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American Institute of Certified Public Accountants (AICPA)

AICPA "The Measure of Excellence"

CAPITOL ACCOUNT

A Monthly Report on Federal Legislative Matters Affecting CPAs

March 1992

AICPA PROPOSALS INCLUDED IN TAX BILL APPROVED BY CONGRESS

The AICPA was successful in having three critical proposals for the profession included in the tax bill passed by Congress on March 20 and subsequently vetoed by President Bush. The provisions concern the election of fiscal years, the individual estimated tax rules, and the 45-day interest rule.

"We were happy with the conference report on H.R. 4210 and believe inclusion of these provisions is a giant stride forward, despite the ultimate fate of this particular bill," Donald H. Skadden, vice-president of the AICPA Tax Division, said.

The bipartisan support the provisions received is a good sign that they could be included in another tax bill later this year, according to Skadden. The provisions did not contribute to the political controversy surrounding the bill about how to best stimulate the economy and so did not figure in the President's decision to veto the bill, he noted.

Fiscal Years

The AICPA's proposal to allow partnerships, S corporations, and personal service corporations to elect any fiscal year was introduced as H.R. 3943 and S. 2109 by Rep. Beryl Anthony (D-AR) and Senator Max Baucus (D-MT), respectively (*Capitol Account*, December 1991). The Senate's revised version of this legislation, which was acceptable to the AICPA, was incorporated into the tax bill passed by Congress. Our success in having this fiscal year relief proposal included in H.R. 4210 is directly attributable to the efforts of many Key Person Contacts around the country.

Thank you for your diligence on this matter.

Estimated Tax Rules

The House version of H.R. 4210 modified the new estimated tax rules for individuals along the lines suggested by the AICPA. While the Senate version of the bill included an unacceptable alternative, Key Person Contacts and AICPA staff were successful in helping convince Senators that the House proposal should be included in the final version of the bill.

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FRAUD BILL OPPOSED BY AICPA

The AICPA opposes the Financial Fraud Detection and Disclosure Act, H.R. 4313, introduced by Rep. Ron Wyden (D-OR). Under the bill, auditors would be required to report any fraud not promptly corrected or reported by management to the Securities and Exchange Commission (SEC) using methods prescribed by the SEC.

H.R. 4313 would require the SEC to prescribe methods to be used by the auditor to detect and report illegal acts, to identify related-party transactions, and to evaluate an entity's ability to continue as a going concern.

A provision that attempts to provide a safe harbor limiting auditors' liability for reporting illegal acts also is included in the bill. The safe harbor would end for fiscal years beginning on or after January 1, 1996.

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CAPITOL ACCOUNT TO BE PUBLISHED MONTHLY

The publication schedule for the *Capitol Account* has been changed from semi-monthly to monthly in an effort to provide Key Person Contacts and Key Person Coordinators with more regular and timely information about events in Washington.

The *Digest of Washington Issues*, which all Key Person Contacts and Coordinators receive and which provides in-depth information about the major congressional issues of interest to CPAs, will now be published quarterly.

We welcome any comments you may have about our publications. Our objective is to assist you, our readers, in being effective Key Person Contacts for the profession. ★

★ INSIDE FOCUS ★

With each passing day it becomes more evident that unwarranted litigation is now the number one "environmental" problem for the accounting profession. And, contrary to what many may think, it is *not* a problem restricted to the largest CPA firms. Even if you or your firm have not yet been sued on a professional services matter, do not feel complacent. It is more than likely just a matter of time until you, too, will experience the liability threat.

The fact is that as professionals we are all susceptible to the destructive trend in litigation abuse. Merely using your professional title will significantly increase your chances of being party to a lawsuit. The initials "CPA" have become a favorite target for trial attorneys who view the profession as a "deep pocket" to compensate injured parties in the wake of business failures.

