

1948

# Protest against the provisions of circular no. 230

New Jersey. Board of Public Utility Commissioners

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A PROTEST AGAINST  
THE PROVISIONS OF  
CIRCULAR NO. 230

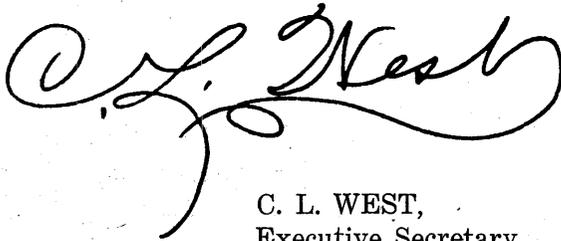
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COVERING THE REGISTRATION OF  
PRACTITIONERS BEFORE THE  
UNITED STATES TREASURY  
DEPARTMENT

## FOREWORD

Believing the Committee on Enrollment has unwisely delegated its authority to the American Institute of Accountants by requiring the passage of the C.P.A. examination and that the law as written as well as Circular 230 never intended that only C.P.A.s and Attorneys to be the only professions eligible for enrollment, the Texas Association of Public Accountants presents this protest, hoping the light of day will cure a condition that has developed into a professional monopoly.

The Texas Association of Public Accountants believes the Committee on Enrollment to Practice before the Treasury Department has circumvented the intent of the law by demanding that anyone, other than attorneys, must pass the Certified Public Accountants examination before enrollment, and that they have unwisely delegated their authority by permitting the State Board of Public Accountancy in the various states to give said examinations. This protest is filed with a view to letting the light of day shine clearly upon a monopolistic practice never intended under the law as written.

A handwritten signature in black ink, appearing to read "C. L. West". The signature is highly stylized and cursive, with a large, sweeping flourish at the end.

C. L. WEST,  
Executive Secretary

## HISTORICAL

By Act of July 8, 1884, Sec. 261, Title 523, Statute 258, the power was delegated to the Secretary of Treasury to promulgate such rules as might be necessary to the proper administration of Federal Income Tax Acts, and the authority relative to the recognition of attorneys, agents and other persons representing claimants before the Department in the following language:

“That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require such person, agent or attorney before being recognized as representatives of claimants that they shall show that they are of good character and good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimant in the preparation of their cases; and such Secretary may after due notice and opportunity for hearing suspend and disbar from further practice before his Department, any such person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with the intent to defraud in any manner, willfully and knowingly deceive, mislead or threaten any claimant or prospective claimant by word, circular, letter or advertising.”

Acting under authority conferred by that Act the Secretary of the Treasury has from time to time promulgated rules and regulations governing the appearance of practitioners before that Department. The present regulation is known as Circular No. 230, which was first promulgated in October 1934 and has subsequently been revised from time to time. The Circular in its present form sets forth as qualifications for enrollment for the Treasury Department, first: Attorneys at law, who have been admitted to practice before the Court of any State or Territory or in the District of Columbia, and who are lawfully engaged in the active practice of their profession; and secondly: Certified public accountants, who have duly qualified to practice as certified public accountants in

their own names under the laws and regulations of any State or Territory or the District of Columbia, and who are lawfully engaged in an active practice as certified public accountants.

This protest is concerned primarily with the requirement in the second instance. Namely: that only certified public accountants may be admitted to practice. This particular requirement has gradually grown from a requirement which provided that any individual public accountant, whether certified or non-certified, who could demonstrate to the satisfaction of the Committee on Practice that he was possessed of the qualifications necessary to serve the public, might be issued an enrollment card, until now it has reached the restriction that before making application an individual must have become a Certified Public Accountant.

