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Income-tax Department

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EDITED BY STEPHEN G. RUSK

Circular No. 230[1], issued by the treasury department under date of August 15th, defining the laws and regulations governing the recognition of attorneys, agents and other persons representing clients and others before that department should make interesting reading to members of the American Institute of Accountants and those in sympathy with it in its efforts to raise the plane of accountancy to the heights which it should occupy as a profession.

We publish in this issue a number of treasury decisions of more than passing interest to which we direct particular attention.

TREASURY RULINGS

DEPARTMENT CIRCULAR NO. 230[1].

Treasury Department,
Office of the secretary,
Washington, August 15, 1923.

The statutes regulating the recognition of attorneys and agents and their practice before the treasury department appear at the end of these regulations.

Pursuant to statutory provisions, the following rules and regulations are prescribed:

1. *Practice.*—Any individual taxpayer or member of a firm or officer or authorized regular employe of a corporation may appear for himself or such firm or corporation solely upon adequate identification to the treasury officials. Where, however, the attorney or agent appears before the department representing a taxpayer, he must be enrolled, and, to be enrolled, must satisfy the requirements of the statute. The statute requires that applicants for enrollment must "show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render * * * claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases." (Act of July 7, 1884.) In order better to protect the taxpayer's interests and to expedite practice before the department, applicants should clearly establish their right to enrollment by showing that they possess (1) a good character and reputation; (2) a sound education; and (3) a familiarity with the laws and regulations covering taxes or other subjects which they will present to the department. Practice before the treasury department is not restricted to duly licensed atorneys at law and certified public accountants; but an agent who is not an attorney or accountant, and attorneys and accountants licensed in states where, in the opinion of the committee on enrollment and disbarment, the license requirements are not adequate, must show satisfactory educational qualifications and evidence of an ability to understand tax questions or such other matters as will be presented to the treasury by the applicants. An applicant's

[1] Effective August 15, 1923. This circular supersedes treasury department circular No. 230, dated February 15, 1921, and its several supplements.

character and reputation can only be established by inquiry among those who have had the opportunity of knowing the applicant in the community in which he has lived. A bad reputation as to integrity or any previous conduct of applicant which is unethical, as viewed by the standards of the American Bar Association or the American Institute of Accountants, or such conduct as would be considered unfair in commercial transactions, will be regarded as sufficient to justify the rejection of the application. References as to the applicant's character should be given, and in addition the applicant should furnish the names of those with whom he has come in contact in his business and of whom inquiry may be made. The committee on enrollment and disbarment will endeavor to ascertain all facts deemed necessary by it to pass on any applicant without expense or undue inconvenience to the applicant, but the committee may require, where it is not satisfied with the information received, that the applicant appear in person before the committee or its duly authorized representative.

2. *Applications for enrollment.*—Applicants for enrollment pursuant to these regulations shall submit to the secretary of the treasury an application, in duplicate, properly executed on form 23 attached hereto. Applications in any other form will not be considered, and all statements contained in the application must be verified by the applicant. The application must be accompanied by an affidavit regarding contingent fees, in compliance with the order of the secretary of the treasury dated March 21, 1923, as amended April 7, 1923. The applicant must also take the oath of allegiance and to support the constitution of the United States as required by section 3478, *Revised Statutes.* A person who can not take the oath of allegiance and to support the constitution of the United States can not be enrolled. Members of the bar of a court of record will apply for enrollment as attorneys; all others will apply for enrollment as agents. Applicants will be notified of the approval or disapproval of their applications. All applications for enrollment must be individual, and individuals who practice as partners should apply for enrollment as individuals and not in the partnership name. An individual who has been enrolled may, however, represent claimants and others before the treasury department in the name of a partnership of which he is a member or with which he is otherwise regularly connected. Except as hereinafter provided in paragraph 3, a corporation can not be enrolled and attorneys or agents will not be permitted to practice before the treasury department for account of a corporation which represents claimants and others in the prosecution of business before the treasury department. Persons applying for enrollment who propose to act for such a corporation in the prosecution of claims and other business before the treasury department will be subject to rejection, and enrolled attorneys or agents who act for a corporation in representing claimants and others in the prosecution of claims and other business will be subject to suspension from practice as to such claims or business.

3. *Customhouse brokers.*—The act of June 10, 1910 (36 Stat. 464, T. D. 30789), provides in part that persons, copartnerships, associations, joint-stock associations, and corporations may be licensed as customhouse brokers by the collector or chief officer of customs at any port of entry or delivery to transact business as such customhouse broker in the collection district in which such license is issued. Customhouse brokers so licensed require no further enrollment under these regulations for the transaction of business within their respective collection districts, but for the representation of a claimant before the treasury department in the city of Washington, application for enrollment as attorney or agent must be made in conformity with the requirements of paragraph 2, and otherwise in accordance with these regulations, except that if a customhouse broker, so licensed in a collection district, is a copartnership, association, joint-stock association, or corporation, its claims or other business may be

prosecuted in its name before the department in the city of Washington by an accredited member or representative, who must, however, be first duly enrolled in accordance herewith.

4. *List of attorneys and agents.*—A list of all attorneys and agents who make application for enrollment or who are enrolled or whose applications have been rejected or who have been suspended or disbarred, will be kept in the office of the chief clerk of the treasury department, and a copy of such list will be furnished the bureaus, offices, and divisions of the treasury department. Information as to whether or not any person is enrolled as an attorney or agent may be had by application to the chief clerk. All bureaus, offices, and divisions of the treasury department are prohibited from recognizing or dealing with any attorney or agent unless enrolled, provided that an attorney or agent, by application to the chief clerk and at the discretion of the committee on enrollment and disbarment, may be recognized temporarily, pending action upon his application for enrollment.

