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1957

## Professional relations of lawyers and certified public accountants

American Bar Association. Special Committee on Professional Relations

American Institute of Accountants. Committee on Relations with Bar

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*The Professional Relations  
of Lawyers and  
Certified Public Accountants*

1957

A JOINT REPORT BY COMMITTEES OF THE  
AMERICAN BAR ASSOCIATION AND THE  
AMERICAN INSTITUTE OF ACCOUNTANTS

**NOTE:** *The Joint Statement of Principles and the Statement by the Secretary of the Treasury cited in this report are reprinted on pp. 7-15.*

JOINT REPORT OF SPECIAL COMMITTEE ON  
PROFESSIONAL RELATIONS OF AMERICAN BAR  
ASSOCIATION AND COMMITTEE ON RELATIONS WITH  
BAR OF AMERICAN INSTITUTE OF ACCOUNTANTS

**B**ecause of the inter-relationship of financial and legal aspects of the modern economy there sometimes is a basis for dispute as to whether a particular matter properly falls within the field of law or within the field of competence of certified public accountants. The Committee on Professional Relations of the American Bar Association and the Committee on Relations with the Bar of the American Institute of Accountants believe that any such question that may arise between the two professions should be resolved by conference and cooperation. One of the principal fields in which such questions have arisen is Treasury practice.

In 1951 the American Bar Association and American Institute of Accountants adopted a Joint Statement of Principles Relating to Practice in the Field of Federal Income Taxation, for the guidance of members of each profession.

On January 30, 1956, the Secretary of the Treasury issued a statement interpreting Treasury Department Circular 230 relating to practice before the Department. In this statement the Secretary mentioned the need for uniformity in interpretation and administration of the regulations governing prac-

tice before the Department and stated that the Department has properly placed on lawyers and accountants, under the Department's ethical requirements, responsibility for determining when the assistance of a member of the other profession is required. He cited with gratification, "the extent to which the two professions over the years have made progress toward mutual understanding of the proper sphere of each, as for example in the Joint Statement of Principles Relating to Practice in the Field of Federal Income Taxation."

In concluding his statement, the Secretary said that relationships of lawyers and accountants in Treasury practice would be kept under surveillance, so that, if necessary, the matter can be reviewed later to determine whether amendment of the regulations governing practice before the Department or other appropriate action is necessary.

Consideration of the public interest and the best interests of both professions seems, therefore, to require expansion of voluntary machinery for self-discipline by both professions and cooperation between them to enable differences between lawyers and certified public accountants as they may arise — whether in tax practice or elsewhere — to be resolved by conference and negotiation, and not by litigation.

To this end, the Special Committee on Professional Relations of the American Bar Association and the Committee on Relations with the Bar of the American Institute of Accountants have agreed that the National Conference of Lawyers and Certified Public Accountants, composed of members of the two committees, should serve as a joint committee to con-

sider differences arising between the two professions and disputes involving questions of what constitutes the practice of law or accounting.

The Joint Committee recommends the following procedures:

1. That with respect to the field of Federal Income taxation, the two professions continue to adhere to the Statement of Principles, approved by the governing bodies of the American Bar Association and the American Institute of Accountants in 1951. It is recognized that the statement is a guide to cooperation and does not presume to be a definition of the practice of law or the practice of accounting.
2. That state organizations of the two professions consider the establishment in each state of a joint committee similar to the National Conference for consideration of differences arising between members of the two professions.
3. That before any state organizations of either profession shall institute or participate in litigation or disputes involving differences between members of the two professions, or involving questions of what constitutes the practice of law or accounting, such differences and questions be referred to joint committees of state organizations of the two professions, where such committees exist, or to the National Conference.
4. That, in the interest of uniformity, state committees maintain close coordination with the National Conference; and if resolution of differences seems impossible at the local and

state level, they be referred to the National Conference. Particularly in the early years, it would seem to be in the best interest of all concerned for the National Conference to participate actively in the consideration and settlement of disputes which might serve as guides and precedents for other cases.

5. That — again in the interest of uniformity — where joint committees at the state level are appointed to deal with any differences which may arise, they be limited, where possible, to one to a state, and their structure and procedure follow the pattern of the National Conference.

