1978

Comments on Proposed Amendments to Treasury Regulations Sections 10.24 and 10.30 Governing Solicitation by Practitioners Before the Internal Revenue Service

American Institute of Accountants. Federal Taxation Division

FEDERAL TAX DIVISION

of the

American Institute of Certified Public Accountants

Comments on Proposed Amendments to Treasury Regulations Sections 10.24 and 10.30 Governing Solicitation by Practitioners Before the Internal Revenue Service

Submitted to the

Internal Revenue Service

August 16, 1978

GENERAL COMMENTS

The proposed amendments to the regulations reprinted in Treasury Department Circular No. 230 are intended to permit the expansion of advertising and solicitation by the professions in accordance with recent judicial decisions. In general, they do accomplish this purpose and the Federal Tax Division is in agreement with most of the content. The proposed rules, however, are directed only to attorneys, certified public accountants and enrolled agents as individual practitioners before the Internal Revenue Service. As a practical matter, much of the advertising will be done by firms (professional corporations as well as partnerships) and much of the solicitation materials will be prepared and delivered by firms. While firms are not authorized to practice before the Internal Revenue Service, the regulations should contain some indication of the extent to which individual members and employees of firms will be held responsible for violations of the solicitation rules by their firms when they have no personal knowledge of the offense.

In addition, we suggest that the proposed amendments be revised as follows:

SPECIFIC COMMENTS

Section 1

10.30(a)(1) This section prohibits practitioners from including false, fraudulent, misleading, deceptive, self-laudatory or unfair statements or claims with respect

to any Internal Revenue Service matter in any form of public communication. The prohibition includes, but is not limited to, statements pertaining to the quality of services rendered, claims of specialized expertise not authorized by State or Federal agencies having jurisdiction over the practitioner, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter. These prohibitions are embodied in the term "solicitation restrictions".

Since the term solicitation is vague, the regulations should provide a definition which reflects the intent of the restrictions. We would suggest that solicitation be defined in such a way as to exclude from restriction situations in which a practitioner is asked by a prospective client to provide information.

In this regard, the AICPA Code of Professional Ethics recognizes a distinction between "invited" and "uninvited" solicitations. It prohibits the "direct uninvited solicitation of a specific potential client". We believe that this approach has merit and that the regulations should draw a similar distinction. For example, if a practitioner is asked by a specific prospective client for information about his experience,

skills, or services, he should be free to fulfill the request. Such information could be provided in a manner which is not false, misleading or deceptive. However, as the regulations are proposed, he might inadvertently violate the prohibition against self-laudatory statements pertaining to the quality of services rendered.

The prohibition on solicitations containing self-laudatory statements or claims is vague and overly broad and may inhibit the practitioner from providing true and useful information to the public. No guidance is given as to what constitutes a self-laudatory statement or claim. The regulations should make it clear that a practitioner is not prohibited from making true statements about his experience or skills or about the quality or variety of services he can provide.

As an alternative, the terms used in describing restrictions might be confined to "false, misleading or deceptive". This, we feel, would achieve the intent of the prohibitions without the use of excess verbiage and vague terminology.

2

10.30(a)(2) This section prohibits practitioners from referring to a past or present connection with the Internal

Revenue Service in any "letterhead, professional card, or in any public communication". It is not clear whether the prohibition is intended to cover, for example, listings in programs and related public announcements of speakers at seminars, etc. who are former officials or employees of the Internal Revenue Service and announcement cards stating that a former official or employee of the Service has joined a professional firm. References in such announcements to the fact that the individual was formerly an IRS official have been commonplace for many years. If the proposed regulation intends to stop this practice, the intent should be made absolutely clear.

3

10.30(b)(1)(viii) This section permits an attorney, CPA or enrolled agent to publish a statement that his or his firm's practice is limited to certain areas. Certified public accountants have not been permitted to so indicate a specialty either by the American Institute of CPAs or by local bodies exercising authority over their practice. (See Interpretation 502-4, adopted by the Executive Committee of the Professional Ethics Division as guidelines under the Rules of Conduct of the American Institute of CPAs, which states in part, "A member or a member's firm . . . may not state

that the practice is limited to one or more types of service".) The question of specialization by CPAs is presently under study by several bodies, but we suggest that indication of a specialty (by announcing limitation of practice) by CPAs should not be approved by the Treasury Department while it is prohibited by the AICPA and local bodies. We therefore suggest that this section be changed to permit a practitioner to state that his practice is limited to certain areas only if the national or local bodies exercising authority over the practitioner permits such designation.