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Income-tax Department

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Accountants practising as agents for their clients have undoubtedly taken due note of the treasury department's revised circular No. 230, which contains the regulations and law governing the enrolment and recognition of those representing claimants and other taxpayers before the department. As this circular contains the treasury's dicta as to the ethics to be observed by attorneys and accountants contending with the commissioner for taxpayers, some comment here seems highly proper, for if those enrolled are found to have violated the rules laid down they will be suspended or disbarred from practising in that department.

In the first place, the duty devolves upon enrolled attorneys and agents to advise their clients to comply with the law. Of course, it is not believed that attorneys and accountants would do otherwise, and no such implication is intended in drawing attention to this duty. However, it might not be deemed improper to inquire whether or not the law is so obvious that the duty can be conscientiously performed in all cases. If, for example, a client should not expect to make a return where there was no income, though a considerable amount of cash had been received on the sale of capital assets at a loss (such loss being based on the best obtainable information), would it be the duty of the enrolled one to advise his client to make a return?

Obviously the answer to this question is that the attorney or agent would not violate the rule by advising his client not to make a return. Yet there is a case on record where a taxpayer was not only assessed a tax on a gain asserted by the commissioner and based on facts that could not have been known to the taxpayer at the date when the return was due, but in addition was assessed a penalty for not making a return.

Confronted with the rule above mentioned, we believe that the famed Socrates would have slyly questioned, "What is the law?"

An enrolled agent shall not draft or prepare written instruments 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 clients as to the sufficiency of, or legal effect of, any such instrument on the federal taxes of such taxpayer under the federal laws. This is a drastic rule, and while it is beyond question that no accountant of reputation would deliberately advise a course of action to effect an evasion of taxes, it does not take a great deal of imagination to conjure up a situation where strict compliance with this rule would restrict him in his duty to his client.

Few accountants presume to draw up instruments involving the conveyance or transfer of property, this being a lawyer's job, but in the highest sense an accountant is more than an analyst of business situations. His clients lean upon him for advice as to the effect of proposed transactions on their business, and the restriction imposed by the treasury department robs him of one of his most important functions.

Another duty required of attorneys and agents is that every brief, argument, affidavit or statement of fact prepared or filed by an attorney or agent as argu-

ment or evidence shall have thereon a statement signed by such agent or attorney showing whether or not he prepared such document, and whether or not he knows of his own knowledge that the facts stated therein are true.

Solicitation of business is specifically made a cause of rejection, suspension or disbarment, and solicitation is defined as including circulars, letters, pamphlets or interviews by the attorney or agent directly or by an employed solicitor.

Certain forms of advertising by an enrolled attorney or agent will be the cause of his suspension or disbarment. The advertising methods that are banned are printed matter appearing on letterheads, cards or other advertising media, indicating previous connection with the treasury department; representations that the agent has acquaintance with officers or employees of the treasury department; the use of any title or name that might imply connection with the treasury department, such as "federal tax expert," "federal tax counsellor," "federal tax bureau," "United States income-tax expert," etc.

The mailing or delivering of bulletins, circulars or pamphlets containing decisions or rulings of the treasury department, United States board of tax appeals or courts on federal tax matters, with comment thereon by the practitioner and containing the name of such practitioner as a distributor of such bulletins, circulars or pamphlets to federal taxpayers who are not such practitioner's clients, will cause suspension or disbarment.

Another rule governing enrolled attorneys and agents covers the matter of contingent fees. Contingent fees may be proper in some instances, but they are not generally looked upon with favor and may be made the ground for suspension or disbarment. Both the reasonableness of the fee in view of the services rendered and all the attendant circumstances are a proper subject of inquiry by the department. An attorney or agent may be required at any stage of a pending proceeding, by the commissioner or by the head of any treasury bureau or division, to make a full disclosure of what inducements, if any, were held out by him to procure his employment; whether or not the claim is being handled on the basis of a contingent fee, and, if so, the arrangement regarding the compensation.

An attorney or agent may not accept employment as associate correspondent or sub-agent in any matter pending before the treasury department from one under suspension or disbarred from practising before the department. For fuller details upon this subject see the treasury department's circular letter No. 230, as revised and dated July 1, 1927.

These rules comprise pretty well the ideas of ethics established and enforced by the American Institute of Accountants and are praiseworthy in every respect as to their intent. We commend the code laid down by the treasury department to the legislators of the states which have enacted laws for the issuance of the certified public accountant certificate. The treasury department and the United States board of tax appeals not only recognize the certified public accountant certificate, but they give their protection to those ethically practising as C. P. A.'s.

The attention of those having tax cases pending for the years 1918, 1919, 1920 and 1921 is directed to the importance of assuring themselves as to the character of waivers that have been made of the statute of limitations. Our attention has been drawn to a case where it was found, after a decision favorable to the taxpayer finally had been made, that the statute of limitations estopped

him from gaining the relief he sought, because of his misapprehension as to the tenure of the waiver. In the earlier tax years many taxpayers signed waivers at the request of some revenue agent; made no memorandum that waiver had been given, and did not ask the commissioner to sign also, only to find that the waiver had been lost or was defective in some minor particular and, therefore, of no effect. Look up the waivers and make sure that the statute of limitations has not started "to run," as the lawyers say.