It is hoped and believed that resolution of specific cases as suggested above will in time provide a body of precedent which will come to serve as a guide to members of the two professions. Such a body of precedent will, we think, prove of more practical value than attempts to find acceptable definitions of the fields of the two professions.

The efforts of the National Conference are not, of course, intended to be punitive in nature. Their objective will be to avoid conflict and to encourage and enable continuing cooperation between lawyers and certified public accountants in accordance with the ethical standards of the two professions.

*For the American Bar Association*

WILLIAM J. JAMESON, *Chairman*,  
Special Committee on Professional Relations

*For the American Institute of Accountants*

JOHN W. QUEENAN, *Chairman*,  
Committee on Relations with Bar

## Department of the Treasury

### *Treasury Department Interpretation of Section 10.2 of Treasury Department Circular 230 (31 C.F.R. 10.2)*

For some months the Treasury Department has had under consideration the revision of Treasury Department Circular 230 relating to practice before the Department.

Congress has given the Treasury Department the responsibility of regulating practice before the Department. It is in the exercise of this responsibility that the Department has issued the rules and regulations set forth in Circular 230, taking into consideration, among other things, the need of taxpayers for tax advice and assistance, the number of tax returns filed each year, the volume and complexity of problems relating thereto, the skills and training required for proper representation of taxpayers' interests and the availability of people who can provide such service.

The Department believes the standards prescribed in Circular 230 have generally operated in a highly satisfactory manner, have made available to taxpayers representatives to assist them in presenting their interests to the Department, and have facilitated fair and orderly administration of the tax laws.

It is the intention of the Department that all persons enrolled to practice before it be permitted to fully represent their clients before the Department, in the manner hereinafter indi-



cated. This is apparent from section 10.2(b), which states that the scope of practice (of agents as well as attorneys) before the Department comprehends "all matters connected with the presentation of a client's interest to the Treasury Department." Enrollees, whether agents or attorneys, have been satisfactorily fully representing clients before the Department for many years. The Department believes this has been beneficial to the taxpayers and to the Government and that there presently appears no reason why the present scope and type of practice should not continue as it has in the past.

The Department's attention has been called to the decisions of certain State courts and to statements which suggest varying interpretations of section 10.2(f) of the Circular. This subsection makes it clear that an enrolled agent shall have the same rights, powers, and privileges and be subject to the same duties as an enrolled attorney, except that an enrolled agent may not prepare and interpret certain written instruments. The second proviso of the subsection states that nothing in the regulations is to be construed as authorizing persons not members of the bar to practice law. The uniform interpretation and administration of this and other sections of Circular 230 by the Department are essential to the proper discharge of the above responsibility imposed on it by the Congress.

It is not the intention of the Department that this second proviso should be interpreted as an election by the Department not to exercise fully its responsibility to determine the proper scope of practice by enrolled agents and attorneys before the Department. It should be equally clear that the De-

partment does not have the responsibility nor the authority to regulate the professional activities of lawyers and accountants beyond the scope of their practice before the Department as defined in section 10.2(b) and nothing in Circular 230 is so intended.

The Department has properly placed on its enrolled agents and enrolled attorneys the responsibility of determining when the assistance of a member of the other profession is required. This follows from the provisions in section 10.2(z) that enrolled attorneys must observe the canons of ethics of the American Bar Association and enrolled agents must observe the ethical standards of the accounting profession. The Department has been gratified to note the extent to which the two professions over the years have made progress toward mutual understanding of the proper sphere of each, as for example in the Joint Statement of Principles Relating to Practice in the Field of Federal Income Taxation.

The question of Treasury practice will be kept under surveillance so that if at any time the Department finds that the professional responsibilities of its enrolled agents and enrolled attorneys are not being properly carried out or understood, or that enrolled agents and attorneys are not respecting the appropriate fields of each in accordance with that Joint Statement, it can review the matter to determine whether it is necessary to amend these provisions of the Circular or take other appropriate action.

(Signed) G. M. HUMPHREY

Dated: January 30, 1956

*Secretary of the Treasury*

## Statement of Principles Relating to Practice in the Field of Federal Income Taxation

*Promulgated by the National Conference of  
Lawyers and Certified Public Accountants*

*Preamble.* 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 the 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 inextricably intermingled. As a result, there has been some doubt as to where the functions of one profession end and those of the other begin.

