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Practice of Taxation: Accountants vs. Attorneys

*by Orville J. Weaver**

WITHIN THE PAST SEVERAL YEARS, there has arisen between accountants and attorneys a controversy on the practice of taxation. With the increasing complexity of the Internal Revenue Code and the heavy burden of income taxes, more and more practitioners are engaged in the preparation of returns and in the representation of clients before representatives of the Treasury Department and in the courts. The controversy has arisen because some accountants have been accused of practicing law in connection with their accounting practices.

The question naturally arises: What constitutes the illegal or unauthorized practice of law by accountants in their tax practice? The popular conception of the practice of law is the appearance in courts by attorneys. This may be a very small part of the average attorney's law practice. He spends most of his time in determining his clients' legal problems other than in court. So the unauthorized practice of law concerns itself with activities of persons, other than lawyers, who give legal advice to clients in connection with the practice of their professions.

Accountants have prepared federal income tax returns, and returns for various state taxing authorities, since the inception of the income tax law. Furthermore, accountants have advised their clients regarding any matter which might have a tax consequence. This activity by accountants is what has caused the accusation of unauthorized practice of law. Where the work of the accountant ends and that of the attorney begins is definitely not clear-cut and precise.

The preparation of income tax returns requires knowledge of accounting and of the tax laws. More complex returns require a greater knowledge of both accounting and tax law. The courts have attempted to define the part to be played by the accountants and attorneys in the tax field. Several of these cases bear closer study and comment.

One of the most widely discussed of the cases is *In re: Bercu.*[1]

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[1] In re: Bercu (1948) 273 App. Div. 524, 78 N. Y. S. (2) 209, 220, 9 A. L. R. (2) 787, affirmed without opinion, 299 N. Y. 278 N. E. (2) 451 (1949).

Bercu was a certified public accountant practicing in New York City. He was called upon to give advice regarding the deductibility of certain taxes accrued on a corporation's books in an earlier year. Could the taxes so accrued in a prior year be deductible on the current year's federal income tax return by the corporation whose books were kept on the accrual basis? Bercu was not the regular accountant or auditor of the corporation in question. The corporation's own accountant, who was also an attorney, gave his opinion that the accrued taxes were not deductible in the current year. Bercu stated that he would undertake to find a different answer in the tax law. The court held that Bercu's work in the case constituted the practice of law. The opinion stated, in part:

> "It is not expected or permitted of the accountant, despite his knowledge or use of the law, to give legal advice which is unconnected with his accounting work. That is exactly what respondent did. He was doing no accounting work for the Croft Company, within the ordinary conception of an accountant's work. He had nothing to do with the company's books or its tax returns. The only question was what view the tax authorities, and ultimately the courts would take as to the years in which the payments of the city's tax claims would be deductible for federal tax purposes. In short, legal advice was sought and given on a question of law."

Further in the opinion, the court stated:

> "Taxation is a hybrid of law and accounting. . . . The accountant can have jurisdiction of incidental questions of law arising in connection with audits or the preparation of returns. But he has no right as a consultant to give legal advice."

The court further held that an accountant can decide a question of law which is incidental to the preparation of tax returns, but that he cannot address himself to a question of law alone. Thus, the court indicates that if the company for which Bercu rendered the alleged legal opinion had been his accounting client, that he could have rendered the same opinion and still would not have been held to be engaged in the illegal or unauthorized practice of law.

In the *Bercu* case, the court attempted to define the line between the work of the accountant and that of the attorney in the tax field, by stating:

> "An objective line must be drawn, and the point at which it must be drawn, at the very least, is where the accountant

or non-lawyer undertakes to pass upon legal questions apart from the regular pursuit of his calling. . . ."

The court further stated that many or most questions which may arise in the preparation of a tax return may be answered by an accountant handling such work. But if an outside accountant, besides the regular accountant preparing the income tax return, gives advice requiring legal research, then that consultant must be a lawyer. The court added that an accountant may know more about tax law than some law practitioners, but he may not set himself up as a public consultant on the law of his specialty. It would seem to be self evident that an attorney should be called in by the accountant, or by the business man, to give advice on matters strictly concerned with the interpretation of the law. But, apparently, such is not always the case. Therein again arises the controversy in the tax practice.

