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Editorial

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A. P. RICHARDSON, *Editor*

EDITORIAL

Annual Meeting of Institute

Arrangements for the annual meeting of the American Institute of Accountants to be held in St. Louis, Missouri, September 16th and 17th are practically complete, and the committee in charge reports that there are prospects of an unusually large attendance. The efforts which have been made to ensure the attendance of representatives of British and Canadian societies of accountants have been successful, and it is believed that all the principal societies will send delegates. The programme which appeared in tentative form in the bulletin of the Institute issued August 15th includes a number of discussions upon important subjects. Special interest will probably be felt in the following: "Inventories—with particular reference to goods in transit and cash discount;" "The fetish of the calendar year as a fiscal year;" "Conference between clients and auditors in the settlement of a corporation balance-sheet;" "University accounting courses;" "Accountants and their relation to bond and stock-brokers in placing securities on the market;" "Capital stock and surplus." The meetings will be held at the Chase hotel. All who are concerned with professional accountancy will be cordially welcome at the open sessions. There will be meetings of the council of the Institute on the Monday preceding and Thursday following the open meeting. These, of course, will be executive sessions. The committee expresses the hope that the invitation to attend the open sessions will lead to the presence of many persons not now members of the Institute. The work of the Institute and its purposes are best exemplified at such a time. Full information may be obtained from the chairman of the committee on meetings, David L. Grey, 506 Olive street, St. Louis, Missouri, or from the offices of the Institute.

Enforcement of Rules of Conduct

In the January, 1924, issue of THE JOURNAL OF ACCOUNTANCY attention was drawn to the fact that the efforts of the American Institute of Accountants to establish rules of conduct had met with the whole-hearted support of the great majority of members. Particular attention was drawn to the rule directed against advertisements of professional qualifications, and the thought was expressed that no one having the welfare of the profession at heart would now suggest that there should be any modification of the rule. Since publication of that comment several letters have been received drawing attention to advertisements which have recently appeared in various newspapers and magazines, and the correspondents have seemed to feel that these advertisements were proof of a tendency to disregard the code of ethics established by the Institute. In most cases, however, the advertisements which have been brought to attention were those of persons not members of the Institute. In other cases they were advertisements of the kind permitted under the rule, namely, professional cards. The Institute has not attempted to prohibit members from card advertising, but the general opinion of leaders of the profession is that such announcements are unprofitable and that their use will be discontinued after experience. The committee on professional ethics which is charged with the duty of considering alleged breaches of the rules of conduct has a task which is not enviable. It is neither an easy nor a pleasant matter to tell one's professional brethren that they have been guilty of offenses against the professional ideal. Furthermore, it has apparently seemed to the committee that its most effective method would be by argument rather than by threat, and there has been an enormous volume of correspondence emanating from the committee in which persons addressed have been urged in the cause of better accountancy to set their respective houses in order and to abstain from anything which would lower the general tone of accountancy. It is only in extreme cases that the committee has felt called upon to make definite charges. The result of this manner of handling the delicate question of professional ethics has been satisfactory. It is difficult to conceive of a practitioner who does not wish to forward the aims of his profession, and when the committee presents to an offending accountant its views of the proprieties it almost invariably leads to acquiescence in the committee's opinions.

Board of Tax Appeals

When congress was considering the bill which subsequently became the 1924 revenue act, the American Institute, through its officers and committees, took much interest in the administrative features of the bill and particularly devoted attention to the proposal to establish an independent board to which taxpayers could appeal from decisions of the bureau of internal revenue. It was with a great deal of satisfaction that the Institute viewed the enactment which provided for the creation of a board of tax appeals, and much hope was felt that this would be the means of bringing about a better sentiment between taxpayers and government officers. The bill was not enacted exactly as the Institute hoped and expected, but the measure had in it the possibility of great good. It was discouraging to find the salaries provided for members of the board reduced from $10,000 to $7,500. One prominent accountant has said that it would have been better to set the salary at $5,000—$7,500 looked too much like an attempt to measure the value of services. Had the amount been $10,000 or $5,000 it would probably have been regarded as merely a nominal salary. To rate a man's services at $7,500, however, does have the appearance of an attempt to apply a yardstick. It is possible that members of congress are a little sensitive about a salary exceeding $7,500. Indeed, we have heard of congressmen who have given evidence of the notion that no human service can possibly exceed in value the sum mentioned. However, the salary difficulty apart, the public still hoped for a board which would bring about the purposes for which it was created. The twelve men who have been appointed to the board represent important factors in the case and they can be relied upon to do their utmost for the establishment of fair and impartial hearings and decisions. If the president of the United States when appointing the remaining sixteen members of the board will heed the numerous suggestions which have been made to him that accountants should constitute a large proportion of the board there will be general rejoicing. So far it must be admitted that the accounting profession has not received so handsome a recognition in the board's personnel as might have been expected.

