

# Accounting Historians Journal

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Volume 11  
Issue 1 *Spring 1984*

Article 1

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1984

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### Recommended Citation

Hopwood, William S. and Hreha, Karen S. (1984) "Interprofessional tax altercation," *Accounting Historians Journal*: Vol. 11 : Iss. 1 , Article 1.

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*The Accounting Historians Journal*  
Vol. 11, No. 1  
Spring 1984

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## **THE INTERPROFESSIONAL TAX ALTERCATION**

*Abstract:* The paper presents an historical summary of the major issues and events which led to the development of the practice of taxation by accountants in the United States. This development was marked by tremendous conflict between the legal and accounting professions.

The purpose of this paper is to provide an historical summary of the major issues involved in the dispute between lawyers and accountants for the right to practice tax in the United States. Determination of the major issues is based upon evidence gathered from the *Journal of Accountancy* and the *American Bar Association Journal*. These journals are the primary publications which represent the thought of the two professions. By examining the bibliography, one can see that most of the documentation for this paper has been taken from the *Journal of Accountancy*. The reason for this is that the *American Bar Association Journal* published much less on the subject. The volume of articles appearing in the *Journal of Accountancy* reflects the tremendous concern and importance which the accounting profession attached to the dispute.

Published facts of the two journals may not be entirely representative of both sides of the conflict. However, the object of this paper is to highlight the major events and issues that had a significant effect on the outcome of the dispute between the professions.

The *Journal of Accountancy* was an official publication of the American Institute of Accountants (AIA), now known as the American Institute of Certified Public Accountants. Please note that where the position of the AIA is stated in this essay, such position may not have been an official one. This can be distinguished by examining the footnote to determine whether it is merely an editorial.

### *Beginning of Dispute*

The question of whether an accountant has the right to practice in the area of taxes in the United States can be traced back as early as 1901 when a Kentucky court allowed an accountant to represent a client in a tax dispute.<sup>1</sup> Although in the early 1930s very few individuals paid taxes, business enterprises generally had enough income to require payment of income taxes. Since the calculation of business income required accounting knowledge, businessmen turned to certified public accountants (CPAs) in large numbers for help in preparing their returns, and in dealings with the Bureau of Internal Revenue.<sup>2</sup> Thus, tax practice had become a large part of professional accounting service. In 1945 it was stated, "From the very first income tax act in 1913 lawyers have shunned the business of preparing income tax returns."<sup>3</sup> By 1941, CPAs constituted one third of the enrollment of those entitled to practice before the Treasury Department, while at the same time the Treasury Department itself was composed of 4,400 accountants and only 400 attorneys.<sup>4</sup> To a large degree, the accountants even interpreted the law.

However, as more cases were taken to the Board of Tax Appeals and the courts, lawyers began to be drawn into tax practice. As early as 1932, an unsuccessful attempt was made to eliminate CPAs from practice before the Board of Tax Appeals. A similar effort was made to introduce a bill in Congress which would limit the rights of non-lawyers to represent others before federal agencies. The bill was defeated. In 1942, the name of the Board of Tax Appeals was changed to the "United States Tax Court." The new Tax Court then announced a requirement of an examination to practice before it. Lawyers were exempted from the examination but CPAs were required to pass it. Efforts by the accounting profession to have the Court restore the right of CPAs to admission without examination were unsuccessful.

By 1943 the right of the accountant to practice tax was challenged in the Supreme Court of the United States. The Supreme Court stated, "Conflicts are multiplied by treating as questions of law what are really disputes over proper accounting."<sup>5</sup> It is difficult to determine when the dispute began; however, in 1944 both the accounting and legal professions found it desirable to establish the National Conference of Lawyers and Accountants (hereafter referred to as the National Conference) which was later to play an instrumental role in settling the dispute.