5. *Knowledge through connection with the treasury department.*—No attorney or agent shall be permitted to appear before the treasury department in connection with any matter to which such attorney or agent gave personal consideration or as to the facts of which he had actual personal knowledge while in the service of the treasury department, and likewise no such attorney or agent shall aid or assist another in any such matter and no attorney or agent shall receive assistance from one formerly in the service of the treasury department and having such personal knowledge.

6. *Suspension and disbarment proceedings.*—If information is received by the treasury department of conduct of any enrolled attorney or agent in violation of any of the statutory provisions or regulations governing practice before the department, the information shall be referred to the committee on enrollment and disbarment. The committee may, on the basis of any such complaint, upon its own motion, or otherwise upon reasonable cause, institute proceedings for suspension or disbarment against any enrolled attorney or agent. Notice thereof, signed by the secretary or undersecretary of the treasury, shall be sent by mail to such attorney or agent at the address under which he is enrolled, and such notice shall state the charge or charges made, and give the place and time within which the respondent shall file, in duplicate, his verified answer, which time shall be not less than 20 nor more than 30 days from the date of mailing the notice. Such answer shall state specifically every ground of defense relied upon by the respondent to answer the charge or charges against him. The committee may, in its discretion, extend the time for filing such answer. The complainant may, in the discretion of the committee, be furnished with a duplicate copy of such answer. If the respondent fails to file such answer within such time, he shall be declared to be in default and the charge or charges against him shall be deemed to be true without further proof by the complainant. When the answer has been filed, the committee shall pass upon the sufficiency of the same, and in case an issue of fact is raised by said answer, then the committee shall set a time and place for the hearing of such case. Notice of the time and place of such hearing signed by the chairman of the committee, shall be sent by mail to the respondent, which hearing shall not be less than 20 nor more than 30 days from the date of mailing such notice. The committee may, in its discretion, postpone the date of hearing, or adjourn any hearing from time to time as may be necessary. An enrolled attorney or agent against whom proceedings for suspension or disbarment have been instituted as herein provided may, pending the conclusion of the proceedings and subject to the approval of the secretary of the treasury, be suspended for the time being from practice before the treasury department.

The committee shall conduct hearings according to such rules of procedure as it shall determine, and may receive evidence in such form

as it may deem proper. The respondent may be represented by counsel. The testimony of witnesses may, in the discretion of the committee, be required to be under oath, and may be stenographically reported and transcribed. Depositions for use at a hearing may, with the approval of the committee, be taken by either party upon oral or written interrogatories before any officer duly authorized to administer an oath for general purposes upon 10 days' written notice if the deposition is to be taken within the District of Columbia and upon 20 days' written notice if it is to be taken elsewhere. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served with the notice, and copies of any written cross-interrogatories shall be mailed to the opposing party or his counsel at least five days before the time of taking the deposition.

The committee shall, promptly after the conclusion of the hearing, or, if the respondent does not appear in person for the hearing, promptly after the date set therefor, submit to the secretary of the treasury a copy of the notice of hearing, the complaint, answer (if any), the record of the hearing (if any), and any written findings of fact by a majority of the committee, together with a recommendation either that the charges be dismissed or that the respondent be reprimanded, suspended for a given period of time or disbarred. The findings and recommendation shall be signed by all members of the committee agreeing thereto. Members of the committee dissenting therefrom shall submit statements of their reasons therefor. If any members of the committee were not present at the hearing, the fact shall be stated.

Upon the suspension or disbarment of an attorney or agent, notice thereof shall be given by the committee to the heads of all bureaus, offices, and divisions of the treasury department and to the other branches of the government, and, unless duly reinstated, such person shall not thereafter be recognized as an attorney or agent in any claim or other matter before the treasury department or any office thereof.

7. *Causes for rejection, suspension, or disbarment.*—In general, any conduct which would preclude an applicant from enrollment will be sufficient to justify his suspension or bisbarment. Specifically, the following matters, among others, will be considered grounds for suspension or disbarment:

(a) Violation of the statutes or rules governing practice before the treasury department.

(b) Conduct contrary to the canons of ethics as adopted by the American Bar Association, or the rules of professional conduct approved by the American Institute of Accountants, or their equivalent.

(c) False or misleading statements or promises made by the attorney or agent to a taxpayer or misrepresentation to the treasury department.

(d) Solicitation of business by the attorney or agent. This includes letters, circulars, and interviews not warranted by previous association; printed matter appearing on the letterheads or cards of the attorney or agent indicating previous connection with the treasury department or enrollment as attorney or agent; or representation of acquaintance with treasury officials or employes. It includes also the use by attorneys and agents of any titles which might imply official status or connection with the government, such as "federal tax expert" or "federal tax consultant." It is not considered a violation of this regulation for treasury employes, on severing their connection with the department, to send out announcement cards, briefly stating their former official status and announcing their new association, provided the cards are addressed only to personal or business acquaintances, and provided further that such cards are distributed only at the time of severance of the official connection with the government. These cards are regarded by the committee not as advertising but as the customary announcement cards issued for the express purpose of identifying the sender with his new association or business.

(e) Negligence in furnishing evidence required in matters pending before the treasury department, and the use of any means whereby the final settlement of the matter is unjustifiably delayed.

(f) The employment by an enrolled attorney or agent as correspondent or subagent in any matter pending before the treasury department, or the acceptance by such enrolled attorney or agent of employment as correspondent or subagent of or from any person who has been denied enrollment or who has been suspended or disbarred from practice. It is in violation of the regulation for an enrolled attorney or agent to assist in any way or be assisted by an attorney or agent who has been denied enrollment or has been suspended or disbarred.

