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Book Reviews

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on a lost vessel were held taxable income to the extent the vessel had been depreciated below recoveries upon the insurance.

Distributions in kind are then taxable to the distributor-corporation in the event and to the extent they represent unrealized gain by virtue of advantageous contract, general market appreciation, or deductions allowed which in fact have reduced basis below subsequent recoveries. Where the properties represent potential income an assignment will not avail the distributor of release of tax liability.

John B. Hainen.

BOOK REVIEWS

Antitrust Laws, et al v. Unit Operation of Oil and Gas Pools. By ROBERT E. HARDWICKE. New York: American Institute of Mining and Metallurgical Engineers, 1948. Pages ix, 300.

Bob Hardwicke literally grew up with the oil business in this state. From the time that he first hung out his shingle in Beaumont in 1911—only ten years after the discovery of the famous Spindletop well heralding the real birth of the oil industry in this state—until the present day, his very full and productive life has been devoted to oil and gas law both as an active practitioner and as a legal writer. One of the first books in that field of the law in Texas was written by him in 1921. In later years, with the growing recognition of the intolerably wasteful practices that had characterized production practices in the past, his writings have been focused more and more upon problems connected with the rapidly developing conservation movement. Because of his active participation in practically all of the major controversies that have attended each successive extension of conservation controls his scholarly writings have been greatly enriched by a comprehensive understanding of the problems, personalities and conflicting interests involved. Ample evidence of this is to be found in his latest book.

The first 118 pages of the book are primarily historical rather than legal. There is an excellent and well-documented account of the growth of the scientific viewpoint that an oil pool is a physical unit supplying its own producing energy that can be utilized with maximum efficiency only by a coordinated plan for the development and operation of the pool as a whole. There is recounted the early advocacy by Henry L. Doherty in 1924 of a federal law requiring oil pools to be developed by all operators as a unit in order to prevent the gross waste resulting from unregulated drilling and producing operations on an individual, competitive basis. This revolutionary suggestion found little favor with the industry, but Mr. Doherty, during the ensuing years, continued to champion the cause of unitization at every opportunity. The debates over unitization were begun and continued during an era of relative scarcity of oil when the public for the first time became conscious of the possibility that the domestic supply of this natural resource might not be adequate to supply our needs indefinitely. With the advent of the era of over-production that commenced about 1930, interest in unitization waned. It was probably quite generally thought that the restrictive measures in the form of well-spacing and proration regulations that were adopted by most of the important producing states to prevent the waste incident to overproduction were adequate to eliminate the waste of which the advocates of compulsory unitization had complained.

As the author points out, due to numerous recent developments in the industry, interest in unitization has had a re-birth in recent years. It has been discovered that the flowing life of a field may be extended and its ultimate production greatly increased by a program of pressure maintenance. The cycling of gas is essential to the proper operation of condensate fields. Secondary recovery operations require re-pressuring of the producing stratum. The wasteful flaring of gas produced from oil wells can be avoided only by reinjection of the gas into the reservoir where no market exists for the gas. All of these waste-prevention measures that have

become of such great importance during recent years require concerted and coordinated action by the operators over the common reservoir. As a consequence many producing states have enacted statutes designed to encourage and, in some instances, to compel unitized operations for the accomplishment of some or all of these conservation purposes.

All of the foregoing historical and factual data found in the first half of the book is used by the author as a background against which later to discuss the legality of unitization. The principle emphasis is placed upon the discussion of whether voluntary unitization agreements entered into without express statutory authorization are necessarily violative of state or federal antitrust laws. The conclusion is reached that voluntary agreements of this type entered into for the purpose and having the effect of increasing the ultimate recovery of oil and gas are in furtherance of the public interest and do not conflict with the public policy expressed in antitrust legislation. Nevertheless, because of the fear of many operators that enforcement officials, relying upon the highly restrictive language of some state antitrust statutes, will prosecute operators who join in a voluntary unitization agreement, the author advocates the enactment of statutes that will remove this deterrent to the successful negotiation of such agreements by providing that antitrust laws will not be violated by proper unitization agreements submitted to, and approved in advance by, an appropriate state agency or official. It is concluded that a statute of this type would not endanger the validity of antitrust laws by creating an unreasonable exception or classification. Nor does the author believe that operators entering into voluntary unitization agreements reasonably necessary for conservation purposes under state statutes of this type would have anything to fear from the standpoint of prosecution for violation of the federal antitrust laws. In this regard the prosecution by the federal government of the parties to the Cotton Valley unitization agreement is adverted to, but is not commented on in detail because of its pendency at this

time in the federal courts. The Appendix, however, contains a letter of the Attorney General of the United States in which it is made clear that the prosecution in that case is not an attack upon unitization agreements designed to promote conservation, but is predicated upon the theory that the particular agreement in that case undertakes to provide for the joint marketing of the products in such manner as to eliminate competition.

Compulsory unit operations on private lands by administrative action is rather briefly discussed. Reference is made to the statutes enacted in some states which specifically authorize the administrative agency to enter order requiring the cycling of gas, pressure maintenance, or the carrying on of secondary recovery operations, and authorizing the integration of producing tracts when necessary in connection with cycling operations. More particular discussion is made of the Oklahoma statute which permits the conservation agency of that state to require unitization of oil and gas fields where certain percentages of the operators initiate and approve of the plan. The author is not an advocate of compulsory unitization generally, but he believes that even this extreme step may be justified under certain limited conditions, and for the accomplishment of certain specific purposes, if a voluntary unitization agreement cannot be obtained because of the opposition of a small minority of the operators in a field.

In view of the effort made at the last session of the Legislature of Texas to amend the present statute permitting the voluntary unitization of gas fields in this state so as to permit similar agreements to be made with respect to fields producing both oil and gas, and the fact that similar efforts will be made at the current legislative session, this book is exceedingly timely. It treats of controversial subjects of vital interest to every citizen of this state.

The author has performed a valuable public service by making available in one volume a comprehensive discussion and reference to all of the legal and scientific literature relating to the subject of unitization. The viewpoints of the author are honestly

advocated without distortion of the facts or of the supporting material. It is a book that should be read by all persons interested in the conservation of oil and gas. The cheap price of the book—it sells for only \$1.50—was made possible in part by the fact that the author donated his manuscript to the publishers without royalty or other compensation.

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