Prior to 1950 accountants encountered some friction from the legal profession, but nevertheless members of the profession con-

sidered it proper to practice in the area of taxes. Accountants had little reason to feel otherwise, as they frequently consulted businessmen concerning their tax problems without question from the legal profession. Even the Treasury Department thought of accountants as *the* "tax people." This is evidenced by the fact that the Treasury Department used accountants in drafting and administering the provisions of the first modern tax statement.<sup>6</sup>

In 1950, the *Bercu*<sup>7</sup> case shattered the confidence of the accounting profession. In this case, the controller of a New York firm was both an accountant and a lawyer. The controller, on behalf of the firm, consulted an outside accountant (who was a CPA) on a tax deduction problem. The outside CPA rendered his services and accordingly billed the firm. The firm escaped paying on the grounds that the CPA had engaged in the unauthorized practice of law. This set a precedent that boded ill for the accounting profession.

In the same year, a Minnesota court rendered a similar decision in what was commonly called the *Conway*<sup>8</sup> case. The main issue centered around whether an accountant had practiced unauthorized law by giving advice to his client on the matter of filing a joint return. During the hearing the Minnesota Society of CPAs, the Minnesota Association of Public Accountants and the State Association of Public Accountants filed briefs on behalf of the CPA. The State Association said, "It must be recognized that to one having all of the qualifications of an accountant all tax returns are likely to be relatively simple." The judge referred to the briefs as, ". . . fine briefs presented on behalf of a great, though new, profession whose standards are not wholly unlike those of the older legal profession." He further stated that it was proper for an accountant to file one of the "numerous kinds of returns"; however, he also added, "That in order for a person to aid and assist a taxpayer in making out an income tax return presenting problems properly in the field of law alone or of both law and accounting it is mandatory for such a person to have and possess knowledge, training and skill found only in the profession of duly licensed attorneys at law."<sup>9</sup>

### *A Time of Negotiations*

By that time both professions realized that a dispute existed and in April 1950 the National Conference proposed a body of principles (subject to ratification by both professions) to serve as a guide to resolution of the problem. The following year could be deemed "the year of negotiations"; however, as one writer, Avstein, stated, "Efforts to reconcile differences make more of a Medieval trial by combat than constructive discussion by intelligent men."<sup>10</sup>

In the same year, 1951, the *Iowa Law Review* devoted its entire Winter edition to the problem at hand. In that issue (in the preface) Professor Stanley wrote, "The publication in a law review of this symposium on law and accounting furnishes impressive testimony as to the close relationship between these two professions. The need for such a relationship has been present from the start, but the legal profession was slow to recognize it, and the law schools have been even slower than the rest of the profession." At about the same time, Austin claimed that there was too much extremism coming from both professions. Many accountants argued that tax practice had nothing to do with law, while at the same time, lawyers were asserting that it was pure law. Austin felt that many of the legal concepts such as consolidated returns, taxable income, and invested capital were accounting terms in spite of the fact that they were embodied in the law. It was also stated that the skills of the accountants were useful contributions in determining taxable income and the tax liability, while the lawyers skills were useful in marshalling and appraising evidence.<sup>11</sup>

By this time, a number of subissues had arisen. First was the question of whether it was proper for the accountant to refer to himself as a "tax consultant." The AIA agreed with the American Bar Association (ABA) that it was unfair to the legal profession to allow accountants to call themselves tax consultants, since the lawyers could not do the same because their code of ethics prohibited it. Such a thing would be "unprofessional."

Second, was it proper to practice law and accounting at the same time? In 1947, the Committee on Joint Practice (composed of ABA members) ruled that joint practice was unethical; however, in 1949 the New York County Lawyer's Association allowed two members to engage in joint practice notwithstanding the ruling to the contrary.<sup>12</sup> The AIA was in favor of joint practice. Thus, the answer to this question had not been fully resolved. Last, there was the problem of dealing with those who could fairly be called "fly by nighters." In relation to this subissue, the Rhode Island Bar Association won an injunction ordering a non-CPA to refrain from practice. Although these cases do not do full justice to describing the three subissues mentioned, they provide a background for understanding the principles which were developed by the National Conference.

The significance of the year 1951 is now well recognized. Principles previously established by the National Conference were officially ratified by the AIA (the ABA had done this in the prior year) and enacted. These principles are still in effect today. The AIA said that they ". . . culminated more than 15 years of patient effort

by means of goodwill in both professions.” Also, “It records the opinion of the organized bar that the CPA’s are members of a recognized profession comparable to that of law.”<sup>13</sup>

Some of the recommendations offered along with the principles were:

1. local committees of lawyers and accountants be established
2. both professions should feel free to consult the local bar associations with problems
3. local committees should refer difficult problems to the National Conference.

