Reform for Form 1040

***The Great Treasury Raid**, by Philip M. Stern (Random House. 361 pp. $5.95), proposes reforms for the tax privileges accorded certain interests. Harold S. Taylor was formerly managing editor of Barron's magazine.*

By HAROLD S. TAYLOR

A FORMER research director for the Democratic National Committee has leveled a brilliant attack at the absurdities and intricacies of the Internal Revenue Code as it is presently written, interpreted, and circumvented. Presumably his first purpose is to arouse the indignation of everyone else against such favored classes as oil tycoons, movie magnates, real-estate syndicators, and those who hold a few million dollars' worth of tax-exempt securities. In this aim Philip M. Stern, now a free-lance writer living in the Washington area, has every right to succeed. His instances are truly hair-raising.

The book's last chapter unfolds a second purpose—to scrap the cumbersome machinery that now grinds out the revenue that maintains the government, and replace it with a simple new model. The failure here is as marked as the success of the first endeavor. If all efforts toward tax reform were channeled toward Mr. Stern's proposals, the reformers' cause would be irretrievably and needlessly lost.

Mr. Stern plunges right into his indictment of the current Revenue Code: Five citizens with incomes of $5 million apiece in 1959 paid no taxes at all. In another recent year a man with an income of $20 million paid no taxes. A real-estate corporation in New York found it could distribute $5 million to its stockholders in a year in which it reported to the Internal Revenue Service a $1,750,000 loss.

An entire chapter is devoted to the oil industry, with its inexcusable right to consider most of its capital investment current expense, and its controversial depletion allowances, which continue long after the cost of a producing well has been recovered.

The really startling incidents appear in a chapter on such special provisions as the law that converted the late Louis B. Mayer's severance pay from Metro-Goldwyn-Mayer from income into a capital gain, the deal that saved Mrs. Gerard Swope $4 million in taxes, and even the clause tucked into a statute about patents to make sure that a friend of the late Senator Robert Kerr should not have to pay a claim that the government had successfully pressed through the courts.

Real-estate depreciation provisions, whereby each successive purchaser of a building starts writing off its cost all over again, come in for a scathing chapter; but Mr. Stern's greatest fervor is reserved for the capital gains provisions of the Revenue Code. He tells us, at the end of the chapter headed "The Great Capital Gains Trial," that he himself is speaking as the foreman of the jury when he says:

> We start from a simple proposition: A dollar is a dollar, no matter how it was earned or where it came from. It will buy just as much in groceries, in shoes, in mink coats or in Cadillacs, whether it was made from a sale of stock or a sale of the sweat of a man's brow or the fruits of his brain. It will pay taxes just as well, too.

When Mr. Stern finally unveils his solution for the evils of which his book so convincingly complains, it turns out to be a plan for "taxing uniformly 'all incomes, from whatever source derived,'" as stipulated in the Sixteenth Amendment, with income defined as "'control over economic resources'—or, in layman's language, the ability to buy things."

The trouble with this is that income is not "the ability to buy things." A man who inherited a million dollar bills when he was born could take 1,000 of them out and buy things every month until he was eighty-three years old, but let's hope Mr. Stern wouldn't call that income. The accountant's best definition of income is still Adam Smith's: "What without encroaching upon his capital he can place . . . for immediate consumption."

Mr. Stern is indignant that a friend of his who earns $7,000 a year in a steel mill paid $1,282 in taxes last year, while another acquaintance simply ordered his broker to sell stocks for $7,000 more than they cost him, and was only taxed $526.

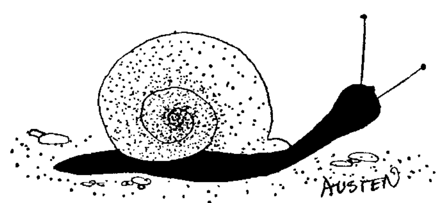
Mr. Stern's friend, in disposing of 350 shares of Celanese Corporation for $60 a share (they cost him $40 a share) definitely encroached on the capital he possessed the moment before he called the broker. If he buys back 350 shares, he has nothing left over, and if he lays out the $14,000 he started with he has some 233 shares where he once had 350.