Various restrictive provisions have been made from time to time, which have had the effect of very materially limiting the practitioners before the Department except as to attorneys and certified public accountants. It was the habit for many years to give examinations to determine an individual's qualifications, which examinations originally were designed by the Treasury Department with a view to determining a man's individual knowledge or abilities in connection with Federal Income Tax Laws; but which have gradually changed their complexion until of late years the examination questions contained in the American Institute of Accountants' examinations for certified public accountants have been frequently, if not exclusively, used. The burden of proof has always been entirely on the individual to prove that he was worthy of admittance to practice, speaking of course of the individual who had not passed a certified public accountant examination in some particular State.

It is the belief of the Texas Association of Public Accountants that the restrictions set forth in the present Circular No. 230 are arbitrary in that they give no recognition to

the thousands of practicing Public Accountants who have been of inestimable value to the Treasury Department in preparing the returns of their clients in such a way as to require the minimum effort on the part of the Treasury Department.

Specific recognition of many of these accountants has been made as a result of the passage in Texas in 1945 of the Accountancy Act of 1945, under the provisions of which all active public accountants in the State of Texas were required to become licensed by the State Board of Public Accountancy, the identical board which issues the Certified Public Accountants' certificates; and the requirements of the law were such that discretion lay within the Board as to determining whether an individual was, or was not, fit for designation as a public accountant and consequently should have a permit. Therefore, it is the considered opinion of the Texas Association of Public Accountants that all those who have been found by the Texas State Board of Public Accountancy to be qualified to act as Public Accountants have in effect met qualifications which should be equally weighty insofar as the Committee on Practice is concerned; and that the rules and regulations of the Committee on Practice should be revised so as to provide that licensed Public Accountants, whether certified or non-certified, who hold a valid permit issued by any State Board of Public Accountancy to practice public accountancy, be permitted to practice before the Treasury Department, and that Circular 230 be revised accordingly.

At a hearing held in Washington, D. C., January 26, 1948, at which certain interests sought to further limit practice before governmental agencies, Congressman Gwynne, Chairman of the Sub-Committee on Judiciary, stated in part that since accountants were licensed under the Texas law they naturally would be holders of the Green Treasury Cards. It therefore would appear that the Congress is not aware that the intentions of the Act, which delegated to the Secretary of the Treasury the authority to regulate practice, has been circumvented.

## ANALYSIS OF CURRENT PRACTICE

WHEREAS there are approximately ten thousand (10,000) attorneys in the State of Texas.

WHEREAS the vast majority of applicants for the "Bar Examination" pass at their first sitting.

WHEREAS it is a well known fact that only a very small percentage of these attorneys are qualified to prepare income tax returns.

WHEREAS only a small percentage of these attorneys hold themselves out to the public as practitioners in Federal Tax matters.

WHEREAS only attorneys who thoroughly understand Federal Tax matters can render valuable aid to the taxpayer.

WHEREAS by Act of Congress the Secretary of the Treasury was directed to prescribe rules and regulations; "and may require such person, agent or attorney before being recognized as representatives of claimants that they shall show that they are of good character and good repute, **possessed of the necessary qualifications to enable them to render such claimants valuable service**" (blackface supplied).

WHEREAS "Bar Examinations" deal with Federal Taxation only fleetingly, if at all.

WHEREAS the Committee on Practice in Circular 230 categorically establishes the fiction that all attorneys are endowed with the necessary qualifications to render valuable service, and this in spite of the admonition by Congress that it may inquire into applicants' qualifications.

WHEREAS there are approximately thirteen hundred (1300) certified public accountants in Texas.

WHEREAS probably less than thirty (30%) of these certified public accountants are in practice as principals in their own business.

WHEREAS less than sixty percent (60%) of these certi-

fied public accountants are actually in the practice of public accounting.

WHEREAS the examinations for certified public accountants as prepared by the American Institute of Accountancy stress extreme speed in the solution of problems which are primarily scholastic in nature rather than practical in accounting application.