Practice Before the Board

The board of tax appeals in its first utterance of rules has included a provision that practice before the board shall be restricted to attorneys and to certified public account-

ants. The purpose of the board in this rule is to prevent appearance by undesirable and poorly qualified representatives of taxpayers. It is an open secret that the bureau of internal revenue has been much hampered by the way in which taxpayers have been misrepresented. There has been a vast number of agents presenting cases in a way that certainly did not do justice to the claims involved and greatly protracted the settlement of them. The board of tax appeals doubtless hopes that it will be possible to insist upon a proper preparation of cases so that the taxpayers' interest may be properly protected and the work of the board expedited. Of course, everyone will admit that there are attorneys and certified public accountants who are sadly lacking in the qualifications which are essential to the preparation of tax cases, but the board will probably find ways by which to weed out the unqualified or poorly qualified practitioners. There is, nevertheless, a grave danger in the restriction which has been made and it is hoped that the board upon further consideration will find a way to permit the appearance of a few agents who are not included in the two categories named. For example, in the American Institute of Accountants approximately fifteen per cent of the members are not certified and are not attorneys. It certainly could not have been the intention of the board to prevent the appearance of such accountants in appeals before it. There are also numbers of well qualified accountants who are not members of the Institute and are not certified public accountants. There should be some means of permitting men of established reputation and practice to present their cases for the consideration of the board of tax appeals. Perhaps the most feasible method of extending the list of eligible practitioners will be to permit application for permission to practise by persons not included in the two categories. The board probably has the right to accept or reject such applications. The so-called tax experts who are afflicting the country could easily be barred from appearance before the board. On the other hand, the qualified accountants, who, under the present rule, would be excluded, would have no difficulty in demonstrating their fitness for recognition. It is hoped that the board will give the matter further consideration and devise some method of fair discrimination between qualified and unqualified. It is essential in the interests of the taxpayer and of the accountant concerned.

Arthur Lowes-Dickinson Fund

We have received a letter from the president of the American Institute of Accountants drawing attention to a donation made by one of the accounting firms to the endowment fund of the school of business administration of Harvard university. This is a matter which will doubtless be of interest to all accountants and we publish Mr. Gore's letter herewith:

> It has come to my notice that in honor of a former member of their firm the partners of Price, Waterhouse & Co. have contributed to the endowment fund of the school of business administration of Harvard university the sum of $100,000 to be known as the "Arthur Lowes-Dickinson Fund". This donation immediately engages the interest of every practising accountant, since it not only marks the appreciation of the gentlemen making the contribution of the services rendered to the profession in this country by their former partner, but indicates their faith in the value of education in accountancy and business as given by our institutions of learning. All the older members of the American Institute of Accountants will recall the fine personality of Mr. Arthur Lowes-Dickinson, as he was then known—Sir Arthur Lowes-Dickinson, as he is now because of his services to his country in its time of need. During his residence in the United States he was found foremost in every effort to advance the interests of the professional accountant, using his talents and his influence, both of which he possessed in a marked degree, to secure the enactment of legislation for the regulation of the profession and for the protection of its ethical practitioners. In the midst of an exceptionally active practice he found time to write his work on *Accounting Practice and Procedure* which has become a classic in the literature of the profession. His services to the profession, given without the possibility of personal advantage, have long deserved substantial recognition, and it should be a source of deep satisfaction to every member of the Institute—which he helped to found—that such recognition has been given and in a form so wholly commendable.

Professional Backgrounds

Recent reference by eminent lawyers in this country to the retrogression of the legal profession in the last few years, and their explanation of this unfortunate state of affairs by declaring that the laws are sufficient in themselves but that the legal background and training of the young men aspiring to become legal practitioners are not what they should be, is emphasized by recent events. Charles E. Hughes and Charles S. Whitman have been foremost in the indictment of criminal law administration. Mr. Whitman, who has been in a position to learn the underground workings and ramifications of weird political manipulations, has made a valuable recommendation for the appointment by the bar association of a permanent commission to produce a standard code of criminal procedure for all states. The attempt to unify state laws is not new in itself. The purpose of this code would be to remove from criminal laws devices calculated to retard justice and to offer loopholes of

escape rather than to prevent an innocent person from being punished for a crime which he did not commit. The presentation of such a measure would be heartily backed by public opinion and this would put pressure of sufficient weight on every state legislature to enact the reformatory laws needed in each case. No matter what one may say about the working of the English laws—and undoubtedly there are good and bad features in both English and American laws—it must be granted that England secures a greater degree of efficiency in her criminal trials. There a murderer cannot dodge the effects of a penal law properly administered. He cannot escape deserved punishment by resorting to technicalities, or by rendering homage to political judges, or by the subterfuge of endless appeals. English judges do not hesitate to use the power they possess, for they are not handicapped by clogs political and otherwise which hamper our strides for justice. It does seem that the present critical period in criminal law trials and appeals in this country is a most opportune moment at which to awaken the American public to the consciousness of ineffective criminal legislation and court procedure.