An earlier New York decision, *Mandelbaum v. Gilbert and Barker Manufacturing Company,*[2] held that anyone who renders an opinion as to the proper interpretation of a statute, or gives information as to what judicial or quasi judicial tribunals are deciding, and receives pay for it, is to that extent, practicing law. This decision would seem to preclude the accountant from giving advice regarding any matter which would include an interpretation of any tax law.

But the *Bercu* decision seems to limit the strict adherence to such a rule to the giving of advice to an accountant's own clients. As long as he advises only those for whom he performs accounting work, he is safe in giving the advice, if the *Bercu* case is followed.

A New Jersey court held that it was not the practice of law by auditors or accountants to recommend a tax-saving plan changing the par value stock of a corporation to no par value, and to reduce the number of outstanding shares.[3]

In *Agran v. Shapiro,*[4] one of the most celebrated cases on the subject of accountants engaging in the unauthorized practice of law, the court said that a public accountant although not a lawyer, may prepare federal income tax returns except where substantial questions of law arise which may be competently determined only by a lawyer.

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[2] Mandelbaum v. Gilbert and Barker Manufacturing Company (1936) 160 Misc. 656, 290 N. Y. S. 462.

[3] Elfenbach v. Luckenbach Terminals, Inc. (1933) N. J. L. 67, 166 A. 91.

[4] Agran v. Shapiro (1954) 127 Cal. App. (2) 807, 273 P. (2) 619.

In the same case, the court further stated that the right to practice before the Treasury Department does not give an accountant the privilege of drafting instruments transferring title to property for the purpose of affecting federal taxes, nor of advising clients as to the legal sufficiency of such instruments or legal effect thereof on the client's taxes. In *Merrick v. American Security and Trust Company,*[5] the court held that the preparation of tax returns and the address of arguments to tax officials might be done by either lawyers or laymen. Rhode Island allows income tax returns to be prepared by others than attorneys or certified public accountants, where the taxpayer's income is less than $5,000, is subject to withholding, and who takes the standard deduction.

In *Rhode Island Association et al. v. Libutti,*[6] a so-called public accountant, not a CPA or member of the American Institute of Accountants, had been preparing long form individual returns and partnership returns. He held himself out as: "Income Tax Counselor," "Income Tax Accountant," "Accountant" and "Income Tax." Libutti was an insurance broker, and he stated that he had studied accounting in college, but that he was not a CPA. The defendant was enjoined from holding himself out as shown above, and from preparing other than simple returns. This decision, and the interpretation of Rhode Island General Law 1938, c. 612, Section 43, would seem to allow certified public accountants to prepare any type income tax return. In so doing, would the CPA be practicing law if he interpreted the Internal Revenue Code for his clients? In *Gardner et al. v. Conway,*[7] a Minnesota court held that a layman, whether an accountant or not, may not hold himself out to the public as a tax consultant or a tax expert, or describe himself similarly, implying that he has a knowledge of the tax law. In this case, Conway was a public accountant who was not certified. He advertised himself as an "Income Tax Expert." In preparing returns for a client, Conway determined: 1. The validity of a common law marriage in relation to a marital deduction. 2. Whether certain frost and flood losses qualified as a casualty loss deduction. 3. Whether the taxpayer was in partnership with his common law wife. The court

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[5] Merrick v. American Security and Trust Company (1939) 71 App. D. C. 72, 107 Fed. 2nd 271, affg. (D. C.) 22 F. Supp. 177 and cert. den. 308 U. S. 625, 84 L. Ed. 521, 60 S. Ct. 380.

[6] Rhode Island Bar Association, et al. v. Libutti (1953) 100 A. (2) 406.

[7] Gardner et al. v. Conway (1951) 234 Minn. 468, 48 N. W. (2) 209.

held that the preparation of the income tax return was not the practice of law, but that the defendant, incidental to such preparation, resolved certain difficult legal questions, which taken as a whole, constituted the practice of law. It is repeated that the defendant was not a CPA, and that he had very limited education of any kind.