WHEREAS in the examination given in the State of Texas in May 1948 only fifteen (15) applicants out of six hundred and seventy (670) passed in all subjects, that is a percentage of only .0223. Further, only .2104 of all papers written resulted in the applicant securing credit therefor, and three hundred and sixty-three (363) persons out of six hundred and seventy (670) failed to secure any credit at all. It is not at all uncommon for an applicant to sit for the examination twice a year for from six (6) to twelve (12) years before passing all subjects, and many applicants never secure their certificate. It has been pointed out above that the vast majority of applicants for the "Bar Examination" pass at their first sitting. Actually there is nothing so basically difficult about the intelligent application of sound accounting principles that there should be such a disparity between the percentage of successful applicants for the "Bar" and the C.P.A. Certificate.

WHEREAS the examinations prepared by the American Institute of Accountancy deal almost exclusively with accounting problems of a scholastic nature, and its questions dealing with Federal Taxation are usually quite elementary. Therefore, the examination is by no means a fair criterion of who is qualified to "render valuable service."

WHEREAS the certified public accountant was recognized by law in the State of Texas in 1915; however this law did not prohibit the practice of public accounting by others and as a result thousands of non-certified public accountants entered the practice. It appears that the certified public accountants sought to control this situation by means of the ex-

tremely difficult examinations mentioned above and by seeking to convince the public that only they could properly be trusted with accounting matters. They did succeed in limiting the number of certified public accountants to such an extent that there are none at all in a large number of towns and small cities, which communities are now being well served by non-certified public accountants. However, the public has not taken them to its bosom; in fact, the public generally does not know the difference between a certified public accountant and one who does not hold a certificate.

WHEREAS the utter lack of a long range policy by the certified public accountant in Texas made it necessary for the Legislature to adopt the "Public Accountancy Act of 1945" whereunder all practicing accountants were licensed, subjected to the same code of ethics, and are regulated by the same State Board.

WHEREAS it is a well known fact that a "Certified Public Accountant" must acquire years of experience before being qualified to render valuable service in Federal tax matters, and it is also well known that many certified public accountants lack the experience to render such valuable service.

WHEREAS the Committee on Practice in Circular 230 categorically establishes the fiction that all certified public accountants are endowed with the necessary qualifications to render valuable service, and this in spite of the admonition by Congress that it may inquire into applicants' qualifications.

WHEREAS there are approximately forty-two hundred (4200) licensed public accountants in the State of Texas who, by the Public Accountancy Act of 1945, have been caused to assume the same responsibility as is assumed by certified public accountants.

WHEREAS because they outnumber certified public accountants by a ratio of four (4) to one (1), they handle the bulk of the tax accounting work in the State of Texas.

WHEREAS a considerable number of these public account-

ants are associated in firms with certified public accountants, often as the senior partner.

WHEREAS the licensed public accountant has not passed a "school boy" examination but has met a far more rigid test. He has sold himself to his clientele and demonstrated that he is performing a valuable service in the practice of his chosen profession.

WHEREAS the Committee on Practice has not followed the intent of Congress that Public accountants should be accorded equal privileges with attorneys and certified public accountants. Instead they require him to pass a scholastic type of examination. When he seeks to take this examination his reputation and character are investigated and if found satisfactory he is told that he may appear for the examination, but he is also advised that the examination is similar to that given to applicants for a certificate as a certified public accountant, and the suggestion is made that he take the examination for the latter instead.

WHEREAS there are approximately four hundred (400) Internal Revenue Agents in the employ of the United States Treasury Department in the State of Texas, and these men are exceptionally well qualified in the field of Federal Taxation. Licenses to practice Public Accounting were granted to all Internal Agents who applied, pursuant to the provisions of the Public Accountancy Act of 1945.

WHEREAS former Internal Revenue Agents are exceptionally well qualified to render valuable service in connection with Federal Taxation matters. However, under Circular 230 even these men are required to pass a scholastic examination similar to that required of certified public accountants before they will be granted "green cards". This fact alone should convince any fair-minded person that Circular 230 is not realistic and that there is a crying need for its revision.