Another matter to which tax practitioners should give careful attention is that of the interest upon their claims. In a number of cases where refunds have been granted the amount of interest included in the cheque seemed to require some attention. There seemed to be something wrong with the relation of rate of interest, expired time and the amount of interest remitted.

Considerable savings can be made for taxpayers by close investigation of the interest calculations made. Interest on deficiencies is computed by the commissioner, and interest for 1918, 1919 and 1920, on deficiencies, is computed from February 26, 1926. For subsequent years interest on deficiencies is computed from the date the tax became due and payable. Interest on refunds is computed by the collector.

SUMMARY OF RECENT RULINGS

Receivership fee received at end of receivership proceedings for services rendered over several years, the amount of which was dependent upon the outcome of such proceedings, is income in the year received. (United States district court, district of Massachusetts, *William C. Forbes* v. *Malcolm E. Nichols.*)

Amount deducted in an estate-tax return for the erection of a mausoleum, which was not actually erected until over a year after the decedent's death and after the filing of the estate-tax return, but which the executors, having discretion under the will as to the amount to be expended, paid to the temporary custody of distributees of decedent's estate until actually expended, held to have been expended by the executors and to be deductible as a charge allowable under the law of the jurisdiction in which the estate is administered. (United States district court, eastern district of Pennsylvania, *Executors of estate of Karl Straus* v. *Blakeley D. McCaughn.*)

A trust of the Massachusetts type under which the trustees had power to hold certain property and to reduce it to cash for division among its owners within a specified period, and the beneficiaries had powers only to assent to a modification of the declaration of trust suggested by the trustees, is not an association subject to the stamp tax imposed by the 1918 and 1921 acts on the issue of stock by a corporation. (United States district court, district of Massachusetts, *Henry A. Hornblower, et al., trustees* v. *Thomas W. White.*)

An annuity given by the will of a taxpayer's husband in lieu of the statutory rights in his property to which she was entitled, is not taxable income. (United States district court, district of Nebraska, Omaha division, *Mrs. Arthur D. Brandeis* v. *Arthur B. Allen.*)

Real-estate conveyances executed by an aged grantor several years prior to his death and before the passage of the revenue act of 1918, were held, under the facts, not to be made in contemplation of death.

A payment by advisees of taxes levied against an estate after final distribution and discharge of the executor is not such a voluntary payment of another's tax as to defeat their right to refund. (United States district court, W. D. Missouri, W. D., *Thomas A. Smart, et al.*, v. *United States of America.*)

A power created by will under which the donee was authorized to appoint by "any last will or testament" any person whomsoever he wished, was held to be a general power of appointment and the property devised under such general power to appoint was held taxable to the decedent's estate under sec.

402, act of 1918. (United States circuit court of appeals, eastern circuit of Pennsylvania, *Elsie Whitlock Rose, executrix,* v. *Blakeley D. McCaughn.*)

A court may grant injunctive relief when the collector has notified a taxpayer that he will collect under the oleomargarine statute a tax on a product which a federal court, from whose decision no appeal was taken, had decided was not subject to the tax, and the taxpayer has no adequate remedy at law. (United States district court, district of Rhode Island, *Higgins Manufacturing Company* v. *Frank A. Page.*)

Amounts embezzled by an employee over a period of years are not deductible in a subsequent year when the loss was discovered by the taxpayer. (United States B. T. A. docket 7091, *J. H. Farish and Company* v. *Commissioner.*)

That a partnership, of which a corporation is a member, is not a partnership and should not be taxed as such is not an absolute rule, and in the absence of evidence as to the corporation involved, the commissioner's action in taxing the taxpayer as a partnership was not disturbed. (United States B. T. A. ruling.)

Debts ascertained to be worthless but not charged off were allowed as a deduction to a corporation which had ceased keeping books after the sale of its assets and discontinuance of its business, except to collect outstanding accounts. (United States B. T. A. docket 9079, *Sumter Coca Cola Bottling Company* v. *Commissioner.*)

Bonuses credited in 1920 to officers and employees upon the books of a corporation which did not have on hand during the year sufficient cash or assets convertible into cash to pay such bonuses are not taxable to them in such years when they had neither the use nor the enjoyment thereof. (United States B. T. A. dockets 10806, 10875, *H. Benjamin Marks and Isaac Marks* v. *Commissioner.*)

Imposition of penalty for filing false and fraudulent returns for 1920 and 1921 is not warranted where inaccuracies resulted when taxpayer estimated his income because of serious illness and loss of records. (United States B. T. A. docket 11148, *Mr. & Mrs. W. D. Collins* v. *Commissioner.*)

Expenses incurred and paid in prior years are not deductible in a later year in which was reported the income, in the earning of which such expenses were incurred. (United States B. T. A. docket 4611, *J. Noble Hayes* v. *Commissioner.*)

Uncollectible fees which have not been reported as income are not deductible as bad debts. Where a legal remedy is being actively pursued to recover it, a debt may not be deducted. (United States B. T. A. docket 4610, *J. Noble Hayes* v. *Commissioner.*)

Depreciation of 25% was allowed on oil-well drilling tools and equipment based upon the average life of such tools in the field where operations were conducted as shown by experience. (United States B. T. A. docket 3465, *E. B. Miller* v. *Commissioner.*)

Depreciation allowed by the commissioner must be approved in the absence of evidence showing that he had erred. (United States B. T. A. docket 8158, *West End Pottery Co.* v. *Commissioner.*)