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Letter from Maurice H. Stans to members of the American Institute of Accountants

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American Institute of Accountants

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INCORPORATED UNDER THE LAWS OF THE DISTRICT OF COLUMBIA

THE NATIONAL ORGANIZATION OF CERTIFIED PUBLIC ACCOUNTANTS

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TO MEMBERS OF THE
AMERICAN INSTITUTE OF ACCOUNTANTS

GENTLEMEN:

On September 20, 1954, Mr. Arthur B. Foye, then president of the Institute, wrote you about plans for action to meet a problem of increasing concern to all of us—threats to the certified public accountant's tax practice created by recent decisions of state courts, and by the attitudes of some bar associations. Subsequently, the Institute attempted to inform members of developments through the Journal of Accountancy and the CPA.

The Institute's Council again reviewed this whole situation at great length at its meeting in May, and it was suggested that the president ought again to write all members of the Institute, summarizing what has happened and where we stand.

That is the purpose of this letter.

You will recall that about a year ago a California court, in *Agran* v. *Shapiro,* ruled that a CPA was "practicing law" when he settled a client's tax liability, involving determination of an operating loss carry-back, with the Internal Revenue Service. Although this was only one of a number of recent state court decisions challenging the scope of the customary practice of CPAs in the Federal tax field, it was the first to assert that a CPA was engaging in the "practice of law" when, as an

enrolled agent authorized to practice before the Treasury Department, he helped a client to settle tax differences with revenue agents.

The Institute has looked upon the confusion thus created as primarily a problem for the Treasury Department, since this action by a state court challenges the right of the Treasury Department to administer its own tax collection procedures. At the same time, actions of this kind seem to have been provoked or aggravated by some bar association committees, and the Institute has therefore tried for several years to find solutions to the problem by working with the American Bar Association—in recent years through the National Conference of Lawyers and Certified Public Accountants, which in 1951 adopted a Statement of Principles for the guidance of lawyers and certified public accountants in tax practice. (Reprinted in the Journal of Accountancy, June, 1951.)

The Agran decision forced the Institute to realize that such joint efforts with the Bar Association could not *alone* deal successfully with the problem. The Statement of Principles not only failed to prevent the Agran decision; the Statement was actually brought into evidence in a way never intended by the CPA members who signed it, by the California State Bar to support the allegation that Agran was "practicing law."

We felt sure that the problem could not be eliminated until the Treasury itself removed any ambiguity in the language of Circular 230 to make it clear that CPAs who are enrolled agents are authorized by Section 10.2(b)* to continue to do what they have been doing for years. The best interests of all taxpayers, as well as the Treasury Department itself, seemed to require such a clarification.

We therefore asked the Secretary of the Treasury for clarification of Circular 230 so as to avoid its misinterpretation by state courts. We also asked members to support Federal legislation (now the Reed-Dingell Bill) to strengthen Treasury control over Federal tax practice and prevent its becoming an exclusive field for any one profession. It was further agreed that the public interest required general discussion of the issues involved in this situation. To that end the Institute prepared and gave wide distribution to the booklet, "Helping the Taxpayer." It also prepared a film on the subject, and encouraged discussion of the situation in accounting journals.

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* (b) *Scope of practice before the Department.* Practice before the Treasury Department shall be deemed to comprehend all matters connected with the presentation of a client's interests to the Treasury Department, including the preparation and filing of necessary written documents, and correspondence with the Treasury Department relative to such interests. Unless otherwise stated the term "Treasury Department" as used in this paragraph and elsewhere in this part includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office, or unit.

That is the way matters stood last fall.

In November, almost immediately after I was elected president of the American Institute of Accountants, Mr. Loyd Wright, the new president of the American Bar Association, wrote me suggesting that efforts ought to be renewed to resolve the difficulties by conferences between the two professional organizations. I replied promptly, and he and I met in Chicago in December and discussed the problem at some length.

Both of us became most hopeful that the problem could be resolved by the conference method. We agreed to appoint new committees and to urge them to get together soon.

To represent the Institute I appointed:

John W. Queenan, Chairman, New York, N. Y.
Michael D. Bachrach, Pittsburgh, Pa.
George D. Bailey, Detroit, Mich.
Homer J. Henning, Ottawa, Kan.
Walter L. Schaffer, New York, N. Y.

For the American Bar Association, Mr. Wright appointed:

William J. Jameson, Chairman, Billings, Mont.
John W. Cragun, Washington, D. C.
William T. Gossett, Detroit, Mich.
T. N. Tarleau, New York, N. Y.
Thomas G. Boodell, Chicago, Ill.

The first meeting of the two committees was held in Washington, D. C., on January 25, 1955. Further meetings were held in Chicago late in February, and the two groups met again in Washington on March 28. In addition to these scheduled conferences, there were a number of informal discussions among committee members, as well as a good deal of correspondence. The conferences received the attention and participation of top officials in both organizations—including Mr. Wright and myself. The meetings were conducted in an atmosphere of good faith and good will. They clarified the problems faced on both sides, but unfortunately it has not been possible thus far to reach agreement on the basic issue.

Actually, we were all greatly encouraged by the first Washington meeting. Agreement in principle seemed to have been reached on all

of the troublesome aspects of the problem. During the next two months, however, as we tried time and again to settle upon language of a joint document confirming the terms of agreement, it was found that there was no real agreement on a solution to the basic issue.