From the above decisions, it would appear that courts which have ruled on the question of whether accountants are engaging in the unauthorized practice of law in the preparation of income tax returns or in prosecuting claims before the Treasury Department, have used the following tests: 1. The Incidental Test, as followed in the *Bercu*[8] case. That is, was the rendering of the so-called legal opinion incidental to the accountant's regular work? 2. The Doubtful or Difficult Legal Question Test, as followed in the *Conway*[9] and *Agran*[10] cases. This test seems to involve the determination of whether or not the accountant was resolving a doubtful or difficult question of law as understood by the average reasonable certified public accountant. If the first question is yes, and the second is no, the accountant is not engaged in the practice of law, states Horace N. Freedman in the *University of Southern California Law Review*.[11]

If the accountants adhere strictly to their own work, why should there be a controversy between the accountants and attorneys? Jerome C. Bachrach, in the *American Bar Association Journal*,[12] stated that the American Bar Association apparently recognizes the right of the certified public accountant to practice before the Treasury Department and the Tax Court, except to the extent that the particular services involved constitute the "practice of law." The Bar further maintains that it is for state courts to define this term. Accountants have prepared income tax returns for the past forty years and assert that "tax practice" does not involve the "practice of law."

Mr. Bachrach further states:

> "The quarrel is in defining what particular determinations and settlements of federal tax problems constitute 'the

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8 In re Bercu, cited in 1, above.

9 Gardner v. Conway, cited in 7, above.

10 Agran case, cited in 4, above.

11 University of Southern California Law Review, Vol. 28, April 1955, pages 303-313.

12 Journal of the American Bar Association, Vol. 41, March 1955, pages 204, 206.

practice of law,' which should be reserved solely to lawyers. If the two professions continue approaching this question as one of definition, they have a long and difficult road ahead. A better approach would be to decide whether engaging in certain tax activities by accountants is inherently in the public interest. If it is, the right of accountants to do these things should be conceded and the concept of 'unauthorized practice of law' revised accordingly. If it is not, the accountants should forthwith be restrained. Whether it is in the public interest for a certain group to resolve tax problems presented to it appears to depend upon the ethics and upon the technical competence of the particular group. The question may therefore be resolved thus: Who is the more competent to handle the average tax problem, the average certified public accountant, or the average lawyer." [12]

Mr. Bachrach pointed out that the CPA must demonstrate his knowledge of federal tax principles to qualify for his certificate, and that the solution of tax problems involves working with figures and making analyses of books, accounts and financial statements, all the usual work of accountants. Mr. Bachrach then adds: "Do these facts support the position that tax practice is primarily a province for lawyers?"

What solutions are there to the problem? The National Conference of Lawyers and Certified Public Accountants has recommended a Statement of Principles relating to the practice in the field of federal income taxation. This Statement of Principles has been accepted by the Board of Delegates of the American Bar Association and the Council of the American Institute of Accountants. The preamble of Statement of Principles declares:

"In our present complex society, the average citizen conducting a business is confronted with a myriad of governmental laws and regulations which cover every phase of human endeavor and raise intricate and perplexing problems. These are further complicated by tax incidents attendant upon all business transactions. As a result, citizens in increasing numbers have sought the professional services of lawyers and certified public accountants. Each of these groups is well qualified to serve the public in its respective field. The primary function of the lawyer is to advise the public with respect to the legal implications involved in such problems, whereas the certified public accountant has to do with the accounting aspects thereof. Frequently, the legal and accounting phases are so interrelated and interdependent and overlapping that they are difficult to distinguish. Particularly is this true in the field of income taxation where questions of law and accounting have sometimes been in-

> extricably intermixed. As a result, there has been some doubt as to where the functions of one profession end and those of the other begin."

The Principles recommend that lawyers and CPAs call upon one another when a problem arises which is in the field of the other profession. These problems arise in the preparation of income tax returns, and the representation of taxpayers before the Treasury Department. The Principles state:

> "Only a lawyer may prepare legal documents such as agreements, conveyances, trust instruments, wills or corporate minutes or give advice on the legal sufficiency or effect thereof, or take the necessary steps to create, amend or dissolve a partnership, corporation, trust or other legal entity. Only an accountant may properly advise as to the preparation of financial statements included in reports or submitted with tax returns, or as to accounting methods and procedures."