While the litigation problems of the largest CPA firms are well publicized, there are also some noticeable signs that legal liability is affecting firms, regardless of the size of the practice. Recently, the *Wall Street Journal* (March 3, 1992) reported that, "A flood of legal-liability awards against accountants is frightening smaller CPA firms into turning down audits and cutting back on client services." The article noted that, afraid of being sued, some accounting firms are refraining from auditing any companies. This in turn will lead to higher audit fees, as fewer accounting firms are willing to risk the liability exposure. In the end, the situation only contributes to our country's economic problems and makes life even more difficult for small and emerging businesses.

The concept of smaller firms restricting services in order to limit liability exposure is also supported by a recent AICPA Professional Liability Survey. The survey was sent to a random sample of 5,000 local (including sole practitioners) and regional firms. 20% of the responding firms indicated that they were planning to discontinue performing certain services over the next five years as a means of limiting legal liability exposure. 54% of the responding firms believe their firm's exposure to legal liability will increase over the next five years. 41% of the firms do not carry professional liability insurance, most because it has become too expensive.

74% of the firms responding to the Survey thought that Congress or state legislatures should act to impose reasonable limitations on accountants' legal liability. The Institute is working to convey that message for our members. We and state CPA societies are taking steps to convince legislators, both state and federal, that our current legal system is one badly in need of change. We are making a concerted effort to promote various legislative reforms including proportionate liability, the "loser pays" rule, civil RICO reform, privity of contract, and reasonable statutes of limitations, to name a few.

The threat of litigation has become a dominant part of the practice atmosphere for the profession. No CPA firm, big or small, is "safe" in the current legal liability environment. Bringing about the needed legislative changes is a formidable job. That's why all of us need to work, together, to seek meaningful liability reform at both the state and federal level. We must assure that public policymakers understand the negative impact that liability problems are having on practitioners and the long run detrimental effect they have on the profession.

Without a doubt, the liability problem for CPAs and for the country's business community is fast approaching a stage of "critical mass." Your help is urgently needed if we are to preserve the viability of our profession. Make sure *your* Members of Congress understand the destructive effect the liability problem has on you, the accounting profession, and the business community at large. Urge your lawmakers to support tort reform measures that will help assure equity and fairness in the legal system and provide a healthy environment for American business and the CPA profession.

Don't assume someone else will protect your franchise. Legal liability problems affect us all and we must work together to overcome them. The alternative is irreparable damage to our profession. ★

–B.Z. Lee
Deputy Chairman–Federal Affairs

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TAX BILL *(from page 1)*

45-Day Interest Rule

The AICPA supported provisions in the House and Senate versions of the tax bill which would apply the 45-day interest-free period to refunds of any type of tax. An extremely harsh rule included in the House version would have denied interest for any period prior to the filing of the claim for refund. Fortunately, this was not retained in the final bill.

Other Provisions

The final version of H.R. 4210 included other provisions also supported by the AICPA, such as tax simplification in areas including the corporate alternative minimum tax and amortization of intangibles, pension simplification initiatives, and a new taxpayer bill of rights.

AICPA proposals could be included in narrow tax bill later this year.

What's Ahead?

Conventional wisdom in Washington now holds that the only tax bill likely to be approved this year is one extending certain popular expiring tax provisions, such as the 25% deduction for health insurance for self-employed individuals, the education assistance exclusion, and the research and development tax credit. We think there is a good chance our proposals can be attached to such a bill because they are revenue neutral and not politically volatile.

We will be carefully following the situation and may call on you again to ask for your assistance.

We thank you for all your hard work to date. ★

SENATE RTC FUNDING BILL EXTENDS TIME TO FILE SUITS AGAINST ACCOUNTANTS IN S&L CASES

The Senate bill to fund the Resolution Trust Corporation (RTC) includes a provision that would extend the statute of limitations from three to five years for filing civil suits against accountants and other professionals in connection with the failure of depository institutions. The provision was introduced as a separate bill, S. 2334, by Senator Tim Wirth (D-CO) on March 10, 1992.

Supporters of the provision say the extension is necessary in order to recover monies from parties connected with failed savings and loans. The current three-year statute has proven too short, they claim, because of the complexity of the cases and because of the volume of cases to be investigated and processed.