(g) Any other matter which, in the opinion of the committee on enrollment and disbarment, is unfair to the taxpayer or to the treasury department or interferes unduly with the orderly disposition of matters pending before the department.

8. *Contingent fees.*—(a) While contingent fees may be proper in some cases before the department, they are not generally looked upon with favor and may be made the ground of suspension or disbarment. Both their reasonableness in view of the services rendered and all the attendant circumstances are a proper subject of inquiry by the department. The commissioner of internal revenue or the head of any other treasury bureau or division of the secretary's office may, at any stage of a pending proceeding, require an attorney or agent to make full disclosure as to what inducements, if any, were held out by him to procure his employment and whether the business is being handled on a contingent basis, and, if so, the arrangement regarding compensation. The treasury department will also make such independent inquiry in regard to the circumstances connected with the employment of attorneys or agents on a contingent basis as it deems advisable.

(b) All attorneys and agents and others practicing before the treasury department or any of its bureaus or offices are required to file with the chief clerk of the treasury department an affidavit, in duplicate, stating whether or not the business in which the attorney or agent appears before the department is being handled on a contingent basis, and, if so, on what basis and under what arrangements regarding compensation. Specific information, giving the names and descriptions of cases handled on a contingent basis, must be filed covering all such cases pending before the treasury department; and, whenever an additional case is taken on the basis of a contingent interest or fee, a further affidavit regarding such case must be filed with the department, provided, however, that any attorney or agent not practising before the department on a contingent basis may file with the chief clerk of the treasury department, in lieu of these specific affidavits, a general affidavit, in duplicate, stating that he is not handling any business before the treasury department on a contingent basis and that he will not handle any business before the treasury department on a contingent basis without first giving specific notice to the department and filing an affidavit in duplicate, as above required. Every such affidavit must state the treasury offices before which the attorney or agent proposes to practise.

(c) The chief clerk of the treasury department will retain in his confidential files the originals and duplicates or copies of all such affidavits regarding contingent fees for use of the committee on enrollment and disbarment and of heads of bureaus and divisions. While discouraging contingent feets and requiring their disclosure, the treasury does not bar such fees in practice before the treasury department; nor is the information, which is submitted in connection with such cases, used to prejudice the fair consideration of any case, provided the attorney or agent is guilty of no unfair practice or violation of the treasury's requirements.

(d) All attorneys and agents practising before the treasury department, who have filed specific or general affidavits regarding contingent fees, will be furnished with cards showing that they have done so, and officers of the department will recognize only those presenting such cards, which will be accepted in lieu of all cards previously issued to them as evidence of their authority to practice before the department. These cards are issued on condition that, prior to appearing before the department in any case handled on the basis of a contingent interest or fee, the said case shall be reported to the department as hereinbefore provided.

9. *Constitution of committee.*—The committee on enrollment and disbarment shall consist of the chief clerk of the treasury department, ex officio, and five other members appointed by the secretary of the treasury, of whom two shall be detailed from the office of the secretary, two from the office of the commissioner of internal revenue and one from the division of customs. The secretary shall designate the chairman and vice-chairman from members detailed from his office. The committee shall make such rules for its own government as it considers advisable. Subject to these regulations, the committee shall have jurisdiction over all matters relating to enrollment, suspension, or disbarment of attorneys and agents practising before the treasury department, and shall submit its recommendations to the secretary of the treasury for approval.

10. *Authority to prosecute claims; delivery of cheques, drafts, and warrants.*—(a) A power of attorney from the principal in proper form may be required of attorneys or agents by heads of bureaus, offices, and divisions, in any case. *In the prosecution of claims involving payments to be made by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.* No power of attorney shall be recognized which is filed after settlement made by the accounting officers, even though the settlement certificate may not yet have issued, unless such power of attorney recites that the principal is fully cognizant of such settlement and of the balance found due.

(b) In all cases originally filed in the treasury department and audited and allowed by the accounting officers, payable from appropriations thereafter to be made by congress, the drafts warrants or cheques issued for the proceeds of such claims shall be made to the order of the claimant, and may be delivered to the attorney or agent legally authorized to prosecute the same, upon his filing in the department, after the allowance of the claim, the ascertainment of the amount due, and its submission to congress for an appropriation, written authority executed in proper legal form for delivery of such draft, warrant, or cheque. The authority so filed shall describe the claim by the number of certificate of settlement, the amount allowed, the title of appropriation from which to be paid, the date when submitted to congress, and the number of the executive document in which it is contained. Drafts, warrants, or cheques issued for the proceeds of other like cases audited and allowed by the accounting officers but which are to be paid from appropriations available at the time of allowance shall also be made to the order of the claimant and may be delivered to the attorney or agent filing written authority, executed in proper legal form, to receive them. The secretary of the treasury reserves the right, however, in any case to send any draft, warrant, or cheque to the claimant direct. (See also paragraph 11 hereof.)

(c) Drafts, warrants, or cheques issued in payment of amounts allowed by congress in favor of corporations and individuals and appropriated for in private or special acts, and for the payment of all other claims presented directly to congress and prosecuted before its committees, shall be made to the order of claimants and delivered to them in person or mailed to their actual post-office addresses.

(d) Drafts, warrants, or cheques issued in payment of judgments rendered by the court of claims, United States courts, or other courts

shall be made to the order of the judgment creditor and delivered to or sent in care of the attorney certified by the court to be the attorney of record upon his filing in the department written authority, executed in proper legal form, after the date of the rendition of the judgment, for such disposition of such draft, warrant, or cheque.

(e) When judgments of the court of claims, United States courts, or other courts are paid by the United States, a notice of such payment, giving number, class, and date of draft, warrant or cheque, and amount paid, will be sent by the treasury department to the clerk of the court in which the judgment was entered in order that payment may be entered on the docket of the court.