In summary, the basic principles were formulated as follows:<sup>14</sup>

1. accountants and lawyers should collaborate
2. it is desirable for both professions to prepare income tax returns (providing that both sides keep within reasonable boundaries)
3. either profession could estimate the tax effect of a transaction
4. neither profession should use the term “tax consultants” or similar terms
5. accountants can practice before the Treasury Department if no legal questions were involved
6. it is not wrong for an accountant to represent a client in Tax Court
7. criminal cases are beyond the scope of the accountant.

The ABA was satisfied with the principles. In the July edition of the *American Bar Association Journal*, it was stated that although the principles were general, the legal profession hoped they would furnish a basis for a cooperative effort between the bar and CPAs. The legal profession was particularly satisfied with the principle that interpretations of the law, both tax law and general, are a matter for lawyers (only). A commonly-held view by the legal profession was that if the principles were followed, both professions as well as the public would reap benefits.<sup>15</sup>

Although the principles were official, they were broad, untested and possibly internally inconsistent. George Hill, a New York lawyer, helped shed some light on the interpretation and application of the principles by publishing what he termed “Legal Concepts of Accounting,” which are in their abstract form as follows (not meant to be comprehensive):<sup>16</sup>

1. The conflict in common law stems between fact as found by the court and fact as in accounting principles.
2. The conflict is similar in administrative law, except rather than a court determining the law, the law is imposed.
3. The court is only concerned with Generally Accepted Accounting Principles in the instant case.
4. Law dominates accounting principles.
5. In the absence of legislation, questions of accounting are not questions of law but rather questions of fact, and therefore accounting principles are not binding in the construction of statutory language and are not conclusive in the application of the law to the fact.

The following year was not without incident. In order to further clarify the atmosphere of the times, a letter to the Editor of the *Journal of Accountancy* is presented in part:

Sir; for consideration of tax practitioners who have been prominently displaying in the windows of delicatessen stores, . . . barber shops, and shoeshine parlors in the past few months. I offer the following passage from the first part of St. Paul's Epistle. "I beseech you that ye may walk worthy of the vocation of where with ye are called."<sup>17</sup>

Shortly thereafter, the Treasury Department decided to recall 94,000 of the outstanding licenses allowing the bearer to practice before the treasury. The AIA offered assistance in the matter, so far as CPAs were concerned, and the Treasury Department cordially accepted.<sup>18</sup> It is also interesting to note that in the same year the AIA Tax Committee made 64 recommendations for changes in the tax laws,<sup>19</sup> and the Missouri Supervisor of the Internal Revenue Service publicly thanked the accounting profession for helping in the administration of the tax laws.<sup>20</sup> Finally, the *Journal of Accountancy* carried an advertisement for the sale of books written for lawyers.<sup>21</sup>

Returning again to the mainstream, by 1952 twenty-one states had formed or were in the process of forming local committees as recommended by the National Conference.<sup>22</sup> As was to be expected there were problems in the application of the principles, but the National Conference emphasized its desire to maintain uniformity in obtaining solutions. There were some encouraging results. In one case a dispute that was in the litigation stage was withdrawn from court and submitted to the National Conference.<sup>23</sup> However,

the machinery for dispute settlement was not solving all of the problems; in another dispute, the attorney refused to do the same.<sup>24</sup>

Furthermore, there was the embarrassing case of the accountant who in representing his client in court, tried to show that a tax-free corporate reorganization had occurred and, subsequently, omitted important information. No evidence had been introduced concerning the fair market value of stock acquired by the taxpayer. It had merely been stipulated between the parties that the book value on such date was a certain amount. Then the court determined that the transfer of shares was not tax free; the taxpayer's deficiency was thus incorrectly computed. The higher court remanded the case to the lower court for rehearing.<sup>25</sup> This case stirred the AIA to come to the defense of the accounting profession in general. The AIA contended that very few CPAs found their way into a courtroom on behalf of clients, and of these, only a small percentage were ever accused of doing something wrong. The AIA invited criticism from the Bench or the Bar.