WHEREAS the State Board of Public Accountancy and the harsh law of economics says who shall practice public accountancy in the State of Texas. These forces operate daily,

both locally and statewide, and police the situation far better than an agency located in Washington.

WHEREAS the attorneys have been and are policing their ranks through their "Bar Associations." The certified public accountants are policing their ranks by means of the "State Board" and their society. The licensed public accountants are also policing their ranks, as is the case with the CPAs, by means of the same "State Board" and the Texas Association of Public Accountants.

WHEREAS the Treasury department spends large sums of money seeking to aid the taxpayers in the preparation of tax returns; nevertheless by Circular 230 the Treasury Department restricts the very men who serve it well in the rather rare instances in which their work is questioned by Internal Revenue Agents. In actual practice the accountant who does not hold a "green card" must cause his client to obtain the services of an individual who does hold a "green card", thereby probably subjecting his client to additional expense and a duplication of similar service. Probably the least that can be said is that the Treasury Department is unwittingly compounding a monopoly.

#### ARGUMENT

WHEREAS the Texas Legislature passed a public accountancy act known as "The Accountancy Act of 1945."

WHEREAS the Public Accountancy Act of 1945 required the State Board of Public Accountancy to draw up a code of ethics which would govern the practice of public accountancy generally. These ethics are the same for both certified public accountants and public accountants. The Accountancy Act required that a code of ethics be balloted upon by all license holders, both certified and non-certified, and a code of ethics was adopted by an overwhelming majority, some 99%.

WHEREAS ALL licensed public accountants are now actually responsible for their acts, it would seem to be entirely proper that the Committee on Practice should grant the privi-

lege of practice before the Treasury Department to all recognized accountants, both certified public accountants and non-certified public accountants.

WHEREAS the State Highway Department of the State of Texas now recognizes that public accountants licensed under the provisions of the Texas Public Accountancy Act of 1945 are qualified to prepare statements submitted to the Highway Department. The State Highway Department took this action in their Circular No. 8-47, dated November 19, 1947.

WHEREAS some of the largest accounting firms in the State of Texas are headed by non-certified public accountants. However, some of these men have cards to practice before the Treasury Department since they have been in business many years, and probably received their cards before the Committee adopted its present rules.

WHEREAS since the passage of the Public Accountancy Act of 1945 the public accountants of Texas are subject to the same code of ethics as the certified public accountants, and since all accountants in Texas are therefore subject to the same type of control, it is only fitting that they should receive the same privileges under Circular 230.

WHEREAS the Committee on Practice insists that its only desire is to protect the public's interest, actually Circular 230 defeats this objective. There are literally thousands of "so called" tax experts who set themselves up in such places as filling stations, barber shops and vacant store buildings during tax filing season, who after March 15th, like the Arabs, "fold their tents and silently drift away." These "so called" experts are not certified public accountants, nor public accountants. They are subject to no type of regulation, and at the present time there is no control over them. The practical solution to this problem would be that all attorneys, certified public accountants, and licensed public accountants be issued "green cards" upon a showing by affidavit that they are of "good character and good repute" and that they are qualified to render valuable service. Income Tax Matters represent an eco-

conomic relationship between the Government and the Taxpayer, and valuable service to either the Taxpayer or the Government involves a special knowledge of special laws which are applicable; being neither criminal or civil: but rather a combination of the application of applicable laws and accounting principles; therefore Circular 230 should provide that assistance or work of any nature in connection with Federal Taxation should be defined as the practice of law and public accounting. This method naturally would not immediately eliminate the so-called "tax expert" but it should have a very salutary effect over the years. Provision for disciplinary penalties might be included in Circular 230 as a further curb. While such a provision probably would be difficult to enforce, its mere availability would in many instances produce the desired result.

WHEREAS it appears that the Committee on Practice should take cognizance of the fact that all licensed accountants in Texas are by law accountable to the State Board of Public Accountancy. During the past years, several states have enacted similar laws. In other words, the several states have sought to protect the interests of the public by recognizing public accountants and subjecting them to responsibilities identical to those of the certified public accountant.