11. *Substitution of attorneys or agents and revocation of authority.*— (a) Substitution of attorneys or agents may be effected only on the written consent of the attorney or agent of record, his principal, and the attorney or agent whom it is desired to substitute, and in all cases only with the assent of the head of the bureau, office, or division concerned; provided that where the power of attorney under which an attorney or agent of record is acting expressly confers the power of substitution, such attorney or agent, if in good standing before the department, may, by a duly executed instrument, substitute another in his stead, such other, however, to be recognized as the attorney or agent only with the assent of the head of the bureau, office, or division concerned.

(b) If a firm dissolve, or those associated as attorneys or agents by virtue of a power of attorney contest the right of either to receive a draft, warrant or cheque, the principal only shall thereafter be recognized, unless the members or survivors of such firm, or the associates in such power of attorney, file a proper agreement showing which of such members, survivors or associates may continue to prosecute the matter and may receive a draft, warrant or cheque; and in no case shall a final settlement of the matter or action toward the transmission of a draft, warrant or cheque to the principal be delayed more than sixty days by reason of the failure to file such agreement.

(c) The revocation by a principal or his legal representatives of authority to prosecute a matter will not be effective so far as the treasury department is concerned, without the assent of the head of the bureau, office or division before which the matter is pending. Where a matter has been suspended pending the furnishing of evidence for which a call has been made on an attorney or agent, failure to take action thereon within three months from the date of suspension may be deemed by the administrative officer before whom the case is pending cause for revocation of the authority of such attorney or agent without further notice to him.

(d) In the settlement of claims of officers, soldiers, sailors and marines, or their representatives, and all other like claims for pay and allowances within the jurisdiction of the general accounting office, the draft, warrant or cheque for the full amount found due shall be delivered to the payee in person or sent to his bona fide post-office address (residence or place of business) in accordance with the provisions of the act of June 6, 1900 (31 Stat., 637).

12. *Acknowledgment of affidavit.*— A declaration, affidavit, or any paper, requiring execution or acknowledgment in connection with any claim, application for reaudit, or other matter before the treasury department, must be executed or acknowledged before an officer duly authorized to administer oaths for general purposes who is not interested in the prosecution of the claim or other matter to which the said declaration, affidavit, or paper pertains.

13. *Application and effective date of circular.*—This circular supersedes the regulations promulgated by treasury department circular No. 230 of February 15, 1921, as heretofore amended and supplemented, relating to the recognition of attorneys, agents, and others. The regulations con-

tained in this circular shall apply to attorneys, agents, and others representing claimants and others before the treasury department in the city of Washington or elsewhere, with the exception as to customhouse brokers set forth in paragraph 3, and shall be effective from and after the 15th day of August, 1923. This circular shall apply to all unsettled matters then pending in this department, or which may hereafter be presented or referred to the department or offices thereof for adjudication, and shall be applicable to all those now enrolled to practise before the treasury department as attorney or agent, provided that nothing herein contained shall be construed to abrogate any rules or orders of the general accounting office relating to the fees of attorneys, agents, or others, or to require those now enrolled to apply again to be enrolled.

14. *Circular may be withdrawn or amended.*—The secretary of the treasury may withdraw or amend at any time or from time to time all or any of the foregoing rules and regulations, with or without previous notice, and may make such special orders as he may deem proper in any case.

A. W. MELLON,
Secretary of the Treasury.

(T. D. 3501—July 23, 1923)

Federal taxes—Bankruptcy—Decision of court.

1. BANKRUPTCY—FEDERAL TAX—PRIORITY—LABOR CLAIMS.

Under the provisions of sections 64-a and 64-b of the bankruptcy act a claim for federal taxes takes priority over payment of labor wage claims where the assets of the estate are insufficient to pay all claims in full.

2. CASES DISTINGUISHED AND FOLLOWED.

Richmond v. Bird (249 U. S. 174), distinguished; *Guarantee Co. v. Title Guaranty Co.* (224 U. S. 152); In re *Weissman* (178 Fed. 115); and In re *Kittenplan* (285 Fed. 82), followed.

The attached decision of the United States circuit court of appeals for the ninth circuit in the case of *West Coast Rubber Corporation (Inc.), bankrupt et al. v. A. J. Oliver, trustee et al.*, is published for the information of internal-revenue officers and others concerned.

UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT

In the matter of West Coast Rubber Corporation, Inc., a corporation, bankrupt; United States and the City and County of San Francisco, a municipal corporation, petitoners, v. A. J. Oliver, as trustee, and Oscar Courtin, Dorothy E. Knight, C. S. Sanford, D. C. Tuhey, H. Black, and Hugh V. Casserly, respondents.

Before GILBERT, HUNT and RUDKIN, Circuit Judges.

[July 2, 1923]

GILBERT, circuit judge: This case, on petition for revision, presents the question of the relative order of priority between tax claims and labor claims in the distribution of an estate in bankruptcy, the assets being insufficient to pay all such claims in full. It involves the construction of sections 64-a and 64-b of the bankruptcy act. 64-a directs the court to order payment of—

> all taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality in advance of the payment of dividends to creditors.

64-b provides:

> The debts to have priority except as herein provided and to be paid in full out of bankrupt's estates shall be (after payment of costs of preserving the estate, filing fees and costs of administrations) (4) Wages of workmen, etc. Wages due to workmen, clerks, traveling or city salesmen or servants which have been earned within three months

before the date of commencement of proceedings, not to exceed three hundred dollars to each claimant.