In regard to resolution of the dispute, 1953 was an uneventful year. In Rhode Island a man was stopped from engaging in the practice of taxes because he was not a CPA.<sup>26</sup> Also a tax accountant won on a charge of unauthorized law practice, citing the *Bercu* case. At this point in time, many tax practitioners may have assumed that the problem was close to being resolved. However, this would have been an incorrect assumption.

#### *A Major Setback for the Accounting Profession*

The year 1954 brought alarm to a number of accountants. Most of the alarm was a result of the *Agran v. Shapiro* case. Here a CPA rendered services to the client on the matter of a loss carryback-carryforward problem. Once again, the client refused to pay on the grounds that the accountant had engaged in the unauthorized practice of law, and the CPA in turn sued for payment. The CPA won in the lower court. On appeal the California Bar came to the aid of the client and the California Society of CPAs did the same for Agran, a CPA (both filed briefs).<sup>27</sup>

The defendant cited 10.2(f) of *Circular 230* (Treasury Regulation). It was advanced that due to 10.2(f) the CPA's services were illegal and therefore there should be no judgment allowed. The controversial part of 10.2(f) was: "Nothing in the regulations of this part shall be construed as authorizing nonmembers [of the bar] to practice law." The superior court ruled for the defendant stating that it was improper that the CPA had referred to the Internal Revenue Code in the course of his work.



The reason that accountants were alarmed was that if the court's reasoning were followed it would be next to impossible to do income tax work because the Code was a vital tool.<sup>28</sup> It is also important to note that Agran was authorized to practice before the Treasury Department and the court interpreted that under the Treasury's own regulation it was improper to do so. Correa's explanation was that the California court followed form and the Federal Government followed substance.<sup>29</sup> Another person summed up the matter as follows: "The conclusion is inescapable that a purposeful minority within some of the bar associations is making a conscious effort to take away from accountants a substantial part of the tax practice in which they have been traditionally engaged, and make it a monopoly for lawyers."<sup>30</sup>

The Unauthorized Practice of Law Committee of the California State Bar stated that no accountant could give advice as to the tax implication of a transaction to a taxpayer. Thus the California Bar had reverted back to the stance that the ABA had taken prior to the enactment of the principles.

There was also a similar case in Florida (Re: Petition of Kearney) where the state Supreme Court cited 10.2(f) and ruled that nonmembers of the Bar could not practice in the area of certain types of tax problems.

### *Accountants Fight Back*

As a result of these occurrences, the AIA decided to vigorously oppose 10.2(f). In addition, the AIA went as far as to call its members to fight to keep the practice of taxes.<sup>31</sup> This was coupled with a large increase in the number of articles published in the AIA official publication, *Journal of Accountancy*. The following recommendations were made:

1. Inform businessmen that they might be deprived of their right to choose their tax advisors
2. Ask sympathetic lawyers to protest
3. Speak to U.S. Senators during the recess of Congress
4. Talk to state Legislators

A further sample of the desire to fight exists in some of the letters written to the Editor of the *Journal of Accountancy*:<sup>32</sup>

I have always felt that the average accountant was not enough of a scrapper and in these attacks has sat back and taken it too long.

I think that it is time . . . to fight in this matter.

J. S. Seidman wrote:<sup>33</sup>

Top tax positions are held by accountants . . . Less frequently the tax administrator is an attorney. I think that this has significance in terms of the practical facts of tax life.

The accounting profession had clearly decided not to turn and run. Their line of attack began to crystalize. The AIA stated, "Perhaps the ultimate solution must be action by the federal government to remove the jurisdiction of the state courts' activities related to the collection of federal taxes."<sup>34</sup>

The legal profession became aware that the accountant wanted to press the issue. However, the lawyers had a different viewpoint of the matter. The lawyer applied the same type of thinking that he would apply to most types of legal problems. That is, he saw the problem as a matter of law and applied the concepts of statutory construction and *stare decisis*. There also was a whole sector of common law in the area of unauthorized practice. An analysis of this area (from an attorney's point of view<sup>35</sup>) is summarized as follows:

1. statutes of unlawful practice exist on both state and federal levels
2. unlawful practice originated in England
3. state laws were rather uniform in this area
4. the general rule was that services normally performed by a lawyer, in or out of court, could only be performed by a bar member except for the following:
  - a nonbar member could perform some legal services if they were incidental to his main endeavor, but
  - a nonmember could not engage in a legal matter that was either "difficult or doubtful"
5. in federal law the Treasury had the power to override the individual states in income tax practice administration problems
6. the Treasury Department had three basic rules
  - a. the practitioner had to be of good moral character
  - b. he had to have "adequate education"
  - c. he had to know the tax laws
7. 10.2(f) applied

The general rule was easy to apply to the problem of the accounting profession engaging in the practice of taxes. The accountant

was not allowed to do any tax work normally done by a lawyer. This did not leave much for the accountant. On the other hand, the exception was much more difficult to discern. First, it was difficult to draw a line between incidental and nonincidental problems. Second, for the accountant practicing in taxes, it was often impossible or at least extremely impractical to determine ahead of time if a particular tax problem would be difficult.<sup>36</sup> The intent of the incidental test was to allow the layman to engage in matters that were very simple (i.e., the selling of a piece of personal property). However, what was "difficult" for one man might not be difficult for another. This left the accountant in a dilemma. He never could be sure whether he was in the "clear" or not.

No doubt a large number of accountants were concerned about losing their livelihood. It cannot be said that all accountants were worried because different treatments prevailed in different states. The "tougher states" were Florida, California, Minnesota, and New York. However, the accountants in the other states were in danger of the unfavorable court decision spreading into their own domains.

#### *The ABA Responds*

Although the accounting profession to some extent propounded that it was in a dilemma, Erwin Griswold, Dean of the Harvard Law School, had a different opinion on the position of the accountant-tax practitioner. He asserted that accountants were blowing up the problem and were getting excited over things that did not deserve attention.<sup>37</sup> He also stated that the accountant was really in a very good position and should have recognized and accepted his good fortune as fact. Griswold made the following five assertions:<sup>38</sup>

1. The term "practice of law" was being interpreted too narrowly. Policemen constantly used the statutes in performing their duties and no one thought about accusing them of unauthorized practice
2. In the *Agran* case the court was too literal in defining the practice of law
3. The ABA should not take an extreme position, as this might cause Congress to take a position strongly in favor of the accounting profession
4. The CPA's were harming themselves by seeking legal changes for all agents (those allowed to practice before the Treasury). They should "separate" themselves from non-CPA's
5. If the CPA's did get what they wanted, an undesirable

thing could happen, that is, a disbarred attorney would be able to continue to practice law (tax law anyway).

Also, Griswold wrote: “. . . many if not most accountants are better equipped to handle many tax questions than a considerable proportion of the members of the Bar,” and in relation to corporate returns he said, “Here there is much that only the accountant can do if the return is of any complexity.”<sup>39</sup> The latter statement is of particular significance because it is incongruent with the “difficult” test as set forth by Rembar. If one begins with the premise that the “difficult” test was for the public good, and then the test is applied to the complex corporate return, it is at least plausible that the accountant would, under this test, not be able to deal with the complex return. But this conclusion would seemingly contradict the “public good” premise if what Griswold said were true; namely, “. . . there is much that only an accountant can do.” The logic is inescapable; if the law will not allow the only qualified person to do the work, how can the law be benefiting the public? In *Agran*, part of the logic that was used against him was that his legal research was of a difficult nature.<sup>40</sup> The court took this thought and pointed to 10.2(f) and *Agran* lost.

The AIA recommended that 10.2(f) be changed to the following: “No enrolled practitioner who is not a member of a recognized profession shall hold himself out as qualified by virtue of his enrollment to engage in the practice of that particular profession.”<sup>41</sup>

The ABA in a response stated: “The ABA opposes the deletion or emasculation of the existing 10.2(f)” (while at the same time calling for collaboration between professions). They said that they did not mind the CPAs filing returns or refund forms, but they did not want accountants in tax court.

In April 1955, Griswold published a few suggestions for the CPAs to follow:<sup>42</sup>

1. The AIA should “call off the dogs”
2. The CPA should “separate” himself from the non-CPA
3. Problems that arise should be kept out of the courts and in the hands of the National Conference. The Conference could wield a great deal of power by arguing in court, if necessary, for the party with which it sided
4. Let the matter work itself out by way of ordinary competition
5. The CPA should make it a rule to contact a lawyer when a legal problem exists

Griswold also acknowledged that there was an overlap between the two professions, and that in other countries accountants were accepted in the area of taxes.

