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Editorial

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The JOURNAL of ACCOUNTANCY

Official Organ of the AMERICAN INSTITUTE OF ACCOUNTANTS

A. P. RICHARDSON, *Editor*

EDITORIAL

The Source of Profits

A provision of the new tax law which has a general accounting interest apart from the tax feature, is the rule that profits from the sale of personal property produced within and sold without the United States, or produced without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States, the commissioner being authorized to prescribe processes, formulas and general apportionment for determining the portion of such net income attributable to sources within the United States.

The previous act did not deal specifically with this question and the attorney general when the question was referred to him, ruled that in such cases all the income was derived from sources within the country in which the goods were sold. In the course of his opinion he said: "No income is derived from the mere manufacture of goods; before there can be income there must be sale; and there is no income from sources within the United States from goods manufactured here unless there is in the language of section 223 both manufacture and disposition of goods within the United States."

Many qualified persons felt that the attorney general had been betrayed into an incorrect application of a sound accounting rule and that the argument just quoted was a clear case of non sequitur. The completion of the sale determines the time of the making of the profit but it does not in the least follow that it determines the source. The real source of profit in a manufacturing business is the employment of capital and labor in the conversion of goods; selling is the realization of the profit rather than the source. The amount of profit is affected by the degree of efficiency of the methods of realization, just as it is affected by the degree of

efficiency of the capital assets and the labor employed in production, and it is entirely equitable that there should be attributed to sale some part (but certainly not the whole) of the profit.

The new provision is therefore sound in principle. It should be understood, however, that it does not lend any sanction to the practice of taking interdepartmental profit when goods are transferred from the manufacturing to the selling department. This practice, thanks largely to its condemnation by accountants, is now comparatively seldom adopted and the new law should not be allowed to form an excuse for its revival. The essential fact on which the accountants' opposition has always been based still remains. There is no profit until the goods have been both manufactured and sold.

District C. P. A. Bill

A bill providing for the creation of a board of accountancy for the District of Columbia, which was introduced in the senate and in the house of representatives, has already been mentioned in the editorial pages of this magazine. The necessity for the creation of such a board is manifest to all who have the welfare of accountancy at heart and the American Institute of Accountants has labored consistently and effectively for the successful passage of the bill.

Our readers are familiar with the situation in the District and all of them, we trust, will be gratified to learn that the bill has been favorably reported by the committee to which it was referred.

Great efforts were made by persons opposed to the bill to prevent its passage, but we believe that, following this report from the committee, there will be no great difficulty in securing its enactment into law.

A hearing on the bill was conducted by the senate committee on District of Columbia. At that hearing arguments in favor of the bill were adduced by members of the American Institute of Accountants, and it is chiefly attributable to their efforts that the committee decided to make a favorable report.

It is urged that all who care for the future of the profession exercise every proper means to stimulate interest in the passage of the bill, so that it may find its way to the statute books as rapidly as possible. The bill follows the lines of the model C. P. A. law approved by the American Institute of Accountants.

It may be well to remind our readers that the action of the Institute in regard to legislation in the District of Columbia is further proof—if proof were needed—that the Institute has stood and continues to stand for all that makes for the stability of professional standards, and it may not be amiss to point out that, but for the activity of the Institute in establishing standards and encouraging proper legislation, the value of the C. P. A. designation would have been seriously depreciated within the last few years.

It has been said that the Institute is not directly concerned with the maintenance of the prestige of the certified public accountant, because the possession of a certificate is not a prerequisite to membership in the Institute. The record, however, is clear and it may be affirmed without fear of contradiction, that it is to the American Institute that the certified public accountant may attribute the continuing value of his certificate.

William R. Mackenzie

William R. Mackenzie, member of the council of the American Institute of Accountants, died at Portland, Oregon, on Monday, February 13, 1922.

Mr. Mackenzie was the pioneer of the accountancy profession in Oregon, and had been a member of the council of the Institute from the beginning and an active member of some of its most important committees. He was one of the outstanding characters in the profession and had done much to raise the standards in the entire northwest. As an illustration of his faithful service, it may be mentioned that he was in the habit of attending every meeting of the council, frequently crossing the continent for the sole purpose of being present at a meeting of a few hours' duration.

He was a man of rugged integrity, kind and considerate, sound in judgment and true to every obligation.

The Institute will learn with profound regret of the passing of this stalwart builder of accountancy and this lovable personal friend of so many of the members.

To Mr. Mackenzie's family, we tender in behalf of the profession our heartfelt sympathy. To the profession we offer our sympathy in the loss of one of its leaders.

The Right to Practise Accountancy

There has been a great deal of discussion among accountants as to the restrictive effect of certified public accountant legislation. Quite recently in these pages we drew attention to the desirability of a definite decision so that those who have the right to practise may do so without interference and those who have not the right may be prevented.

A decision rendered in the city magistrate's court for the third district of the borough of Manhattan, in the city of New York, has a distinct interest, and we present it to our readers for their information. An opinion of the attorney-general dated February 1, 1922, in accord with the magistrate's decision is also appended.