The court below held that the claim for wages was prior in rank to taxes owing by the bankrupt. In support of that ruling, reference is made to the language of section 64-a in which the taxes are directed to be paid before the payment of dividends to creditors, and it is said that as "dividends to creditors" means partial payments to general creditors, and payment of taxes is directed to be paid prior to the payment of such dividends only, the intention was to give priority to all the preferred claims mentioned in 64-b. It is true that the term "dividends to creditors" ordinarily refers to dividends to general creditors. But it does not necessarily have that meaning. A dividend is that which is to be divided. In bankruptcy it is the sum of money which is to be divided among two or more creditors. It is not necessarily a partial payment. It is obvious that it may at times be a payment in full even as to general creditors. We think it is the intention of 64-a to provide that taxes shall be paid before any payment is made to creditors, whether they be general creditors or preferred creditors. The power to levy and collect taxes is not only an indispensable attribute of sovereignty, but it is absolutely necessary to the support of government, the maintenance of law and order, and the protection of life and property. It is not to be supposed that the power to tax would be subordinated to the claim of any creditor, however meritorious that claim may be. In the bankruptcy act of 1867 this was not left to doubt. The law made it clear that after the payment of costs, fees, and expenses, all debts due the United States and all taxes and assessments under both the laws of the United States and the states should be paid, and thereafter wages for services performed within a stated period prior to bankruptcy.

The court below found authority for its ruling in *Richmond v. Bird* (249 U. S. 174) in which the court said:

> Section 64-a directs that taxes be paid in advance of dividends to creditors, and "dividends" as commonly used throughout the act means partial payment to general creditors.

We do not find that the court was there dealing with the question which is involved in this case. That was a case in which the city of Richmond sought to have taxes declared payable out of the bankrupt's assets in preference to the claim of a landlord which was secured by a specific lien arising upon distraint. The court held that the city had no such superior right since neither the laws of the United States nor those of the state accorded it such priority. In *Richmond v. Bird* no reference was made to *Guarantee Co. v. Title Guaranty Co.* (224 U. S. 152). In the latter case the court had said:

> Labor claims are given priority and it is provided that debts having priority shall be paid in full. The only exception is taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality.

It is objected that what was thus said was obiter, but conceding that it may have been unnecessary to the decision of the question then pending before the court, it should nevertheless be taken as the expression of the view of the court upon the question of the relative rank of taxes and labor claims, and we do not find that it is inconsistent with or that it is met or answered by anything that was held or said in *Richmond v. Bird*.. In harmony with the conclusion which we reach are In re *Weissman* (178 Fed. 115) and In re *Kittenplan* (285 Fed. 62).

The petitioner discusses also the question whether penalties are allowable as part of the taxes, but that question is not properly before us, the court below not having ruled upon it, and it appearing that the referee in bankruptcy, on a hearing had before him later than the hearing which

is herein sought to be revised, had fixed the amount of taxes and that no review has been taken of his order.

That order is reversed.

(T. D. 3510—September 4, 1923)

Payment of income and profits taxes.

Instructions as to acceptance of treasury notes for income and profits taxes.

1. Collectors of internal revenue are authorized and directed until further notice to receive at par with an adjustment of accrued interest, in payment of income and profits taxes payable at or within six months before their respective maturities, treasury notes of the United States of series A-1924, dated June 15, 1921, maturing June 15, 1924; series B-1924, dated September 15, 1921, maturing September 15, 1924; series A-1925, dated February 1, 1922, maturing March 15, 1925; series B-1925, dated June 15, 1922, maturing December 15, 1925; series C-1925, dated December 15, 1922, maturing June 15, 1925; series A-1926, dated March 15, 1922, maturing March 15, 1926 series B-1926, dated August 1, 1922, maturing September 15, 1926; series A-1927, dated January 15, 1923, maturing December 15, 1927; and series B-1927, dated May 15, 1923, maturing March 15, 1927. Collectors are authorized to receive treasury notes which are acceptable as herein provided in payment of income and profits taxes in advance of the respective tax-payment dates. All matured coupons attached to the notes must be detached by the taxpayer before presentation to the collector, and collected in ordinary course when due, but all coupons that have not matured must be attached to the notes when presented. The amount at par of the treasury notes thus presened by any taxpayer in payment of income and profits taxes must not exceed the amount of the taxes to be paid by him, and collectors shall in no case pay interest on the notes or accept them for any amount other or greater than their face value. Accrued interest from the last interest payment date on any notes accepted to the tax payment date will be remitted to the taxpayer by the federal reserve bank with which the collector makes a deposit on the basis of schedules to be furnished by the collector to the federal reserve bank. Receipts given by collectors to taxpayers should show the amount and description of the notes received in payment of taxes.

2. Deposits of treasury notes received in payment of income and profits taxes hereunder must be made by collectors, unless otherwise specifically instructed by the secretary of the treasury, with the federal reserve bank of the district in which the collector's head office is located, or in case such head office is located in the same city with a branch federal reserve bank, with such branch federal reserve bank. Specific instructions may be given to collectors by the secretary of the treasury in special cases for deposit with federal reserve banks of other districts or branch federal reserve banks. The term "federal reserve bank," where it appears herein, unless otherwise indicated by the context, includes branch federal reserve banks. Treasury notes accepted hereunder by collectors in advance of the tax payment date should be forwarded by the collector to the federal reserve bank to be held for account of the collector until the tax date, and for deposit on such date.

3. Treasury notes accepted hereunder should in all cases be indelibly stamped by the collector on the face thereof as follows, and when so stamped should be delivered to the federal reserve bank in person if the collector is located in the same city, and in all other cases forwarded by registered mail, uninsured:

....., 192...

This note has been accepted in payment of income and profits taxes and will not be redeemed by the United States except for credit of the undersigned.

