
Melvin G. Dakin

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Close Corporations is the first book in its field. It will pay for itself many times over in any law office. In addition, it is a work of scholarship, demonstrating real insight into the needs and problems of small business, and hacking a path through the underbrush which no legal writer has yet travelled.

Alvin B. Rubin*


Judge Learned Hand once said of the business organization about which this book is written that it is "one of the most obscure and unsatisfactory of legal concepts." As Taubman states, "the joint venture does not enjoy ease of identification. . . . Laymen scarcely know the term. The bar is aware of it mainly as a device to impose legal liability as an additional cause of action in a complaint. The bench has used this relationship to impose certain of its legal consequences as a measure of justice. . . . Paradoxically, the term is easier to define than to identify. Joint venture is an association of two or more natural or juridical persons to carry on as co-owners an enterprise, venture, or operation for the duration of that particular transaction or series of transactions or for a limited time." Since 1932, it has for tax purposes been included in the concept of partnership. But in 1954 Congress added two extraordinary provisions to the Internal Revenue Code: "[T]he Secretary . . . may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of [the provisions on partnership]." (§ 761(a), Internal Revenue Code of 1954): "[A]n election may be made, in accordance with regulations prescribed by the Secretary . . ., by the proprietor or all the partners, owning an interest in [an unincorporated business] enterprise . . . to be subject to . . . taxes . . . as a domestic corporation. . . ." (§ 1361(a), Internal Revenue Code of 1954)

To the author of this treatise, these somewhat obscure provisions presented a challenge; the result has been a rare and refreshing phenomenon in tax law—a genuinely philosophical

*Member, Baton Rouge Bar; Special Lecturer in Law, Louisiana State University.
treatment of the complex problem of taxing the fruits of the joint venture.

The provisions, of course, simply utilized a standard device in the 1954 Code; whatever some arrangement or transaction may really be, it will or may be treated as something else for tax purposes if expedient to do so. The device has made for an almost dizzying flexibility in the variety of results which can be achieved taxwise; what this author has demonstrated is the havoc wreaked with traditional systematic conceptions and categories by such tax classification practice. His main concern is for the "joint venture." What happens to its usefulness and manageability when it can be treated, under Section 761, as outside the partnership provisions and hence as substantially "tenancy in common," and under Section 1361, as to some degree within the corporate classification? Are these, the author asks, the only possibilities? Why not recognize it as *sui generis* and perhaps entitled to tax status quite apart from partnership or corporate criteria? Must all business organizations, he asks, regardless of their variant natures and purposes, lead a partnership or corporation tax life?

Taubman argues for abandonment of the exclusive partnership-corporation dichotomy. The joint venture, along with numerous other forms of business association suffer, he finds, from tax strait-jacketing; what is required is not the kind of relief afforded by Section 761 and Section 1361 but the development of standardized legal and tax treatment tailored for such recognized forms of business organization as the joint venture and its penumbral cohorts.

The author suggests the creation of an Institute of Business Organization, with the bar as the prime movers, as a good beginning toward such development. "Lawyers," he states, "must learn some of the techniques and approaches of other fields to be masters of business organization." The most important related area, he finds, is philosophy, for it is in the realm of determining the form and content of legal personality that he sees an acute need for philosophizing — a need directly felt in the area of tax law with its separate scheme of taxation for juridical persons and its need for clarification and improved classification of the various business organizations given juridical personality.

The author's present treatise points the way for the work of
such an institute. In a field in which there were no existing treatises and a great deal of judicial and administrative confusion, he has prepared a volume of substantial breadth and depth. In Part I, he has traced a fascinating history of the joint venture, its origins, its characteristics, and judicial and administrative attempts at classification. In Part II, he narrates in documented detail the tax life of the joint venture from 1894 through the Internal Revenue Code of 1954 and its aftermath of regulations and rulings. Finally in Part III he explores the use of the joint venture in the production of oil and gas, in motion pictures production and the theatre, and in the development and sale of real estate. These chapters are rich in informed analysis and documentation and alone amply justify the volume for the practitioner's library.¹ A case table and well-arranged page index, as well as a table of contents by sections, afford ready entrance and in adequate detail. There is provision for a supplement as well, since Parts II and III are necessarily concerned with developments still in flux and still unfolding.

For the reader who is tempted to probe the history of business organizations more deeply, the chapters, particularly the chapters on "The Adventure in History" and "Joint Adventure: Origin and Analogue," are replete with references for further reading; a bibliography renders them readily accessible by author and, in the case of law review notes and comments, by title.

*Melvin G. Dakin*


The problem of world peace today is clearly the most important and urgent of all human problems. The technology of modern war has given the solution of the problem of world peace an air of immediacy and necessity. There is, however, great danger in viewing the problem exclusively in terms of its immediate and necessary solution. Such singular concentration

¹ For the practitioner needing guidance in the special problems of joint venture corporations, there is now the excellent two-volume work on Close Corporations by F. Hodge O'Neal recently published by Callaghan & Company. See review, page 233 supra.

*Professor of Law, Louisiana State University.