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## FEMINIST JUDGMENTS: REWRITTEN TAX OPINIONS

Could a feminist perspective change the shape of the tax law? Most people understand that feminist reasoning has tremendous potential to affect, for example, the law of employment discrimination, sexual harassment, and reproductive rights. Few people may be aware, however, that feminist analysis can likewise transform tax law (as well as other statutory or code-based areas of the law). By highlighting the importance of perspective, background, and preconceptions on the reading and interpretation of statutes, *Feminist Judgments: Rewritten Tax Opinions* shows what a difference feminist analysis can make to statutory interpretation. This volume, part of the Feminist Judgments Series, brings together a group of scholars and lawyers to rewrite tax decisions in which a feminist emphasis would have changed the outcome or the court's reasoning. The volume includes cases that implicate gender on their face (such as medical expense deductions for fertility treatment or gender confirmation surgery and special tax benefits for married individuals) as well as cases without an obvious connection to gender (such as the tax treatment of tribal lands and the business expense deduction). This book thus opens the way for a discussion of how viewpoint is a key factor in all statutory interpretation cases.

Bridget J. Crawford is Professor of Law at the Elisabeth Haub School of Law at Pace University.

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*Edited by*

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In loving memory of my mother, Jane Crawford –*BJC*  
For Hien and Rose Mai –*ACI*

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## Preface

Could a feminist perspective change the shape of the tax law? To begin to answer this question, we brought together a group of scholars and lawyers to rewrite, using feminist perspectives, significant tax cases from the United States Tax Court, federal Circuit Courts of Appeals, and the United States Supreme Court. Some of them implicate gender on their face – questions about the deductibility of fertility expenses or the use of gender in actuarial tables, for example – but others implicate gender less obviously, such as a case involving the ability of state and local governments to tax Indian land, or the ability of a businessman to take a deduction for the repayment of certain debts. This book challenges the belief that statutes are neutral. Most people understand that feminist reasoning has tremendous potential to affect, for example, the law of employment discrimination, sexual harassment, and reproductive rights. Few people may be aware, however, that feminist analysis can likewise transform tax law (as well as other statutory or code-based areas of the law). By highlighting the importance of perspective, background, and preconceptions on the reading and interpretation of statutes, *Feminist Judgments: Rewritten Tax Opinions* shows what a difference feminist analysis can make to statutory interpretation.

This volume, like all of the books in Cambridge University Press's Feminist Judgments Series, demonstrates that judges with feminist viewpoints could have changed the law, based on the precedent and law in effect at the time of the original decision. Or, even if the desired result could not be achieved under the current law, this volume shows how a powerful dissent can serve to draw attention to the fact that the tax law operates in many cases to the disadvantage of women, racial minorities, LGBT taxpayers, and other historically subordinated groups. Together, the opinions and commentaries in this volume illustrate the importance of diversity of perspectives on the bench so that judges do not approach their work with a uniform worldview influenced

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by the same set of preconceptions and privileges. For judges, lawyers, students, and members of the general public, reading these critical opinions helps expose the ways in which judges – and, in turn, the development of the law – are subtly influenced by preconceptions, existing power hierarchies, prevailing social norms, and “conventional” wisdom. This book argues that the tax law is not neutral, but rather is shaped by the society that produces and applies it. At the same time, this book holds out the hope that the tax system can be reformed to be an instrument of greater justice and equality for all people.

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We are grateful to Kathryn M. Stanchi and Linda Berger for their leadership and guidance. We wish to thank the members of our Advisory Panel, who embraced the project with enthusiasm and helped us think about the book's organization, limitations, and challenges. Our editor John Berger provided guidance and assistance throughout the publication process.

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