.....

Collector of internal revenue
for the.....district of.....

Each unmatured coupon attached to each such note must be indelibly stamped across the face by the collector with the word "paid," followed by his name and title.

4. Collectors should make in tabular form a schedule in duplicate of the treasury notes to be forwarded to the federal reserve bank, showing, by series, the face amount transmitted, the serial number of each note, the denomination, and the name and address of the taxpayer presenting the note. Notes accepted in advance of the tax payment date must be scheduled separately, and treasury notes should in all cases be scheduled separately from treasury certificates of indebtedness. At the bottom of each schedule there should be written or stamped, "income and profits taxes, $.....," which amount must agree with the total shown on the schedule. One copy of this schedule must accompany notes sent to the federal reserve bank, and the other be retained by the collector. The income and profits tax deposits resulting from the deposits of such notes must in all cases be shown on the face of the certificate of deposit (form 15) separate and distinct from the item of miscellaneous internal revenue collections (formerly called ordinary). Until certificates of deposit are received from the federal reserve banks, the amounts represented by the treasury notes forwarded for deposit must be carried by collectors as cash on hand or in banks, and not credited as collections, as the dates of certificates of deposit determine the dates of collections.

5. For the purpose of saving taxpayers the expense of transmitting such notes as are held in federal reserve cities or federal reserve branch bank cities to the office of the collector in whose district the taxes are payable, taxpayers desiring to pay income and profits taxes by treasury notes should communicate with the collector of the district in which the taxes are payable and request from him authority to deposit such notes with the federal reserve bank in the city in which the notes are held. Collectors are authorized to permit deposits of treasury notes in any federal reserve bank with the distinct understanding that the federal reserve bank is to issue a certificate of deposit in the collector's name covering the amount of the treasury notes at par and to state on the face of the certificate of deposit that the amount represented thereby is in payment of income and profits taxes. The federal reserve bank should forward the original certificate of deposit to the treasurer of the United States, with its daily transcript, and transmit the duplicate to the commissioner of internal revenue, accounts and collections unit, Washington, D. C., and the triplicate to the collector, accompanied by a statement giving the name of the taxpayer for whom the payment is made, in order that the collector may make the necessary record.

(T. D. 3511—September 6, 1923)

Income tax—Cooperative associations.

Article 522 of regulations 62 amended.

Article 522 of regulations 62 is hereby amended to read as follows:

ART. 522. *Coöperative associations.*—(a) Coöperative associations, acting as sales agents for farmers, fruit growers, live-stock growers, dairymen, etc., or engaged in the marketing of farm products, and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of the produce furnished by them, are exempt from income tax, and shall not be required to file returns. Thus coöperative dairy companies, which are engaged in collecting milk and disposing of it or the products thereof and distributing the proceeds, less necessary operating expenses, among the producers upon the basis of the quantity of milk or of butter fat in the milk furnished by such producers, are exempt from the tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, the association does not meet the requirements of the statute and is not exempt. The accumulation and

maintenance of a reasonable reserve for depreciation or possible losses or a reserve required by the state statute or a reasonable sinking fund or surplus to provide for the erection of buildings and facilities required in business, or for the purchase and installation of machinery and equipment, or to retire indebtedness incurred for such purposes will not destroy the exemption. A corporation organized to act as a sales agent for farmers, or to market coöperatively the products of the farm, and having a capital stock on which it pays a dividend not exceeding the legal rate of interest in the state in which it is incorporated and in which substantially all of the outstanding capital stock is owned by actual producers, will not for such reasons be denied exemption, but any ownership of stock by others than actual producers who market their products through the association must be satisfactorily explained in the application for exemption. In every such case the association will be required to show that the ownership of its capital stock has been restricted as far as possible to actual producers, and that the association has not voluntarily sold or issued any stock to nonproducers. Thus, if by statutory requirement all officers of an association must be stockholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a stockholder for any reason ceases to be a producer and the association is unable, because of a constitutional inhibition or other reason beyond the control of the association, to purchase or retire the stock of such nonproducer, the fact that, under such circumstances, a small amount of the outstanding capital stock is owned by stockholders who are no longer producers will not destroy the exemption.

(b) Coöperative associations organized and operated as purchasing agents for farmers, fruit growers, live-stock growers, dairymen, etc., for the purpose of buying supplies and equipment for their use and turning over such supplies and equipment to them at actual cost, plus necessary operating expenses, are also exempt. The provisions of paragraph (a) relating to a reserve, sinking fund or surplus, and to capital stock, shall apply to associations coming under this paragraph.

In order to be exempt under either (a) or (b) an association must establish that it has no net income for its own account, other than that reflected in a reserve, sinking fund, or surplus specifically authorized in paragraph (a). An association acting both as a sales and a purchasing agent is exempt if as to each of its functions it meets the requirements of the statute.

(T. D. 3512—September 6, 1923)

Payment of income and profits taxes.

Instructions as to cancelation and transmittal of treasury notes and treasury certificates of indebtedness accepted for income and profits taxes.

1. Referring to instructions heretofore issued to collectors of internal revenue and others concerned with respect to the acceptance of treasury notes and treasury certificates of indebtedness in payment of income and profits taxes, attention is directed to the requirements therein set forth governing the cancelation and transmittal of such notes and certificates. These requirements are as follows:

2. Deposits of treasury notes and treasury certificates of indebtedness received in payment of income and profits taxes must be made by collectors, unless otherwise specifically instructed by the secretary of the treasury, with the federal reserve bank of the district in which the collector's head office is located, or in case such head office is located in the same city with a branch federal reserve bank, with such branch federal reserve bank. Specific instructions may be given to collectors by the secretary of the treasury in special cases for deposit with federal reserve banks of other districts or branch federal reserve banks. The term "federal reserve bank," where it appears herein, unless otherwise indicated by the context, includes branch federal reserve banks.