In July 1955, a response was published by Richardson who stated that within the framework of Griswold's suggestions there was a solution if the members of the Bar sincerely desired one. His main points are listed as follows:

1. Accept the premise that CPA's are qualified to practice taxes
2. Acknowledge that CPA's are honest in their contention that Sec. 10.2(f) of Circular 230 is being used to deprive accountants of well established rights and privileges
3. Both professions need to make sacrifices
4. Having "cleared the air" with 230, establish a cooperative organization to settle disputes
5. Let there be more evidence that the rank and file lawyers are willing to follow men like Griswold.<sup>43</sup>

A deeper understanding of the ABA's position can be found by examining William Jameson's address to the House of Representatives. An abstract in outline form is presented below:<sup>44</sup>

1. William Jameson was the President of the Committee on Professional Relations (CPR)
2. The committee was aware of the AIA's proposed change in Circular 230. The 1954 House had authorized a special committee to oppose the proposed Circular change
3. Congressman Reed of New York (Chairman of the Ways and Means Committee) introduced HR 9922 proposing that the Secretary of the Treasury regulate tax matters relating to lawyers and accountants
4. The Committee on Unauthorized Practice became the Committee on Professional Relations (the CPR) of which Jameson became president
5. HR 9922 was also introduced as HR 1601 and HR 2461
6. The CPR was very aware that the AIA had sent letters to its members (calling the members to action) and as a result sent a counter letter to each member of Congress stating, ". . . we believe it would be an unwise interference by the federal government with the traditional control of the practice of law by the several states."
7. The AIA published a pamphlet called "Helping the Tax-

payer." In referring to this James said, "I'm sure that you all will agree that the publication of that pamphlet was unfortunate." The ABA sent out a counter pamphlet called "Lawyers and Accountants in the Tax Practice" to "clear the air," but not to "aggravate."

8. In December Maurice Stans (AIA President) met with Loyd Wright (ABA President) and the two appointed a committee to negotiate. Jameson stated, "We have been negotiating in good faith and this is true of both sides."
9. It is interesting to note what Jameson expected to happen in the event the negotiations failed. He said that the AIA would push for the bills to be passed and also that ". . . they have accumulated a substantial fund for that purpose . . . we can't hope to match that in the event that we get into this controversy."
10. Jameson expressed a desire not to dispute.

In relation to the AIA pamphlet, "Helping the Taxpayer," mentioned in item 7 above, the ABA had a number of criticisms to offer:<sup>45</sup>

1. The pamphlet incorrectly states the position of the legal profession concerning the proper activities of lawyers and accountants in tax practice
2. The pamphlet fails to state correctly the nature of the federal tax problem and the procedures involved in the disposition of tax controversies
3. The AIA failed to mention the principles of 1951 which ". . . creates confusion where none exists."

Along with these points were included the following examples of problems in which the accountant should not engage:

1. determination of whether a minor should be included as a member of a partnership
2. determination of when monetary payments to a divorced wife are tax deductible
3. determination of when the forgiveness of a debt is taxable to the debtor
4. determination of whether a merger or consolidation qualifies as a tax-free reorganization.

On January 1, 1956, the Treasury Department finally made a statement regarding 10.2(f). The Department acknowledged that it was

responsible for uniform interpretation of the regulation and that the particular problem would be monitored closely in the future; if necessary, an investigation would be made to determine the need for a change in regulations. This statement was very much in favor of the accountants as the legal profession was not in favor of uniform interpretation (unless such interpretation would be slanted in their favor which was unlikely).

Later in the same year, the AIA announced that it was dropping the *Agran* case and was not going to take it to the Supreme Court. The reason cited was that the AIA's legal counsel recommended that the case was not a serious precedent in the other states and, being two years old, would not likely be cited as it once was. It is interesting to note that at the time this statement was made, accountants in Los Angeles were practicing tax as if nothing had happened.<sup>46</sup>

Early in 1957, the Special Committee on Professional Relations of the ABA and the Committee on Relations with the ABA of the AIA met and issued a joint report.<sup>47</sup> It was stated that each state should set up a joint committee and litigation should pass through these committees rather than going to court. The 1951 principles were reiterated. It was also stated that there should be only one state committee per state and that there should be a high degree of coordination between the state, local, and national levels.