For the guidance of members of each profession the National Conference of Lawyers and Certified Public Account-

ants recommends the following statement of principles relating to practice in the field of federal income taxation:

1. *Collaboration of Lawyers and Certified Public Accountants Desirable.* It is in the best public interest that services and assistance in federal income tax matters be rendered by lawyers and certified public accountants, who are trained in their fields by education and experience, and for whose admission to professional standing there are requirements as to education, citizenship, and high moral character. They are required to pass written examinations and are subject to rules of professional ethics, such as those of the American Bar Association and American Institute of Accountants, which set a high standard of professional practice and conduct, including prohibition of advertising and solicitation. Many problems connected with business require the skills of both lawyers and certified public accountants and there is every reason for a close and friendly cooperation between the two professions. Lawyers should encourage their clients to seek the advice of certified public accountants whenever accounting problems arise and certified public accountants should encourage clients to seek the advice of lawyers whenever legal questions are presented.

2. *Preparation of Federal Income Tax Returns.* It is a proper function of a lawyer or a certified public accountant to prepare federal income tax returns.

When a lawyer prepares a return in which questions of accounting arise, he should advise the taxpayer to enlist the assistance of a certified public accountant.

When a certified public accountant prepares a return in which questions of law arise, he should advise the taxpayer to enlist the assistance of a lawyer.

3. *Ascertainment of Probable Tax Effects of Transactions.* In the course of the practice of law and in the course of the practice of accounting, lawyers and certified public accountants are often asked about the probable tax effects of transactions.

The ascertainment of probable tax effects of transactions frequently is within the function of either a certified public accountant or a lawyer. However, in many instances, problems arise which require the attention of a member of one or the other profession, or members of both. When such ascertainment raises uncertainties as to the interpretation of law (both tax law and general law), or uncertainties as to the application of law to the transaction involved, the certified public accountant should advise the taxpayer to enlist the services of a lawyer. When such ascertainment involves difficult questions of classifying and summarizing the transaction in a significant manner and in terms of money, or interpreting the financial results thereof, the lawyer should advise the taxpayer to enlist the services of a certified public accountant.

In many cases, therefore, the public will be best served by utilizing the joint skills of both professions.

4. *Preparation of Legal and Accounting Documents.* Only a lawyer may prepare legal documents such as agreements, conveyances, trust instruments, wills, or corporate minutes, or

give advice as to 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.

*5. Prohibited Self-Designations.* 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.

*6. Representation of Taxpayers Before Treasury Department.* Under Treasury Department regulations lawyers and certified public accountants are authorized, upon a showing of their professional status, and subject to certain limitations as defined in the Treasury rules, to represent taxpayers in proceedings before that Department. If, in the course of such proceedings, questions arise involving the application of legal principles, a lawyer should be retained, and if, in the course of such proceedings accounting questions arise, a certified public accountant should be retained.

*7. Practice Before the Tax Court of the United States.* Under the Tax Court rules nonlawyers may be admitted to practice.

However, since upon issuance of a formal notice of deficiency by the Commissioner of Internal Revenue a choice of

legal remedies is afforded the taxpayer under existing law (either before the Tax Court of the United States, a United States District Court, or the Court of Claims), it is in the best interests of the taxpayer that the advice of a lawyer be sought if further proceedings are contemplated. It is not intended hereby to foreclose the right of nonlawyers to practice before the Tax Court of the United States pursuant to its rules.

Here also, as in 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 taxpayers, in such cases, should be advised accordingly.

8. *Claims for Refund.* Claims for refund may be prepared by lawyers or certified public accountants, provided, however, that where a controversial legal issue is involved or where the claim is to be made the basis of litigation, the services of a lawyer should be obtained.

9. *Criminal Tax Investigations.* When a certified public 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 as to his legal and constitutional rights.

*Conclusion.* This statement of principles should be regarded as tentative and subject to revision and amplification in the light of future experience. The principal purpose is to indicate the importance of voluntary cooperation between our professions, whose members should use their knowledge and

skills to the best advantage of the public. It is recommended that joint committees representing the local societies of both professions be established. Such committees might well take permanent form as local conferences of lawyers and certified public accountants patterned after this conference, or could take the form of special committees to handle a specific situation.