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## At Home and abroad

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## At Home and Abroad

ACCOUNTANTS, if they would advance with business and with their profession, eventually must acquire more than a mere knowledge of accounting. With the ever-increasing variety of services he is called upon to render, the accountant must develop a keen insight into the other conditions surrounding accounting, in fact, into business management in general. Many cases arise which are on the border line between accountancy and law and for which the accountant should have at least a general knowledge of the law in order to apply the proper accounting procedure, or to make a fair judgment of the correctness of the accounts.

The growth of corporations national in scope not only has complicated the accounting procedure required for recording the numerous transactions, but has introduced other problems which directly, or indirectly, affect the public accountant and his work. As corporations developed they became the popular target for taxation among the states because they afforded the easiest avenue of taxation open to the legislatures. Then, too, the general public always has preferred indirect taxation, and heartily approved of saddling the burden on the so-called big business interests. Naturally enough, foreign corporations offer the state legislatures an even more popular object for taxation. By the very instinct that prompted it to prefer indirect taxes, the public will always favor taxation of "outsiders" and especially "outside" corporations. The very name "foreign corporation" suggests to the general public the idea that the corporation is an "outsider" which has come into the state to exploit its resources and take them out of the state, and consequently it should be made to pay dearly. The legislatures have not been slow to react to this sentiment and now practically every state in the

Union has laws regulating foreign corporations "doing business" within the state.

In the language used by the state legislatures "foreign" corporations are those organized in another state, while "alien" corporations are those organized in a foreign country. The name "foreign" is a very poor one to apply to the class of corporations to which it is applied, since it carries the implication of an alien corporation to the minds of the public, and undoubtedly makes taxation of such corporations more popular.

There are two principal types of commerce within the United States—interstate and intrastate commerce. Interstate commerce is regulated by the Federal government, and as long as business is conducted along interstate lines the individual states have no power to regulate it. However, when a business approaches the border line between interstate and intrastate commerce it is getting into the danger zone, for if it oversteps the line it subjects itself to the regulations, taxes, and penalties of the state in which it is found to be "doing business." Just what is "doing business" in a foreign state is a matter of interpretation, and no clear-cut definition has been given thus far. Ordinarily, it involves the thought of continuity of conduct and requires more than a single act to constitute doing business before the law. Yet a number of cases could be cited in which a single business transaction has been sufficient to convict a corporation of doing business within a state.

The mere selling of goods within a foreign state by salesmen and shipping the goods from outside the state do not come within the definition of "doing business" in a state. However, it was held in one state that if a salesman sells goods which he carries, even if they be only samples, that act constitutes doing business within the state in behalf

of the employing corporation. Corporations carrying on interstate commerce often unwittingly overstep their bounds by some transaction which constitutes doing business in a state without having obtained the proper authority, and thus subject themselves to the penalties prescribed by the states.

It is very essential for corporate officials to watch the status of their company in the various states in which it does business. From the point of view of self-protection the corporation should either maintain a strictly interstate business beyond the shadow of a doubt, or if it does engage in intrastate commerce in a given state it should register and comply with the laws regulating foreign corporations in that state. Otherwise, it is liable to have a rude awakening when it suddenly finds that it has been doing business unlawfully within the state, and is subject to rather severe penalties.

A favorite method of punishing a foreign corporation for transacting business within a state without complying with the statutes is that of fining it. These fines range from \$10 to \$10,000, and in many cases are not of single imposition but are applied to each offense or each working day in which business is transacted without compliance. In a majority of the states not only the corporation is subject to a fine, but the officers of the company are subject to fines and in some cases jail sentences.