#### *Accountants and Lawyers Work Toward Resolution of Dispute*

After the 1957 joint report, an atmosphere of mutual confidence and cooperation was being created. *Circular 230* had been completely revised (although it was argued that there was no real change<sup>48</sup>). In the same state in which the *Bercu* case had been held, a decade later, the State Bar met with the State Society of CPAs and made a formal agreement consistent with the 1951 principles and also established the machinery for settling disputes.<sup>49</sup> Moreover, in California a CPA won a judgment for professional fees (for tax work). The defendant cited *Agran*, but the judge stated that *Agran* was not applicable in the instant case because an important fact was missing—the research of a hundred legal cases which *Agran* had done.<sup>50</sup>

The National Conference was influential in settling controversies which arose in a number of states. Its lawyer-members dissuaded some state or local bar associations from intended hostile actions against the accounting profession. Gradually, incidents of this na-

ture ceased, and the situation became stabilized throughout the country.<sup>51</sup>

Later, the Editor of the *Journal of Accountancy* wrote:

However it is not the machinery alone that is responsible for the present harmony. There has been a change of basic attitudes, from one of conflict, to one of cooperation, from one of silence to one of disclosure, and from one of suspicion to one of trust.

In the past, the AIA had been instrumental in blocking a series of bills supported by the ABA relating to practice before administrative agencies of the federal government.<sup>52</sup> Most of these bills contained provisions which would severely restrict CPAs in their tax practice or in informal representation before governmental agencies.

Major legislation of this type was introduced with the support of the Bar in 1965. The AIA's position was that it would support the bill if an amendment were made to provide specifically that certified public accountants were entitled to practice before the Treasury Department. After consultation, the ABA stated that it would not object to the desired amendment.

On September 23, 1965, the bill passed both houses of Congress. It contained the following provision, inserted as an amendment at the AIA's request:

Any person who is duly qualified to practice as a certified public accountant in any state, possession, territory, commonwealth, or the District of Columbia may represent others before the Internal Revenue Service of the Treasury Department upon filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular party in whose behalf he acts.<sup>53</sup>

Thus, after a long struggle, the right of CPAs to practice before the Treasury Department was law.

### *Conclusions*

The tax dispute played an important role in the evolution of the modern accountant. It helped establish accountancy as a profession in the eyes of the law and also formally introduced the "newly recognized profession" to the legal profession. The dispute also helped the general public by establishing further clarity in the law regarding what is in fact unauthorized practice.



After 30 years of controversy, the authority of CPAs to practice before the Internal Revenue Service was firmly established. Fortunately, the ABA did not offer massive resistance and conceded to the demands of the AIA. Today, lawyers and CPAs are dependent upon each other's expertise in dealing with the complexities of tax law.