3. Notes and certificates acceptable in payment of income and profits taxes should in all cases be indelibly stamped on the face thereof as follows by the collector, and when so stamped should be delivered to the federal reserve bank in person, if the collector's head office is located in the same city, and in all other cases forwarded by registered mail uninsured:

....., 192...

This note/certificate has been accepted in payment of income and profits taxes and will not be redeemed by the United States except for credit of the undersigned.

.....

Collector of internal revenue
for the.....district of.....

4. Each unmatured coupon attached to such note or certificate must be indelibly stamped across the face by the collector with the word "paid," followed by his name and title.

5. Collectors should make in tabular form a schedule, in duplicate, of the notes or certificates of indebtedness to be forwarded to the federal reserve bank, showing by series the face amount transmitted, the serial number of each note or certificate, the denomination, and the name and address of the taxpayer presenting the notes or certificates. Notes or certificates accepted in advance of the tax date must be scheduled separately, and treasury notes should in all cases be scheduled separately from treasury certificates of indebtedness. At the bottom of each schedule there should be written or stamped, "income and profits taxes $....," which amount must agree with the total shown on the schedule. One copy of this schedule must accompany notes or certificates of indebtedness sent to the federal reserve bank, and the other copy retained by the collector.

6. The foregoing instructions will continue in effect with respect to treasury notes or treasury certificates of indebtedness delivered to the federal reserve bank in person, rather than by registered mail, where the collector's head office and the federal reserve bank are located in the same city.

7. Where the collector's head office and the federal reserve bank are not located in the same city, and it is necessary to transmit the notes or certificates to the federal reserve bank by registered mail uninsured, the following requirements, with respect to the preparation of shipments, must be observed: The notes or certificates, and each unmatured coupon attached thereto, must in all cases be stamped on the face thereof as indicated in paragraphs 3 and 4 hereof. The schedule of securities transmitted should be prepared as prescribed in paragraph 5 hereof, except that it should be prepared in *triplicate*. The original copy of such schedule should be forwarded to the Federal reserve bank by *separate* registered mail, and should bear a certificate signed by two employes of the office of the collector, stating (a) that they inspected and checked the shipment before sealing; (b) that each note or certificate listed was properly canceled by stamping on the face thereof the prescribed legend; (c) that each unmatured coupon attached thereto was stamped "paid" on its face; (d) that the shipment was sealed in their presence before it left their immediate control; and (e) that each and every security listed was in the package when mailed. The duplicate copy of the schedule should be inclosed with the securities, and the triplicate retained by the collector. It is important that the collector's retained copy be carefully preserved, and in this connection it is recommended that the certificate of the two employes be entered also on the retained copy, in order that no complication may arise in the event that the original copy should be lost or destroyed.

8. The foregoing instructions shall apply also to shipments of any obligations of the United States which collectors of internal revenue may hereafter be authorized to accept in payment of income and profits taxes.

9. This treasury decision amends articles 1732 of regulations 62 and T. D. 3421 and T. D. 3510.

(T. D. 3513—September 7, 1923)
Estate or inheritance taxes.

Receipt of Liberty bonds, treasury bonds, and treasury notes in payment estate and inheritance taxes.

The appended department circular, issued under date of July 31, 1923, with reference to receipt of treasury bonds of the United States in payment of federal estate and inheritance taxes, is published for the information of internal-revenue officers and others concerned. This circular supplements department circular No. 225, dated January 31, 1921 (T. D. 3144), as supplemented by department circular dated June 30, 1922 (T. D. 3383).

1. The provisions of the department circular No. 225, dated January 31, 1921, prescribing regulations covering the receipt of liberty bonds and victory notes for federal estate or inheritance taxes, are hereby extended and made applicable to treasury notes of the United States now or hereafter issued under authority of section 18 of the second liberty bond act, as amended and supplemented, bearing interest at a higher rate than 4 per cent. per annum, and any such treasury notes shall accordingly be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States, under or by virtue of any present or future law, upon the same terms and conditions as provided in said department circular No. 225, dated January 31, 1921, with respect to the acceptance of liberty bonds and victory notes bearing interest at a higher rate than 4 per cent. per annum.

2. The issues of treasury notes at this date outstanding, bearing interest at a higher rate than 4 per cent. per annum, are:

Description.	Date of issue.	Short title.
(a) 5¾ per cent. notes, payable June 15, 1924	June 15, 1921	Series A-1924
(b) 5½ per cent. notes, payable Sept. 15, 1924	Sept. 15, 1921	Series B-1924
(c) 4¾ per cent. notes, payable Mar. 15, 1925	Feb. 1, 1922	Series A-1925
(d) 4¾ per cent. notes, payable Mar. 15, 1926	Mar. 15, 1922	Series A-1926
(e) 4⅜ per cent. notes, payable Dec. 15, 1925	June 15, 1922	Series B-1925

3. For the calculation of accrued interest on the current coupons of treasury notes tendered in payment of estate or inheritance taxes under this circular, the method outlined in exhibit B to department circular No. 225, dated January 31, 1921, should be followed. Interest tables at the various rates borne by treasury notes may be obtained from the treasury department, division of loans and currency, Washington. The interest tables appropriate for use in connection with the issues of treasury notes at present outstanding are as follows:

Form General 1017, for series A-1924 (interest dates June 15 and December 15).

Form General 1016, for series B-1924 (interest dates March 15 and September 15).

Form L. & C. 369, for series A-1925 prior to September 15, 1922 (interest during this period is on annual 365-day basis).