If this statement were followed by the two professions, there should be little cause for criticism by either profession. Naturally, there are many times when a person of one profession will attempt to perform all of the tasks set before him by the problem of his client. Then there is a possibility of a controversy. If the accountant attempts to prepare any of the legal documents enumerated above, he is practicing law, according to the Statement of Principles. If the lawyer attempts to prepare or advise as to the preparation of financial statements, or to advise as to accounting methods and procedures, he too is open to criticism.

The Statement of Principles sets forth recommendations regarding representation before the Treasury Department and practice before the Tax Court. Here again, the certified public accountant has the right to practice. However, the Statement of Principles advises that where there arise questions involving the application of legal principles, a lawyer should be retained; and if in the course of the proceedings, accounting questions arise, a certified public accountant should be retained. In the presentation of a case before the Tax Court, or in contemplating the presentation of a case, it is recommended that a lawyer be retained. This is advantageous to the taxpayer inasmuch as only an attorney knows how to present a case to a court, since it is necessary to know the rules of evidence and general procedure. For this reason, few CPAs will present a case to the Tax Court but will depend upon an attorney.

The Statement of Principles says: "Here also, as in the proceedings before the Treasury Department, the taxpayer, in many

cases is best served by the combined skills of both lawyers and certified public accountants, and the taxpayer, in such cases, should be advised accordingly."

This is advice that the taxpayer should, and usually does, follow. The cases in the Tax Court, for the most part, are complex tax matters. They involve law, accounting and interpretations in both fields. An attorney is able to present the case to the Court, since he has been trained to present court cases. He will be able to examine and cross-examine witnesses. These tasks are definitely not within the field of the accountant.

However, there are the difficult and involved accounting problems to be interpreted by the CPA, and he will be able to render to the lawyer great service in preparing for the presentation of the case, and in aiding in preparing questions to be asked of the witnesses, many of whom are accountants.

The Principles include the recommendation that in cases where the accountant learns that his client "is being specially investigated for possible criminal violation of the Income Tax Law, he should advise his client to seek the advice of a lawyer." In the violation of this principle, the accountant can leave himself open to criticism, and also cause his client great harm. Only an attorney can advise his client of his Constitutional rights, the accountant does not have this right. In cases where prosecution is possible, the accountant must use unusual astuteness so that the attorney will be retained before the taxpayer has had the opportunity of making statements which might be detrimental to his case.

Congress has delegated to the Treasury Department the responsibility of regulating practice before the Department. In the exercise of this responsibility, the Treasury Department has issued the rules and regulations, as set forth in Circular 230.[13] Attorneys, certified public accountants and certain other persons may be admitted to practice before the Department. Granting of the privilege to practice before the Department by nonlawyers has caused discussion and controversy.

Section 10.2 (f) of Circular 230 states:

> "Rights and duties of agents. An Agent enrolled before the Treasury Department shall have the same rights, powers and privileges and be subject to the same duties as an enrolled attorney.

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[13] U. S. Treasury Department Circular No. 230; C. F. R., Subtitle A, Art. 10.

> "Provided, that an enrolled agent shall not have the privilege of drafting or preparing any written instrument by which title to real or personal property may be conveyed or transferred for the purpose of affecting Federal taxes, nor shall such enrolled agent advise a client as to the legal sufficiency of such an instrument or its legal effect upon the Federal taxes of such client. And further provides: That nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law."