There is a wide difference of opinion as to the professional value of this decision. Many accountants feel that to restrict the practice so rigidly will not make for the benefit of the people or of the profession itself. The matter should be settled finally and therefore it is to be hoped that there will be an appeal from the decision, and that the question will be carried to the highest authority.

Of course, a decision in New York is a decision in only one state. Other jurisdictions might hold different views. Therefore, it is a mistake to attach too much importance to the opinion expressed by the magistrate in the present case.

Following is a transcript of the decision:

GEORGE W. SIMPSON, city magistrate: The defendant is charged with a violation of section 80 of the general business law, in that, without having first received a certificate from the regents of the university of the state of New York, he used and uses the title "Certified Public Accountant" or "C. P. A.," or other words to indicate that he is such certified public accountant of the state of New York.

The statute reads as follows:

"Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, residing or having a place for the regular transaction of business in the state, being over the age of twenty-one years and of good moral character, and who shall have received from the regents of the university a certificate of his qualifications to practise as a public expert accountant as hereinafter provided, shall be styled and known as a certified public accountant; and no other person shall assume such title, or use the abbreviation C. P. A. or any other words, letters or figures, to indicate that the person using the same is such certified public accountant. Any citizen of the United States who has practised three years as a certified public accountant in another state, under a license or a certificate of his qualifications to so practise, issued by the proper authorities of such state, may, upon payment of the regular fee, in the discretion of the regents of the university, receive

a certificate to practise as a certified public accountant without an examination. But he must possess the qualifications required by the rules of the regents of the university and must furnish satisfactory evidence of character and qualifications."

The defendant authorized the insertion of an advertisement, on page 8 in Donnelly's *Red Book*, classified telephone directory, New York City, July 21 issue, as follows:

(1st line) . "J. Alsen, C. P. A. E. A. Brown, C. P. A. (N. H.)
(2nd line) "Equitable Audit Co.
(3rd line) "Certified Public Accountant
(4th line) "Accountancy in all its branches
(5th line) "Under supervision of
(6th line) "Certified Public Accountant
(7th line) "347 Fifth Ave. at 34th St., Murray Hill 3758-9"

Mr. J. Alsen, whose name is mentioned in said advertisement, is a certified public accountant of the state of New York, duly licensed to practise pursuant to the requirements of section 80 of the general business law. Defendant did obtain from the banking commissioners of the state of New Hampshire a certificate authorizing him to practise as a certified public accountant in that state. Defendant at no time procured from the regents of the university of the state of New York the requisite certification of qualifications to practise as certified public accountant, and permitting him to annex to his name the letters "C. P. A."

The legislative intent is perfectly plain. The legislature elected to permit certified public accountants of other states to practise as certified public accountants in this state only in the discretion of the regents of the university of the state of New York and upon complying with their rules including the furnishing of satisfactory evidence of good character and qualifications. There is nothing in the statute to prohibit one from following the vocation of an accountant. The statute is designed to prevent an accountant from holding himself out as a certified public accountant until he shall have obtained the certificate of the regents of the university of the state of New York as provided for in the statute. It is argued by the defendant that by adding (N. H.) to the words C. P. A. at the end of his name, he does not hold himself out as a certified public accountant of the state of New York but as one having received his degree in the state of New Hampshire. The only logical inference, however, that can be drawn from such representation is that the defendant is a person who has received his certified public accountant's degree in the state of New Hampshire and who has also met the requirements and has received a certificate from the regents of the university of the state of New York entitling him to practise as a certified public accountant in the state of New York as well as in the state of New Hampshire. There is no doubt in my mind that the words "C. P. A. (N. H.)" used by the defendant as set forth in his advertisement are intended to and do mislead and deceive. The advertisement appearing in Donnelly's *Red Book* boldly sets forth the name "Equitable Audit Co., Certified Public Accountants." Assuming the name Equitable Audit Co. to be either a trade name or the name of a corporation, it can not be legally used in connection with the title "Certified Public Accountants." Even if the advertisement contained only the names "J. Alsen, C. P. A." (who is conceded to be a New York certified public accountant), and E. A. Brown, C. P. A. (N. H.) a firm called "Alsen & Brown" could not use the style "Certified Public Accountants" in connection with their practice in the state of New York, unless both are certified public accountants under the laws of said state.

In the case of *People vs. Somme*, 120 App. Div., page 20, the defendant Dr. Somme, who was legally admitted to practise in the state of Indiana used the title "Doctor" (M. D.) in the state of New York, although not licensed in this state. Dr. Somme was not charged with illegally practising without a license. The charge was similar to the charge in the case

at bar—appending the letters M. D. to his name to show or tend to show and convey the impression that he is a legal practitioner of medicine duly licensed to practise in New York. The court at page 23 says:

“It was admitted that the defendant possessed the diploma of a medical school in Indianapolis called the College of Medicine and Midwifery. He did not produce or offer to produce any other authority for the assumption and use of the title “doctor” or “M. D.” The gravamen of the section of the statute under which he was prosecuted is that he should not assume or advertise that title in such a manner as to convey the impression that he was a legal practitioner of medicine.”