The provision also stipulates that, when the RTC ceases to exist (now scheduled for December 31, 1996) and its responsibilities are taken over by the Federal Deposit Insurance Corporation, the statute of limitations will revert to the longer of three years or the applicable state law.

The legislation is of concern to the accounting profession because it expands the liability of CPAs by extending the time for federal regulators to file suits against accountants who provided services to failed savings and loans.

Because the House bill to fund the RTC does not contain a provision extending the statute of limitations, it's possible the final RTC funding bill cleared by Congress will not include the provision. Given the politics of this issue, the AICPA has been investigating whether or not to attempt to block inclusion of the provision by House and Senate conferees to the RTC funding bill. ★

INVESTMENT ADVISER BILL INTRODUCED IN SENATE

Members of Congress continue to pursue a solution to the problems unscrupulous investment advisers present to consumers.

A new bill regarding investment advisers has been introduced by Senator Christopher Dodd (D-CT), the chairman of the Senate Banking Securities Subcommittee, following a hearing on proposals to regulate investment advisers by the subcommittee on February 20, 1992. The Securities and Exchange Commission (SEC) helped develop the bill, S. 2266.

The measure would authorize the SEC to increase its registration fees for investment advisers to help pay for more SEC examiners. The bill also amends the Investment Advisers Act of 1940 to require that the investment adviser obtain information from the client about the client's financial situation, investment experience, and investment objectives and to then make recommendations suitable for the client. S. 2266 also authorizes the SEC to require registered investment advisers who have access to a client's funds or securities to be bonded against larceny and embezzlement.

In the House, we expect an investment adviser bill to be introduced by Rep. Edward Markey (D-MA) in the next few weeks. Rep. Markey is the chairman of the House Energy and Commerce Subcommittee on Telecommunications and Finance; his subcommittee probably will consider the bill soon after it is introduced.

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ADVISER BILL *(from page 3)*

The Markey bill is likely to take a different approach than legislation introduced last year by Rep. Rick Boucher (D-VA). The AICPA opposed the Boucher bill because it would, among other things, expand the definition of "investment adviser" under the Investment Advisers Act of 1940 to include all those, including accountants, using the term "financial planner" or similar terms, narrow the current exclusion available to accountants under the Advisers Act, and create a private right of action under the Advisers Act permitting clients to sue the adviser and thereby expanding accountants' liability.

The AICPA is continuing its vigorous efforts to convince members of Congress that any regulatory changes should be directed toward the type of activity in which individuals engage, rather than what the services are called or how they are advertised. We will keep you updated about this issue. ★

FRAUD BILL *(from page 1)*

The AICPA has two primary objections to H.R. 4313. First, the Institute believes that the setting of auditing standards should remain in the private sector and the bill grants the SEC the authority to prescribe methods for conducting audits relative to illegal acts, related-party transactions, and the evaluation of the business as a going concern. Second, the bill's provision to limit auditors' liability is inadequate.

The AICPA believes that the broader issue of unwarranted legal liability facing the profession (see "Inside Focus," page 2) should be addressed in connection with H.R. 4313.

H.R. 4313 was introduced on February 25, 1992, and is co-sponsored by Reps. John Dingell (D-MI) and Edward Markey (D-MA), the chairmen of the House Energy and Commerce Committee and the Energy and Commerce Subcommittee on Telecommunications and Finance, respectively. These two panels have jurisdiction over the bill and the co-sponsorship of the bill by Chairmen Dingell and Markey improves the bill's chances of being considered. To date, however, no hearings have been scheduled.

H.R. 4313 is a revised version of H.R. 3159. As reported in the February issue of *Capitol Account*, H.R. 4313 does not include a provision that was in H.R. 3159 that directed the SEC to conduct a study about whether internal control reports by management and auditors should be required.

The deletion of this provision from the bill has resulted in the Financial Executives Institute (FEI), which represents financial officers of large corporations, dropping their opposition to the bill. The FEI's change in position could improve the bill's chances of passing.

The Institute is developing alternative legislative language and will continue its efforts to have the bill amended. ★

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