Under this section, enrolled agents have represented their clients before the Treasury Department for many years. Some state courts have held that the right to practice before the Department does not give the accountant the right to interpret questions of law, as was held in the *Agran* case.[14] The Supreme Court of Georgia has upheld the right of an accountant to a fee for services consisting of representation of his client before the Treasury Department on the grounds that under the regulations of the Department he was authorized to practice there.[15] A Florida opinion has held that an attorney not admitted to the Florida Bar, was denied the right to practice as a "Federal tax counsel." The attorney must be admitted to the Florida Bar. Apparently, the Florida Supreme Court would allow a certified public accountant to practice accounting before the Tax Court but would not permit him to practice law.[16]

In Ohio, an appeals court has held that the fact that a person is licensed to practice before the Treasury Department of the United States as a tax consultant and adviser does not qualify him as an attorney at law regularly admitted to practice in the courts.[17]

On January 30, 1956, the Secretary of the Treasury issued Treasury Department Interpretation of Section 10.2 of Treasury Department Circular 230 (C. F. R. 10.2). This interpretation has been summarized as follows by Prentice-Hall: [18]

1. Non-lawyers as well as lawyers, with Treasury Cards, can handle "all matters connected with the presentation of a client's interest to the Treasury Department." The Treasury sees "no reason why the present scope and type of practice should not continue as it has in the past."

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14 Agran case, cited in 4, above.

15 Irwin v. Young (1955) 90 S. E. 2nd 22 (Georgia case).

16 In re Kearney (Florida 1953) 63 So. 2nd 630.

17 George et al. v. Walton (App.) (1942) 69 O. A. 291, 36 O. L. A. 306.

18 Prentice-Hall, Inc. Federal Tax Report Bulletin, Vol. XXXVII, No. 10, Par. 34,109, March 8, 1956.

2. Enrolled non-lawyers have "the same rights, powers, and privileges and (are) subject to the same duties" as enrolled lawyers. The only specific exception is that a non-lawyer should not prepare any written instrument transferring title to property in order to affect taxes, nor advise as to the legal sufficiency of such instrument or its effect on Federal taxes.
3. The treasury rules contain a general provision that the rules do not authorize a non-lawyer to practice law. As to practice before it, the Treasury will interpret and apply this restriction, and does not intend to leave the matter to any outside agency or authority. Conversely, it's none of the Treasury's business to control the activities of non-lawyers outside Treasury practice.
4. It is primarily up to the enrolled accountants and lawyers each to decide when assistance from the other profession is needed. The Joint Statement in 1951 of the American Bar Association and American Institute of Accountants adjusted their relationship in this field.

This interpretation had followed the introduction of a bill in the 83rd Congress (H. R. 9922) by Representative Daniel A. Reed and Senator Frank Carlson. Mr. Reed stated that the bill has three purposes:

> First, to clarify the responsibility and authority of the Treasury Department to protect the Government and the public from incompetent and unethical tax practitioners;
>
> Second, to establish the fact that control of Federal tax practice must lie with the Congress and the Federal Government;
>
> Third, to guard against the danger that qualified professional assistance may not be available to all taxpayers at reasonable cost.

Mr. Reed further stated, in explaining why the bill was necessary:

> " . . . In recent years, State Courts in a number of jurisdictions have entertained suits in which the right of individuals to engage in various phases of Federal tax practice has been questioned on the grounds that such activities should be restricted to lawyers. It is obvious that the whole field of Federal tax practice would be thrown into chaos, to the detriment of both Government and taxpayers if they were subject to different rules in 48 states, the District of Columbia and the Territories, and if hundreds of thousands of accountants and others who have been giving satisfactory service to taxpayers for 40 years, were expelled from this field of work."

The American Institute of Accountants has espoused this bill, but the American Bar Association has not. Neither has the Bar agreed to suggested changes in the Circular 230. In commenting upon the proposed changes in the Circular, Edward M. Otterbourg of New York, concluded his remarks with the following:[19] "I do hope that the time will soon come when an enlightened leadership in the accounting profession may carry out the basic idea that the Bar has been advocating, to-wit: That the public is entitled to have each remain in his own field and that when accounting is involved, accountants should serve and when law is involved, lawyers should act, and that both, working together, will be of greater help to the government and to the people than by either preempting the other's authorized competency." This would indeed seem to be a simple and effective manner in which to stop all controversy between the two professions.