The doctor had advertised as the defendant Brown in the case at bar. He was found guilty. Defendant is equally guilty. Accountants are not prohibited from practising their profession and in this regard the New York statute is less stringent than that applicable to lawyers and physicians of other states, who are not permitted to practise here until they obtain a license. Reference may here be made to the enabling statute passed by the legislature of the state of New York recently which permitted former President Woodrow Wilson to practise as a lawyer in this state and to the compliance required of the famous Dr. Adolf Lorenz before he was permitted by the regents of the university of the state of New York to practise as a surgeon in this state. Section 80 of the general business law was designed for the protection of the public. Residents of this state acting as accountants upon complying with our statute may become certified public accountants. Certified public accountants admitted elsewhere may become certified public accountants of the state of New York upon complying with the reasonable provisions of our statute by furnishing satisfactory evidence of character and qualifications and come up to the standard set for those licensed under the laws of this state. The work is so important, so much depends upon the result, that the character and qualifications of a certified public accountant should be above reproach. This, as a consequence of compliance with local officially established standards, is done when the seal of approval of the state of New York is placed upon a certificate issued by the regents of the university of the state of New York in accordance with the statute. It is well settled that statutes shall receive a reasonable construction consistent and in harmony with their object and purposes. With this in mind I have come to the following conclusions:

(a) No person has a legal right to use the title “Certified Public Accountant” or the letters “C. P. A.” *in this state*, even though he has obtained a similar title or degree in another state, and even though he clearly shows that it is the title or degree of another state, without compliance with the provisions of the New York statute. It is the use of the title in this state which is prohibited by section 80 of the general business law.

(b) No trade name nor corporation name may be legally used in connection with the words “Certified Public Accountant” or the letters “C. P. A.”

(c) A firm consisting of two or more members in which all the members have not received certificates of qualifications from the regents of the university of the state of New York to practise as certified public accountants may not legally assume the title and call themselves certified public accountants.

It appearing to me that the crime mentioned in the summons issued and served on the defendant has been committed, and that there is sufficient cause to believe the defendant guilty thereof, I order that a complaint be drawn for a violation of section 80 of the general business law, against the defendant, and when said complaint is prepared and properly before me, in view of the stipulation as to the testimony taken herein, I shall

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order that the defendant be held to answer to same in bail to be then fixed by me for trial in the court of special sessions.

GEORGE W. SIMPSON, *City Magistrate.*

The following is the text of a letter written by the attorney-general of the state of New York to the assistant commissioner and director of professional education:

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ALBANY

February 1, 1922.

HON. AUGUSTUS S. DOWNING,
Assistant Commissioner and
Director of Professional Education,
Albany, N. Y.

Dear Doctor Downing:

For some time I have been giving attention to the question as to whether or not certified public accountants chartered by the National Association of Certified Public Accountants could use in their vocation in this state the letters "C. P. A. (N. A.)."

Our statute provides, as you know, in 80 that only our own inhabitants certified by the education department may use the letters "C. P. A." The statute then goes on to provide:

"and no other person shall assume such title, or use the abbreviation C. P. A. or any other words, letters or figures to indicate that the person using the same is such certified public accountant."

(*General Business Law 80*)

The president of the National Association of Certified Public Accountants has at my request very courteously advised me concerning the status of his association. I find that it is chartered under the laws applicable to the District of Columbia. I think, therefore, that some of our correspondents are mistaken in thinking that the National Association is a federal corporation to the extent of being chartered to do business among the several states. Of course, the federal government makes the laws for the District of Columbia, and therefore, the charter of the National Association is granted locally only for the District of Columbia. A member of the National Association, therefore, gains no rights to do business in the state of New York by virtue of the fact that his association is chartered under a United States statute, limited by its terms only to the locality where the United States has sole jurisdiction.

The question to be decided necessarily is, whether or not the letters "C. P. A. (N. A.);" are in conflict with the letters authorized by our statute, "C. P. A.;" Violations of the statute have not been prosecuted through this department since no special authority is given to the attorney general, but I understand that cases have been conducted by the various district attorneys in the county where they arise. At first glance, the letters "C. P. A. (N. A.);" might be taken as having the same purpose as "A. B. (Oxon).;" However, we are dealing with a situation involving a licensed vocation which differs widely from a purpose to express the derivation of an academic degree. I think the letters "C. P. A. (N. A.);" may easily be taken to indicate that the user is a certified public accountant of this state and also a member of the National Association of Certified Public Accountants.

I am, therefore, of the opinion that the use of the letters "C. P. A. (N. A.);" is forbidden under the laws of our state for persons not licensed in New York.

Yours very truly,

CHARLES D. NEWTON, *Attorney General.*

By EDWARD G. GRIFFIN, *Deputy.*