WHEREAS the Committee on Practice has not recognized this trend. If the several states deem it to be in the public interest to recognize the public accountant, the Committee on Practice should do likewise. One of the principles of democracy is that the government is responsible to the will of the people. The election on November 2, 1948 seems to have rather forcefully reaffirmed this principle, that is if any re-affirmation was needed.

#### SUMMARY

Congress directed the Secretary of the Treasury to prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department. It is to be noted that the direction did

not state nor apparently intend that recognition was to be limited to attorneys or certified public accountants, or to those who could pass a purely scholastic examination.

It was the apparent purpose of Congress to permit the Treasury Department to conduct its business in an orderly manner, and certainly it was not the intent of Congress to deny the right of practice other than to those of "good character and good repute, possessed of the necessary qualifications to enable them to render valuable service."

There are probably 200,000 attorneys and 25,000 certified public accountants in the United States. Obviously the Committee on Practice cannot pass upon their individual qualifications, therefore "green cards" are issued to them in a more or less routine manner on the theory that their training has qualified them to render valuable service. Many of the better attorneys are the first ones to point out that they themselves are not qualified to represent clients in Federal Tax matters, and they recommend that an attorney who specializes in that field be engaged.

There are probably 125,000 non-certified public accountants in the United States. Since it would be impracticable for the Committee on Practice to fairly determine the individual qualifications of these men, the obvious solution is that they should be granted "green cards" upon a showing that they are licensed to practice public accounting, and are of good character and good repute.

The practical solution to this problem would be that all attorneys, certified public accountants, and licensed public accountants be issued "green cards" upon a showing by affidavit that they are of "good character and good repute" and that they are qualified to render valuable service. The law of economics would then function to eliminate most of those who are unfitted to render valuable service.

If it should be deemed necessary to determine the qualifications of applicants by examination, then all applicants, whether they be attorneys, certified public accountants, or

licensed public accountants, should be given the same examination, which examination should be practical and designed to determine the applicant's workable knowledge of the application of the laws and regulations dealing with Federal taxation.

Assistance or work of any nature in connection with Federal taxation should be defined as the practice of law and public accounting. This should result in the eventual elimination of most of the unqualified practitioners.

BE IT RESOLVED that the Texas Association of Public Accountants prays that the Committee on Practice call representatives from the various recognized accounting organizations, and work out new rules of admission. Be it further resolved that Circular 230 be so revised that adequate control can be exercised over all persons who prepare income tax returns.

BE IT FURTHER RESOLVED that the Congress of the United States by a joint resolution should state and declare that it is their intention that all licensed accountants in the United States and its possessions be permitted to practice before the Treasury Department of the United States.

The Board of Governors of the Texas Association of Public Accountants in special meeting assembled in the City of Austin, Texas, under date of November 29, 1948; unanimously adopted the above written protest against the provisions of Circular 230, this being the circular issued that governs the registration of practitioners before the Treasury Department of the United States, as representing the action and the position of the membership of the Texas Association of Public Accountants: and further instructed the executive officers of the Texas Association of Public Accountants to deliver a certified copy of said protest as above written, together with any other information considered by said executive officers, from time to time, as being then appropriate, into the hands of the representatives of the citizens of the State of Texas

in the Congress of the United States; and to such administrative officers of the Government of the United States as should properly receive such protest; and to any other persons who properly should be advised as to the position of the Texas Association of Public Accountants relative to the present provisions of Circular 230.

(Signed) J. D. HUBBARD, President  
Texas Association of Public  
Accountants

(Signed) C. L. WEST, Executive  
Secretary  
Texas Association of Public  
Accountants

**ATTEST:**

(Signed) L. E. TENNISON, Secretary-  
Treasurer  
Texas Association of Public  
Accountants

BILLINGSLEA  LONGVIEW