Form L. & C. 435, for series A-1925 subsequent to September 15, 1922 (interest dates March 15 and September 15).

Form L. & C. 435, for series A-1926 (interest dates March 15 and September 15).

Interest tables or decimals for computing interest as may be required for other or future issues may be obtained from the treasury department, division of loans and currency, Washington, upon request.

(T. D. 3514—September 7, 1923)

Estate tax—Revenue act of 1916 as amended—Decision of court.

DEDUCTIONS—MARYLAND COLLATERAL INHERITANCE TAX.

The Maryland collateral inheritance tax is not an inheritance tax but an estate tax and in computing the federal estate tax is deductible from the gross estate under the provisions of title II of the revenue act of 1916 (as amended by the act of October 3, 1917).—Judgment of the district court (276 Fed. 845) affirmed.

The following decision of the United States circuit court of appeals for the fourth circuit in the case of *Joshua W. Miles, former collector of internal revenue for the United States in and for the district of Maryland and Delaware, v. John J. Curley, John M. Dennis, and William A. Dixon, executors of the last will and testament of Helen M. H. Grafflin, deceased,* affirming the decision of the United States district court for the district of Maryland, is published for the information of internal-revenue officers and others concerned.

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

Joshua W. Miles, former collector of internal revenue for the United States in and for the district of Maryland and Delaware, plaintiff in error, v. John J. Curley, John M. Dennis, and William A. Dixon, executors of the last will and testament of Helen M. H. Grafflin, late of Baltimore County, deceased, defendants in error.

WRIT of error to the district court of the United States for the district of Maryland.

(July 3, 1923.)

MCCLINTIC, district judge: The defendants in error (hereinafter called the plaintiffs) brought an action at law in the district court of Maryland to recover a certain sum of money paid to the collector of internal revenue for the district of Maryland and Delaware, being the amount of certain federal estate taxes assessed by the collector on the estate of Helen M. H. Grafflin, who died a resident of Maryland, which sum was claimed by the plaintiffs to be in excess of the amount lawfully chargeable thereon. Such sum of money had been paid under protest, and all proper steps had been taken to bring such action for the recovery thereof.

The taxes were assessed and collected by such collector (hereafter called the defendant) under the provisions of the act of congress approved September 8, 1916, as amended by the act approved March 3, 1917.

The executors claimed a deduction from the total taxable estate of $48,759.44 paid to the state of Maryland as an estate tax. The collector claimed that the deduction was not proper because the tax under the laws of Maryland was a legacy tax.

The defendant interposed a demurrer to the declaration which was overruled.

By stipulation it was agreed that there was no dispute as to the facts alleged in the declaration, and the court being of opinion that the law was with the plaintiffs, a final judgment was entered therein on the 26th day of April, 1922, for the plaintiffs and against the defendant for the sum of $3,710.25 and $26.05 costs.

There is but one question in this case, and that is, does the Maryland collateral inheritance tax attach to an estate before distribution? If so, the plaintiffs are entitled to recover the amount above named.—*Lederer v. Northern Trust Co.* (262 Fed. 253 U. S. 487). (T. D. 3027.)

If, on the other hand, the Maryland tax is a legacy tax and not an estate tax, the sum in controversy was properly collected.—*New York Trust Co. v. Eisner* (256 U. S. 345). (T. D. 3267.)

The decision by the highest court of Maryland directly deciding this question and construing the statute imposing such collateral inheritance tax would be binding upon this court. Is there any such decision?

In discussing this question the learned district judge, in his opinion overruling the demurrer to the declaration herein, says:

> In the case at bar each side has argued that the court of appeals of this state has interpreted the act in the sense for which it contends, and each quotes language which, if standing alone, might sustain its position. That each is able to do so is perhaps the best proof that the attention of that high court never had been drawn to the precise point now at issue, in such sense, at least, as to call for its definite determination.

We have examined the cases decided by the court of appeals of Maryland and referred to in the briefs of counsel and have reached the conclusion that no decision upon this point has been really made.

The Pennsylvania statute upon the subject of collateral inheritance tax is believed to be the first that was passed by any state in America. This statute was enacted in 1826.

In 1884 the legislature of the state of Maryland in substance and effect adopted the Pennsylvania statute.

In the case of *Jackson v. Myers* (257 Pa. 104) the supreme court of Pennsylvania decided that the collateral inheritance tax of Pennsylvania is not levied upon the inheritance or legacy but upon the estate of the decedent, holding that what passes to the legatee is simply the portion of the estate remaining after the state has been satisfied by receiving he tax.

An examination of other cases in that state shows that this case only follows the previous holdings on this subject.

The question presented herein for decision was directly presented to the circuit court of appeals of the third circuit in the case of *Lederer v. Northern Trust Co.*, supra, and that case held that under the Pennsylvania statute and the decisions of the court of last resort in the state of Pennsylvania such tax was an estate tax and not a legacy tax, and that the plaintiff therein should recover from the collector the amount so paid under protest.

Upon the authority of that case and under all the circumstances and conditions surrounding this case we hold that the proper construction of the collateral inheritance statute of Maryland makes such tax an estate tax and not a legacy tax, and therefore the judgment below is affirmed.

B. F. McMorris and John C. McDavid announce the formation of a partnership under the firm name of McMorris-McDavid & Co., with offices at 1533 Boatmen's Bank building, St. Louis, Missouri.

Frank L. Wilcox and N. A. Flood announce the formation of a partnership under the firm name of Wilcox & Flood, with offices at 709 Liberty National Bank building, Waco, Texas.

Roy T. Bell, Charles S. Alverson and Ralph F. Mateer announce the formation of a partnership under the firm name of Roy T. Bell & Co., with offices in the Wick building, Youngstown, Ohio.