Where Uniformity is Needed

While on the subject of a need for uniformity in administration of criminal law it may not be amiss to refer to the need which accountants throughout the country feel for a uniformity of accountancy legislation. All the states have certified public accountant laws, and there are only two which are exactly alike in phraseology. There are not two that are administered in exactly the same way. This is inevitable when there is a complete independence of action on the part of each state. The American Institute of Accountants has done the most that could be done to bring about standards and uniformity by establishing an examination which is adopted by most of the states in the union. There is, however, always the faint hope that some time, somehow, we may reach a point where a uniform accounting law will prevail throughout the United States. In all probability the divorce laws which have been the scandal of America will become standardized in form and application within the course of the next few years. The negotiable instrument laws are now practically standardized. And from time to time the movement toward uniformity will be accelerated. There are many reasons why a federal law governing the practice of accountancy should super-

sede all state laws. Accountancy, as everyone knows, is essentially interstate in character. But on the other hand there is danger that a federal law would develop into so powerful a political implement that most accountants are afraid to encourage such a reform. There is no reason, however, why all state laws should not be the same in form. The difference in administration would gradually disappear or become inconsiderable and the value of the certified public accountant certificate would be enormously enhanced by the general knowledge of the fact that there was no state issuing certificates under a law less rigorous than any other law.

Standards Must be Maintained

In many ways the experience of the bar should be a warning to accountancy. For example, it has been alleged by members of the American Bar Association that the requirements for admission to the profession and even for admission to institutions of learning have been lowered to such a point that it is possible for an altogether unworthy young man to become a member of the bar. The growth of litigation is one of the unfortunate facts of the present day, but in spite of the resultant demand for more lawyers the law schools are turning out graduates faster than the country can assimilate them. Many of the men who were filled with enthusiasm for the legal profession have been compelled to apply their legal training in other fields and have given up all thought of practising as attorneys. It is alleged by lawyers that had the requirements for admission to legal practice been maintained on a high plane this surplus of lawyers would not have developed. Here is a warning for the accounting profession which should not be ignored. If there was ever a need for the maintenance of high standards for admission to practise accountancy it is at the present time when the work of the accountant is becoming better known and more men are being attracted to it by virtue of its bright promise. In the days when the work of the accountant was little understood it was fairly reasonable to suppose that the only persons attracted to the profession were those who felt an irresistible urge toward the analytical labors of the accountant. Now, however, there is so much more inducement to enter the profession than there was in the past that many altogether undesirable and unqualified persons are seeking admission. As a safeguard against the fate which has befallen the legal profession accountancy must look to its standards.

The Taxpayer Has Rights

There is a legal axiom that every man shall be considered innocent until proven guilty, and there is a somewhat similar axiom used in tax cases that the benefit of the doubt shall be given to the taxpayer. Some accountants who have had experience in the matter are inclined to believe that this is pure theory. They say, and probably say truly, that it would be an excellent thing if all members of the government department charged with the administration of tax laws would give careful and continuing thought to the allocation of the benefit of the doubt. Let us hear what the courts say. In the case of *Hecht v. Malley*, decided in the supreme court of the United States on May 12, 1924, Justice Sanford delivered the opinion of the court. Among other things he said:

> Nor does the language of the act in this respect call for the application of the established rule that in the interpretation of statutes levying taxes their provisions are not to be extended by implication beyond the clear import of the language used, and in case of doubt are to be construed most strongly against the government and in favor of the taxpayers.

In *Gould v. Gould*, decided by the United States supreme court, November 19, 1917, Justice McReynolds speaking for the court enunciated the principle in exactly the same terms.

In *United States v. Merriam*, Justice Sutherland, speaking for the supreme court November 12, 1923, said:

> On behalf of the government it is urged that taxation is a practical matter, and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.

In the British case of *Partington v. Attorney General*, Lord Cairns said:

> I am not at all sure that in a case of this kind—a fiscal case—form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

We commend to the consideration of all persons concerned with the administration of tax laws, federal, state, county and municipal, the principles enunciated by the eminent authorities quoted.