This so-called solution is what is called for in the Statement of Principles Relating to Practice in the Field of Federal Income Taxation, promulgated by the National Conference of Lawyers and Certified Public Accountants. In commenting on the statement, Erwin N. Griswold, Dean of the Law School of Harvard University[20] stated: "The chief objection that could be taken to the statement might be that, if taken literally, it would call for the services of two persons, one a lawyer and the other a certified public accountant in too many cases. But here again we are faced with a question of degree. If the questions are large enough and important enough, such services may be required. I do not think that the statement was meant to be read literally every time a small or incidental legal question arises in connection with an accountant's handling of a tax matter, or vice versa."

It would appear that if the two professions would adhere to the Statement of Principles, there would be no controversy in the tax field. William J. Jameson has stated in the *Journal of the American Bar Association*:[21]

> "It boils down to this, a lawyer should not perform accounting work for the client because he does not have the necessary training to give the client the best assistance in this field. By the same token, the accountant can not undertake to do legal work for the client, whether in advising as to the

[19] American Bar Association Journal, Sept. 1954.

[20] Speech before the Association of the Bar of the City of New York, reported in the Journal of Accountancy, April 1955.

[21] American Bar Association Journal, Vol. 41, page 439, May 1955.

possible tax effects of transactions, in connection with the preparation of tax returns, or after the return is filed, because the accountant does not have the technical training or experience to do the work of a lawyer."

Mr. Jameson further stated that tax law cuts across all branches of law, and that state laws must be taken into consideration in the deciding of Federal tax questions. *"Unauthorized Practice News"* [22] states that tax law is as much law as any other branch of the subject. There can be no question that tax law is LAW in the most vivid sense of the word. It has been suggested by some that tax law is a field of law separate and apart from the general body of law. To the contrary, tax law is a part of the seamless web of the law. It is not in any sense a unique or isolated topic. It cuts across virtually all branches of substantive law and necessarily weaves in their principles. The general law of the respective 48 states is inextricably a part of the body of federal tax law in that tax law interrelates the law of corporations, partnerships, trusts, wills, estates, gifts, future interests, real and personal property, divorce and a variety of other fields of substantive law. Obviously, the knowledge, training and experience of lawyers is essential to the proper protection of the taxpayer in such cases. It is for this reason that, in the Statement of Principles, the certified public accountant agreed that when "questions of law arise" the accountant "should advise the taxpayer to enlist the assistance of a lawyer."

Another phase in the so-called controversy has been the employing of attorneys by firms of certified public accountants. John L. Carey, Executive Director of the American Institute of Accountants has stated: [23]

"Employment of lawyers by CPAs is looked upon with suspicion, and the ethics committee is also considering safeguards against the possibility of abuses in such circumstances. Good relations with lawyers are important to CPAs—and we hope the reverse is also true. It is worth a lot of thought and care to avoid unnecessary irritations. Here are some things progressive accounting firms are doing:

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[22] Unauthorized Practice News, American Bar Association Committee on Unauthorized Practice of Law, Vol. XX, No. 3, October 1954.

[23] The C. P. A. Membership Bulletin of the American Institute of Accountants, January 1956.

1. Making it clear in written opinions, correspondence, even bills, that the work is being done by a firm 'as accountants.'
2. Insisting, preferably in writing, that drafts of provisions for inclusions in contracts, minutes, etc., be reviewed by legal counsel—as lawyers should insist that accounting provisions be reviewed by CPAs.
3. Refusing to let lawyers employed on the staff identify themselves as lawyers or render legal services to clients, and insisting that they study accounting and take the CPA exam."

The American Bar Association Committee on Professional Ethics and Grievances in Opinion 272, October 25, 1946, states:

> "A lawyer may properly be employed by a firm of accountants on a salary basis to advise the accounting firm, but such employment may, under no circumstances, be used to enable the accounting firm to render legal advice or legal services to its clients.
>
> "Should a lawyer be employed by a firm of accountants on the basis of receiving a percentage of the firm profits or fees, this would result in such close professional association between them as to be equivalent, for the purpose of *Canon 35,* to a partnership between them, and under *Opinion 269* would necessitate the subsequent confinement of the lawyer's activities to such as were permitted the lay accountants."

The opinion further states that the billing for the lawyer's services made separate from those for accounting work, would not change the result. Thus, it appears that both the Bar and the CPAs are in accord that safeguards should be placed upon the employment of lawyers by accounting firms.

