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Letter to Members of the American Institute of Accountants re: Immediate Threat to the CPAS's Position in Tax Practice

Arthur B. Foye

American Institute of Accountants

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American Institute of Accountants

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THE NATIONAL ORGANIZATION OF CERTIFIED PUBLIC ACCOUNTANTS

270 MADISON AVENUE, NEW YORK 16, N. Y.

September 20, 1954

To Members of the
American Institute of Accountants

Gentlemen:

It now looks as though we have to face up to a real and immediate threat to the CPA's position in tax practice.

I need hardly tell you that we didn't seek this trouble, for we want no quarrel with lawyers or any representative group of lawyers. The situation we now face we have tried over the years to avoid. We propose to continue to do everything we can to resolve the controversy by discussion and negotiation. But since your right to engage in Federal tax practice is involved, we must now give you a full account of the matter and suggest what seems to us appropriate action.

1. From time to time, Bar representatives have advocated Federal legislation which would have narrowed the scope of tax practice permitted to non-lawyers. The Institute has taken a leading part in preventing the passage of such legislation.
2. Starting a little more than ten years ago, local Bar groups began a series of attacks in the local courts which have resulted in a series of decisions — inconsistent among themselves — throwing certain restrictions, some of them vaguely worded, around the activities of accountants in tax practice. In four of these cases the Institute supported the state societies concerned in opposing contentions made by the Bar spokesmen.
3. In 1951 the American Bar Association and the Institute agreed on a *Statement of Principles Relating to Practice in the Field of Federal Income Taxation*. In very general terms, this document recognized that both professions had a legitimate place in tax practice, and advocated that their members cooperate voluntarily in the best interest of the public.

4. Then came the *Agran* case in California, which was reported in the August 1954 Journal. Here for the first time a CPA, enrolled to practice before the Treasury Department, was ruled to have been "practicing law" in settling a client's tax liability with Internal Revenue officials.

The decision, following a brief filed by the State Bar Association, was based largely on an old and little noticed proviso in the Treasury Department's Circular 230, that nothing in the regulations shall be construed as "authorizing persons not members of the bar to practice law." It was reasoned by the California Court, in *Agran*, that since only the state courts could decide what was "practice of law" the Treasury meant to leave it to the state courts to decide what enrolled agents could or could not do. The California court held that *Agran* was practicing law in settling a client's tax liability, though the principal question involved a net operating loss carryback.

The implications are clearly serious. If the state courts can nullify our members' Treasury cards, the whole accounting profession faces a chaotic situation. We cannot believe that the Treasury intended to invite state courts to take away from enrolled agents the authorization which the Treasury itself has given them. But unless this question is clarified soon litigation similar to the *Agran* case is likely in many states.

Our legal counsel has been authorized to take all necessary steps with a view to ultimate review of the *Agran* decision by the United States Supreme Court.

5. We also conferred with Treasury and Internal Revenue officials, and officially requested that the regulations be clarified so as to permit enrolled accountants to continue to represent clients before the Treasury as the Treasury had always permitted them to do.

The American Bar Association strongly opposed our proposal. An unsigned article in the American Bar Association Journal of June 1954 accused the Institute of asking the Treasury to "grant the accountants a federal license to engage in what would constitute the unauthorized practice of law in various states of the Union." We replied to the Editor of the Bar *Journal* that we were seeking nothing which had not been a part of the regular and unchallenged practice of certified public accountants for the better part of forty years.

The Secretary of the Treasury has set up machinery to revise the Treasury regulations, and we hope to know the result soon.

6. Meanwhile interested members of Congress were informed of the possible effects of the *Agran* decision. In order to allow no misunderstanding regarding the Treasury's authority to regulate Federal tax practice, and to make it clear that Congress did not intend Federal tax practice to be a monopoly of any profession, Representative Daniel A. Reed, Chairman of the Ways and Means Committee, introduced HR 9922 on July 15, 1954, and Senator Carlson introduced the same bill in the Senate. The bill says simply:

A BILL

"To authorize the Secretary of the Treasury to prescribe regulations relating to qualifications of persons who assist taxpayers in the determination of their Federal tax liabilities, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall by regulations prescribe, to the extent that he considers practicable and desirable, qualifications, rules of practice, and standards of ethical conduct applicable to persons who assist taxpayers in determination of their Federal tax liabilities, in preparation of their Federal tax returns, and in settlement of their Federal tax liabilities with the Internal Revenue Service: Provided, that no person shall be denied the right to engage in such activities solely because he is not a member of any particular profession or calling."

The Institute supports this legislation as strongly in the public interest, since it would protect the taxpayer's freedom of choice in selecting the kind of help he wants in dealing with tax problems, while authorizing the Treasury to maintain adequate standards among tax practitioners.

7. The American Bar Association's House of Delegates, at its annual meeting in Chicago in the week of August 16, 1954, resolved to oppose HR 9922 and appointed a special committee for the purpose. In related discussion some strong statements were made about accountants, and a militant tone seemed to prevail.

What You Can Do

We must now assume that a large part of the livelihood of most of our members is seriously threatened. We regard it as our duty to defend the customary tax practice of CPAs, in the interest of the public as well as ourselves. We propose to conduct this defense by all legiti-

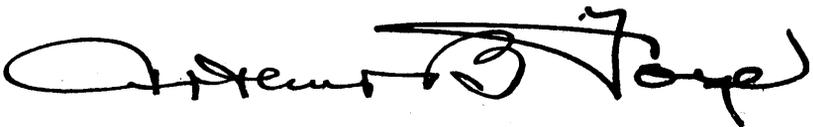
mate means, in the Congress, in the Executive Branch of the Government, and in the Courts, as may be appropriate—but particularly by seeking the support of Public Opinion, which in the long run will decide such a controversy.

Your aid is needed in this task:

1. Enclosed is a statement, "Helping the Taxpayer," in which the Institute has tried to present the tax-practice problem fairly and objectively, and suggest a common-sense solution. Extra copies of this statement are available without charge. Please study this statement. We think you will want promptly to write your Congressman and Senators your views on the subject—or, even better, talk to them if possible, and ask them to read the statement. The same applies to candidates for election to Congress this fall. It is highly important that the legislation now identified as HR 9922 be enacted in the next Congress. Pledges of support are important to you.
2. We think you will also want to talk to your clients about the problem and what it means to them. If they care to express their views to Congressmen and Congressional candidates it would be helpful.
3. You may also want to discuss the matter with lawyer friends, giving them a copy of the statement. Maybe we'll discover that most lawyers don't support the American Bar position.
4. In order that we may know right now whether most of our members concur in our view of the situation, we urge you to write us how you feel about it.
5. Please write the Institute the names of Congressmen, or candidates, with whom you communicate and tell us their reactions. Also please inform us of the reactions of clients, lawyers, and others.

This is a lot of work we're asking you to do. But remember, it's your own tax practice that is at stake.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Arthur B. Joyce", written in a cursive style.

President