## FOOTNOTES

- <sup>1</sup>Dunlop v. Lubus, 112 Ky. 237, 65 s.w. 441, 1901.
- <sup>2</sup>Carey, p. 204.
- <sup>3</sup>Kopta, p. 76.
- <sup>4</sup>Austin, p. 808.
- <sup>5</sup>Dobson v. Comm., 320 U.S. 489.
- <sup>6</sup>Kopta, p. 76.
- <sup>7</sup>Re New York County Lawyers Association (Bercu case), 273 App. Div. 524, 78 N.Y.S. 2d 909, 87 N.E. 2d 461 (1948).
- <sup>8</sup>"'Tax Expert' Found Guilty of Unauthorized Practice of Law," p. 185.
- <sup>9</sup>"'Tax Expert' Found Guilty of Unauthorized Practice of Law," p. 260.
- <sup>10</sup>Austin, p. 805.
- <sup>11</sup>Austin, p. 805.
- <sup>12</sup>This is not meant to imply that the same thing was happening in all states.
- <sup>13</sup>"Tax Practice Principles Approved by Lawyers and CPAs," p. 802.
- <sup>14</sup>Official Decisions and Releases, "Lawyers and CPAs Join in Statement of Principles Defining Proper Areas of Federal Tax Practice for Members of Both Professions," *Journal of Accountancy*, 1951, p. 869.
- <sup>15</sup>"The Interrelationship Between Law and Accountancy," p. 62.
- <sup>16</sup>"The Interrelationship Between Law and Accountancy," p. 67.
- <sup>17</sup>Letters to the Editor, "A Word for Advertising 'Tax Expert,'" *Journal of Accountancy*, 1952, p. 537.
- <sup>18</sup>"Practice Before Treasury Under Congressional Investigation," p. 33.
- <sup>19</sup>Journal Newsletter, *Journal of Accountancy*, 1952, p. 389.
- <sup>20</sup>"Accountants' Help Acknowledged by Tax Authorities," p. 161.
- <sup>21</sup>Current Books and Articles, "Publications for or by Lawyers Can Be Useful to Accountants as Well," *Journal of Accountancy*, 1952, p. 109.
- <sup>22</sup>Official Decisions and Releases, "February Meeting of the National Conference of Lawyers and Certified Public Accountants," *Journal of Accountancy*, 1952, p. 466.
- <sup>23</sup>Official Decisions and Releases, "February Meeting of the National Conference of Lawyers and Certified Public Accountants," *Journal of Accountancy*, 1952, p. 466.
- <sup>24</sup>Official Decisions and Releases, "February Meeting of the National Conference of Lawyers and Certified Public Accountants," *Journal of Accountancy*, 1952, p. 466.
- <sup>25</sup>F. K. Ketler, 196 F.2d 822 reversing and remanding 17 TC 216.
- <sup>26</sup>Rhode Island Bar Assoc. et. al. v. D. Libutti Eq #2181 Supreme Court of Rh. I.
- <sup>27</sup>Correa, p. 599.
- <sup>28</sup>It also deserves mention that Agran did extensive legal research for his client in order to do the tax work.
- <sup>29</sup>Correa, p. 599.

- <sup>30</sup>"CPAs' Tax Practice Seriously Threatened," p. 161.
- <sup>31</sup>"CPAs' Tax Practice Seriously Threatened," p. 161.
- <sup>32</sup>Letters to the Editor, "Some Readers' Opinions on the Tax Practice Problem," *Journal of Accountancy*, 1954, p. 581.
- <sup>33</sup>Letters to the Editor, "Some Readers' Opinions on the Tax Practice Problem," *Journal of Accountancy*, 1954, p. 149.
- <sup>34</sup>"CPAs' Tax Practice Seriously Threatened," p. 162.
- <sup>35</sup>Rembar, p. 549.
- <sup>36</sup>Rembar, p. 549.
- <sup>37</sup>Griswold, December, 1955, p. 1113.
- <sup>38</sup>Griswold, p. 1113.
- <sup>39</sup>Griswold, p. 1113.
- <sup>40</sup>Agran did research on about 100 cases of law. A later case that was similar ended up with opposite results on the premise that the CPA did not render the legal research that Agran did.
- <sup>41</sup>Official Decisions and Releases, "Proposed Revision of Treasury Circular 230," *Journal of Accountancy*, 1955, p. 56.
- <sup>42</sup>Griswold, April, 1955, p. 33.
- <sup>43</sup>Richardson, p. 27.
- <sup>44</sup>"Chairman Jameson's Statement to the House," p. 318.
- <sup>45</sup>The criticisms were made by the staff of the *American Bar Association Journal*, see: *American Bar Association Journal*, "Lawyers and Accountants," p. 440.
- <sup>46</sup>"The Agran Case in Perspective," p. 29.
- <sup>47</sup>Official Decisions and Releases, "Joint Report of Special Committee on Professional Relations of American Bar Association and Committee on Relations with Bar of American Institute of Accountants," *Journal of Accountancy*, 1957, p. 53.
- <sup>48</sup>Weitzel, p. 42.
- <sup>49</sup>"Lawyer - CPA Co-operation," p. 27.
- <sup>50</sup>Official Decisions and Releases, "Decision Upheld in Tax Practice Case," *Journal of Accountancy*, 1961, p. 70.
- <sup>51</sup>Carey, p. 254.
- <sup>52</sup>Carey, pp. 255-256.
- <sup>53</sup>Carey, p. 257.

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