It was decided, therefore, that Mr. Jameson and Mr. Queenan should go together to the Under Secretary of the Treasury, reporting the conferences, and submitting a joint statement summarizing the unresolved areas. That was done on May 18. The text of this Joint Statement follows:

> "On the initiative of the presidents of the two organizations, committees of the American Bar Association and the American Institute of Accountants met on January 25, February 18 and March 28 in an effort to find solutions to problems that have arisen in the field of tax practice.
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> "It was recognized that these problems have many interrelated aspects, and the two committees, working in an atmosphere of good will and good faith, attempted to reach an overall agreement on solutions.
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> "The discussions enabled each group to gain a better understanding of the professional problems of the other, and general agreement on several troublesome aspects of the situation seemed to be comparatively easy. But agreement on those aspects depended upon resolution of what seemed to the Institute a key problem—need for clarification of the intent of Circular 230 as to the scope of tax practice of enrolled agents. On this matter, it has been impossible to reach agreement.
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> "In order to clarify the problem as it has developed in these conferences, the following summaries of the two points of view are presented.
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> "1. It is the position of the Institute that under Section 10.2(b) of Circular 230 certified public accountants are authorized to represent taxpayers in the settlement with the Internal Revenue Service of differences that may arise as to their tax liabilities—which necessarily involves interpretation and application of the Internal Revenue Code and related regulations, rulings and decisions; and that the Treasury Department, as well as various state and federal courts have recognized this right. In the opinion of the Institute, this right has now been put in question by the Agran decision in California, and clarification by the Treasury Department of the intent of Section 10.2(b) is therefore necessary to prevent litigation in state courts resulting in differing and inconclusive interpretations of what certified public accountants are authorized to do. It has been suggested that voluntary cooperative action can deal with these difficulties, but it is the position of the

Institute that without clarification of Section 10.2(b) no joint machinery for voluntary action would be effective.

"2. It is the position of the Association that the rights of certified public accountants and other enrolled agents under Section 10.2(b) have always been subject to the limitation stated in the last clause of Section 10.2(f)* and that any amendment to Section 10.2(b) thus far suggested would have the effect of nullifying that limitation. This the Association opposes on the ground that it would be tantamount to authorizing enrolled agents to practice law, thus inhibiting the regulation of the practice of law by the several states. It is the view of the Association that the solution of the problem lies, not in amending Circular 230, but in a nation-wide program of cooperative action between certified public accountants and lawyers. The Association is of the opinion, therefore, that amendment of Section 10.2(b) is both inadvisable and unnecessary; and that effective machinery can and should be established at national, state and local levels to apply in specific cases the general standards of the Statement of Principles upon which the two organizations agreed in 1951."

As will be clear to you, the Bar Association proposal does not seem to get us very far from where we are today. The Institute has always been glad to participate in cooperative programs with the Bar Association, and will continue to do so. We have maintained committees on cooperation with the Bar Association for twenty years, and they have been active. The National Conference of Lawyers and Certified Public Accountants has existed for ten years. The Statement of Principles was adopted in 1951. But as pointed out earlier, all this did not prevent a line of court decisions, advocated by certain bar associations, culminating in the Agran decision, which leaves CPAs completely up in the air as to what they can do in the tax field without fear of attack based on allegations of "illegal practice of law."

There is no reason to believe that cooperative machinery *alone* can be any more effective in the future.

The American Bar Association is a national society, and it has no control over state and local bar groups. For this reason we have no

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* (f) *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: *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 provided further,* That nothing in the regulation in this part shall be construed as authorizing persons not members of the bar to practice law.

assurance that a policy adopted by the Bar Association—or joint machinery established by it—would receive the support of local associations. In fact, past experience has given us hard-headed reasons for skepticism. In August 1953, for example, the unauthorized practice of law committee of the California State Bar specifically rejected the "Statement of Principles" that had been adopted in 1951 by the national association. It suggested a standard of practice for certified public accountants in California including the following:

> "On the instigation of an audit [by the Internal Revenue Service] it is recommended that an accountant should advise the retention of an attorney; and upon the issuance of a 30-day letter by the Treasury Department, an accountant shall do nothing further in the matter, except under the supervision of, and in aid of, an attorney."

Neither the American Bar Association nor the American Institute of Accountants can control litigation over fees. We cannot compel parties to submit their arguments for adjudication before a joint professional group. For example, in one case now pending in court, the National Conference of Lawyers and Certified Public Accountants tried to bring the parties before it in an effort to reach an informal agreement. The certified public accountant was willing, but the attorney for the client refused.

In short, while the Institute wants to continue to cooperate with the Bar Association, we concluded that in present circumstances cooperative efforts *alone* could not solve the problem.

On May 3, the Council of the Institute, after thorough review of the whole situation, approved the following program of action by the Institute during the period immediately ahead:

(1) Continue negotiations with the Bar Association

(2) Renew discussions with the Treasury Department to obtain clarification of Circular 230

(3) Favor legislation (Reed-Dingell bill) reaffirming the Treasury's authority to regulate practitioners before the Department.

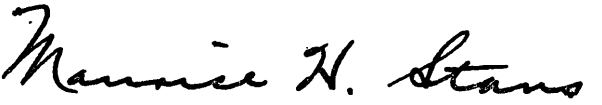
(4) Make every effort to bring the Agran case, or some other case involving the rights of CPAs in Treasury practice, before the United States Supreme Court.

(5) Continue to keep all members of the Institute informed of current developments.

We must now continue to urge the Treasury Department to recognize this as its own problem. If the Treasury Department resolves the difficulty by amendment of its regulations, it may, of course, become unnecessary to press for action by Congress or the Supreme Court at this time. Clarification of Circular 230 by the Treasury would greatly improve the prospect of an effective program of cooperative action by the American Bar Association and the American Institute of Accountants.

Members of our special committees, as well as the Executive Committee and the Council, have been greatly helped in attempts to deal wisely with this problem by opinions expressed by many of you in letters to the Institute. We hope to continue to hear from you.

Sincerely yours,



President