It is true, as Mr. Stern eloquently sets forth, that many rascals have saved a lot of taxes by pretending that transactions that weren't capital gains were capital gains, but that doesn't mean that capital gains do not exist, and that they aren't different from income.

Mr. Stern is very happy to document instances of unbecoming behavior by Congress, but he is quite ungenerous in giving the legislators credit for their better instincts. One example is the special tax bill regarding the divestment by E. I. duPont de Nemours of its General Motors stock. For more than a generation everyone who bought a share of duPont got seven-eighths of a share of General Motors folded into it. By some tortuous process of sophistry, the Treasury persuaded itself that if that ownership were symbolized by two pieces of paper rather than one, the holder had realized income and must needs be taxed. Congress very properly brushed aside the sophistry and declared that indeed he hadn't and he needn't.

One of Mr. Stern's reforms—it was really sponsored by Stanley S. Surrey of the Treasury—is to begin taxing the interest on all outstanding state and municipal bonds. There are $72 billion in such bonds. The value of the tax exemption they are accorded is roughly 35 per cent of their sales price. These bonds were all bought in the faith—reinforced by Supreme Court decisions—that the interest would never be taxed. Suddenly to whack $25 billion off their resale value might sound like reform to Mr. Stern and Mr. Surrey. Fortunately, Congress is still full of simple souls who would recognize it for grand larceny.

Mr. Stern argues that since specific reforms haven't made much headway, the one-big-push route is as good as any. This view would have more weight if there were solid evidence of any sincere campaign for the individual reforms. In a half-dozen places, Mr. Stern pictures the Kennedy Administration fighting for reforms against a stubborn Congress. Then in one rueful footnote he concedes what all of us who have followed the matter know to be the case: the Kennedy Administration "was prepared to jettison the reform (which only accounted for about a third of the



tax-cut 'carrot' anyway) in order to get its true goal—the 'economic stimulus' of a massive tax cut."

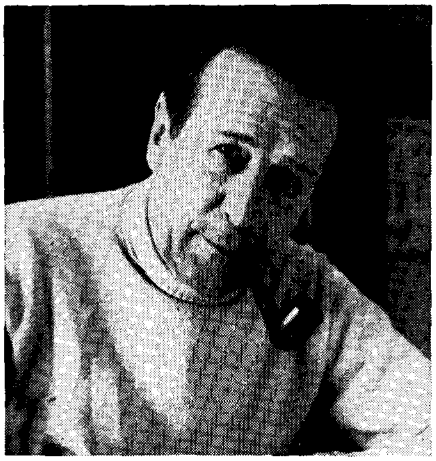
There are a number of specific reforms in the tax structure that could be enacted with sincere sponsorship:

- Stock options could be absolutely forbidden, not so much as a tax measure as in simple justice to the ordinary stockholder.
- Every commercial building, on completion, should get an *in rem* depreciation figure, which would follow it through every change in ownership, and when that was gone there would be no more.
- Trusts and gifts should not be considered to have passed from a donor until actual possession was transferred and all strings to the donor were permanently cut.
- The oil-depletion debaters should stop screaming at one another and get the data on what the physical depletion rate really is. The method by which the present figure of 27½ per cent was reached was wildly irrational, but there is no firm evidence that the 20 per cent or 15 per cent variously proposed is correct either. The records of the Bureau of Mines and of a dozen oil-country supply companies could furnish figures extremely close to the mark. (In any case, Mr. Stern is wrong again about limiting depletion to the cost of each producing property. Since the government isn't paying the losers their losses, the winners should be able to deduct their own antes and the losers' as well.)
- Once the indefensible intangible-cost deduction for oil drilling loses the protective coloration of the emotional battle over depletion, it could easily be knocked off.

