apt. Finally, Chapter 11 also reiterates the rules of Sections 704(c) and 737.

Chapters 12 and 13 consider additional instances in which partnership distributions trigger recognition. Chapter 12 builds on Chapter 11 by walking through the rules of Section 751(b). Using the terms defined in Section 751(c) (which are discussed in Chapter 10), this chapter is particularly notable for its detailed examples that, as much as possible, cogently convey these complex rules as they apply to liquidating, and then current, distributions. Instructors seeking classroom examples or problem sets will find such examples essential. Chapter 13 further builds on Chapter 11 by presenting the rules of Section 736. This chapter thoroughly unwinds Section 736's complexity, carefully walking through the difficult statutory drafting, the meaning of a payment for "partnership property," and the taxation of different Section 736 payments. Like Chapter 12, useful examples abound. Chapter 13 also helpfully discusses some additional wrinkles with respect to Section 736, including a detailed and important discussion regarding the distinction between a sale of a partnership interest and a retirement payment under Section 736.

Chapter 14 presents the basis adjustment under Section 734(b). Conceptually, this chapter could follow directly from Chapter 11, but it is enriched and made more precise by following the discussions of Section 751(b) and Section 736, which delineate Section 734(b)'s scope. Chapter 14's discussion of the Section 743(b) adjustment's mechanics also helpfully reinforces the Section 743(b) adjustment discussed in Chapter 10 by way of comparison.

Finally, Chapter 15 briefly summarizes the variety of unique issues that arise from the death of a partner. After a helpful discussion that would refresh students' recollection of income in respect to a decedent under Section 1014(c), the chapter applies the basis step up rules at death to the various paradigms that apply when a partner dies (i.e., inheriting the right to receive payments and inheriting the partnership interest itself), underscoring the importance of this distinction that stems from careful drafting. Chapter 15 concludes with notes regarding the closing of the partnership's tax year with respect to the decedent partner under Section 706(c) and regarding the subsequent sale of a partnership interest by the inheriting partner.

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