This question of the propriety of lawyers being employed by accountants naturally raises the question: Should law firms employ certified public accountants on their staffs, and if so, what are the limitations on their practice? *Opinion 272* states:

> "It is entirely ethical for a firm of lawyers to employ a public accountant (whether a CPA or not) on a salaried basis to advise the law firm on matters of accounting and to assist the firm in connection with accounting problems arising in its law practice. For a law firm to employ an accountant on the basis of a division of the fees of the law firm would violate *Canon 34,* forbidding the division of legal profits or fees with those not lawyers. To permit such an accountant to certify statements under his own name as a CPA for the use of clients of the law firm would violate the provisions of *Canon 35* requiring the lawyer's relations

to the client to be personal and direct, without intervention of any lay intermediary.

In the course of a law suit, a corporate reorganization, the management of an estate or some other legal activity, it occasionally becomes necessary to have a balance sheet certified without the necessity of certification by an independent accountant.

A law firm could not furnish a certificate of a CPA in its employ to a client for public use of the client without a disclosure in connection with the certificate that the CPA was an employee of the firm. However, we have frequently ruled that for a law firm to state publicly that it has in its employ a CPA constitutes a violation of *Canon 27*. Accordingly, it would seem impossible for the law firm to furnish the statement specified without violating this Canon."

Thus it appears that both the Bar and the certified public accountants recognize that if a member of one profession is employed by a firm of the other profession, that the advice is for the firm only, and not for its clients.

A further cause for conflict and discussion has been the use of such titles as "Income Tax Expert," "Tax Counsel," and other such self-designations. It is apparent that many accountants and lawyers do hold themselves out by such designations, usually on their stationery. The Statement of Principles states:

"An accountant should not describe himself as a 'tax consultant' or 'tax expert' or use any similar phrase. Lawyers, similarly are prohibited by the canons of ethics of the American Bar Association and the opinions relating thereto, from advertising a special branch of law practice."

Since the Statement of Principles prohibits such designations, it must be a matter of calling to the attention of members of both professions of the restrictions so that the use of such titles will be discontinued.

The use of some of the above-named designations, and others, has been indulged in by public accountants who are not certified public accountants, nor are they lawyers. What is their status, and how can they be enjoined from using such titles? Since they are not members of either of the two professions, they are not subject to disciplinary action by Bar Associations or CPA societies.

If lawyers and accountants would abide by the Statement of Principles, there would apparently, be no conflict between the two professions. Naturally, there will be border-line cases where it will be difficult, or impossible, to determine the scope of the

authority of either profession. More cooperation between the professions would tend to reduce such conflict to a bare minimum. Dean Griswold has stated: [24]

"It is a great mistake, I think, to blow this question up to too great importance. In my experience, lawyers and accountants have got along very well together, each performing a specialized service of complexity and importance to his clients. In the tax work being done, I know of very little friction between lawyers and accountants. If people would cease being excited, my guess is that the situation would move along with considerable satisfaction to the client, and with little difficulty for the two professions, for a long time. . . . This is a great country, and I get the impression that accountants, with very few exceptions, are doing what they want to do without harassment. This is an area where it is extremely difficult to lay down explicit rules. Wouldn't we be better off if we could just let well enough alone?"

And Maurice H. Stans, past president of the American Institute of Accountants has stated: [25] "We need now only to bring to bear the statesmanship and leadership that both professions possess in full measure. I urge upon both the sensible fact that they owe it to their own futures and to the interests of their public to adopt such a course by whatever means seem feasible.

"To seek to solve the differences peaceably is not appeasement and it is not surrender of principle. It is the challenge of today —in this area of relaxed tensions in the world and of new statesmanship among peoples. And every solution that is reached which dispels the emotions of controversy adds to the stature of man."

May we add that the close cooperation of the two professions and a sincere attempt by each to understand the problem of the other, and the recognition by each of its own limitations, would lead to a successful end to the controversy.

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[24] The American Bar Association Journal, December 1955.

[25] Journal of Accountancy, December 1955. "A Proposed Solution to the Controversy."

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