Whether one agrees with Mr. Stern, disagrees, or votes for and against from chapter to chapter, there is one thing for which he deserves the thanks of everyone who must do much reading about taxes. He places the word "loophole" in meticulous quotes, and explains that by it he means legal tax preferences rather than the dictionary definition: **"loop'hole,** *n.* Figuratively, a method of evading the intent of a statute, contract or obligation." Too many editorial writers and commentators define it **"loop'hole,** *n.* Any provision of the Internal Revenue Code on which Walter Reuther, were he a Senator, would vote 'Nay.'"

Mr. Stern knows that what he is talking about are not evasions but legislative decisions. He points out that the remedies for the inequities he lists lie in badgering our legislators, rather than simply waiting for the wily taxpayer to stop trying to shift his burden onto some other taxpayer.

Life in the Last Analysis



—*Yves Debraine.*

Simenon—"bitter pills"

The Dying Day, *by Wlodzimierz Odojewski, translated from the Polish by Maurice Michael (Harcourt, Brace & World. 156 pp. $3.95), and* ***The Bells of Bicêtre,*** *by Simenon, translated from the French by Jean Stewart (Harcourt, Brace & World. 240 pp. $4.95), question the worth of individual lives lived in trivial or crippling circumstances. James Gray wrote "On Second Thought."*

By JAMES GRAY

A NOVEL that concerns itself with a confrontation between man and death would seem to promise little of the élan that propels the usual work of fiction. But here are two in which the moment of final suspense is crowded with so intense a desire to comprehend the meaning—if any—of human experience that they seem to contain all the fully alerted vitality of a lifetime.

In each, the protagonist is a European who has lived the life of his time in a conspicuous place; each book poses the question: Can the worth of an individual life be demonstrated even if the conditions enclosing its achievement have been trivial or degrading? Both testaments are meager in their bequests of hope; but in quite different ways they are valuable reports on the human predicament, compiled by shrewd, experienced observers.

Much the more impressive is *The Dying Day,* by a young Pole whose work is new to this country. Wlodzimierz Odojewski enters the mind of a writer (one surely not unlike himself) who has wished, with the fierce concentration of a man to whom analysis is second nature, to understand and to help guide the political destiny of his generation. With an eagerness no less avid he has sought close identification with a fellow creature in the realm of sentiment. Through one afternoon while he lies dying of tuberculosis he reviews the crucial happenings of this adventure of the spirit—not in chronological sequence but in a series of feverish, hallucinatory dreams, flashes of memory, glimpses into meanings.

Only the essence of each crisis is presented; there is little of factual detail. Perhaps it is necessary for a Pole still to be cautious in any examination of the terror and tyranny that must have pressed hard upon his mind and flesh from the moment of birth. Odojewski's method of coping with this problem is technically brilliant. The longest passage of the book is devoted to a Kafka-like allegory in which the vast, vague menace of inexplicable authority threatens decency, integrity, even the sense of identity. On other pages the reader is made to share the sufferer's feeling of being exposed on a desert of indifference even more vast and terrifying. It is easy to believe that a man *in extremis,* tormented by fever, would endure again in just this way the miseries of life in a police state.

The second theme is presented more realistically; memories return in moments of only partially clouded lucidity. Pitiful and petty doubts assail the dying man about his relationship to his wife. Her separate existence as a successful actress is wrapped in enigma. Does she, he wonders, merely play for him another role, that of sacrificial mate to a doomed creature? The "latent strangeness" in another intensifies for him the cruelty of the love-hate duel that maims intimacy. Here Odojewski has obviously found another mentor: as the tortured neurotic yearns for the presence of a woman whom he distrusts, and at the same time wishes her to be as far from him as possible, one cannot fail to recall the similarly painful alternation of moods that plagues Proust's central figure in *The Sweet Cheat Gone.*

Odojewski allies himself successfully with the best tradition of the modern

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