However, the penalty which the foreign corporation feels more than any other, and which affects the work of the accountant, is the provision that any contract entered into by a corporation doing business within the state without complying with the laws is made outside the pale of the law, and is not valid. The laws of the many states divide these invalid contracts into three classes which are: (1) non-enforceable in the courts; (2) voidable unless the proper compliance with the state corporation laws is

made within fixed limits of time; (3) absolutely void from their inception. While the offending corporation is absolutely powerless to enforce its rights under the contract, it is at the same time wholly liable for its own agreements. As might be imagined, this places the foreign corporation in a rather discomfiting position. The losses may be heavy. The corporation may be compelled to make full delivery of goods, or complete a construction contract, and yet be denied all aid of the courts or the law in collecting payment.

Here, as in many other cases where the accountant comes in contact with the legal aspect of the situation, he must have a working knowledge of the law in order to apply his knowledge of accountancy properly. It is vital that an accountant in certifying to a balance sheet of any concern satisfy himself that the accounts receivable are collectible, that the contracts are valid, and that proper and sufficient reserves have been set up to meet any possible losses on contracts and receivables. The question of adequacy of reserves and collectibility of accounts has assumed great importance the last few years. In some instances companies apparently with sufficient reserves have failed on account of the uncollectibility of their accounts.

As a safeguard against certifying balance sheets having inadequate reserves, the accountant must investigate all the conditions affecting the status of the receivables. Certainly the question of the legal status of the contracts and transactions entered into by the corporation is an important consideration in determining the value of the receivables. If the corporation is doing business, intrastate in character, in states other than the state of its incorporation, and has not complied with the laws of those states with respect to registering, paying fees, submitting reports, and the other requirements made of foreign corporations, then the accounts

receivable and contracts of that corporation are in a precarious position. They may be actual and the result of good-faith transactions, but in the eyes of the law they are not genuine or enforceable. Since the value of receivables rests upon the ability of the debtor to pay, and the ability of the creditor to enforce payment through the courts, when the right of court action is removed the collectibility of accounts becomes indefinite. If the debtor does not choose to pay, the unfortunate corporation is helpless to collect the account. True, this works gross injustice in some cases, but it is a fact, nevertheless.

Naturally, if the accountant discovers such a condition he must set up larger reserves to offset the greater potential loss, and he should advise the corporation to take steps to improve its position. While the accountant cannot be expected to investigate the legal status of the corporation on every engagement, nevertheless it would seem wise that in those instances where the corporation has large contracts and large amounts of accounts receivable in states other than the home state, the accountant should make some investigation and secure legal opinion as to whether the client is complying with the laws in the states in which it is doing business. Of course, if a firm is clearly doing interstate commerce only—if it is filling all orders in the home state, and billing customers from there, and it does not maintain a stock of goods

for delivery, either in a warehouse or in the hands of salesmen, in any state other than the state of incorporation—then there is no need to investigate its legal status among the states.

There are those accountants who will say that the work of the accountant is to audit the books of account, design systems of accounts, and advise the client on accounting matters, but not to act as legal adviser. There should be no quarrel over this statement. The accountant is a specialist in accounting and auditing, and cannot be expected to be a specialist in legal affairs also. But when certain legal aspects affect the principal work of an accountant then he should not dodge the issue. He should familiarize himself with that part of the law, or at any rate its main points, so that at least he can recognize matters that require a legal opinion, and thus render better service to his clients and present a more nearly correct statement of the condition of the business and at the same time protect himself. Accountancy and law are becoming more closely associated in corporate business every day. If the accountant can not only perform valuable service in auditing and accounting, but also can show his client how better it can protect its assets by strengthening its legal status in the states, then the accountant has raised the standard of his service, and elevated his profession to a higher plane.

### Security Offering Sheets

**I**NVESTORS are receiving each year more complete information than ever before as to the financial affairs of the corporations in which they are interested. The situation is encouraging, but the ideal is still far distant. Apparently, many corporate officials still think that data on financial operations should not be made available for public consumption.

Certainly a prospective purchaser of stocks or bonds is entitled to information concerning the financial condition of the organization which is to make use of his funds. Such information as is given by way of offering sheets, whether meager or complete, nevertheless should be accurate. Inaccurate or misleading figures are not to be condoned in such instances.