

University of Mississippi

eGrove

Newsletters

American Institute of Certified Public
Accountants (AICPA) Historical Collection

7-1992

Capitol Account, Volume 4, Number 5, July/August 1992

American Institute of Certified Public Accountants (AICPA)

Follow this and additional works at: https://egrove.olemiss.edu/aicpa_news



Part of the [Accounting Commons](#)



CAPITOL ACCOUNT

A Monthly Report on Federal Legislative Matters Affecting CPAs

JULY/AUGUST 1992

LIABILITY REFORM LEGISLATION INTRODUCED IN CONGRESS

Includes Changes Long Sought by Profession

Critically important legislation for the entire accounting profession, actively promoted by the AICPA

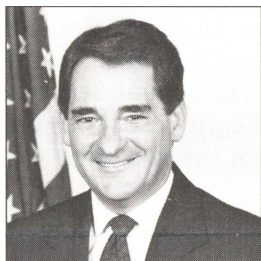
A recent AICPA survey indicates that claims against firms other than the six largest firms rose by two-

an increase in exposure to legal liability. The same group has experienced a 300 percent increase in liability insurance premiums since 1985. Smaller firms must now carry far more coverage, and high deductibles force them to pay even medium-sized claims out-of-pocket. The median amount for deductibles is now \$240,000—nearly six times the 1985 median of \$42,000. Forty percent of all the firms surveyed are "going bare," largely because liability insurance is simply too expensive.

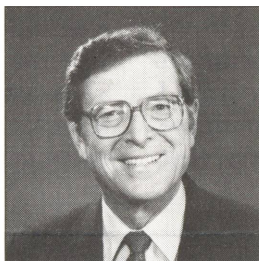
H.R. 5828 and S. 3181 are similar, but not identical. Following are two important provisions the bills have in common, in addition to

continued on page 3

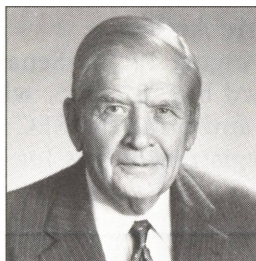
BILL SPONSORS



Rep. Billy Tauzin



Senator Pete Domenici



Senator Terry Sanford

and others, was introduced in Congress in August. The bipartisan litigation reform legislation, H.R. 5828 and S. 3181, pertains only to suits brought under Securities and Exchange Commission Rule 10b-5. Nevertheless, the importance of the legislation to the future of the overall profession is enormous. Enactment would establish a precedent for proportionate liability and be a welcome and needed step towards restoring balance and fairness in the litigation arena.

A rule of proportionate liability would require judgments against co-defendants to be based on their proportionate contribution to claimed losses rather than on their ability to pay most or all of the entire judgment.

The litigation explosion is a problem facing the large firms, the small firms, and the mid-size firms.

thirds between 1987 and 1991. Ninety-six percent of those firms having more than 50 CPAs reported

CPAs' MAJOR TAX CONCERNS INCLUDED IN HOUSE AND SENATE BILLS

Key provisions for CPAs—to help correct both the workload compression problem and the 1991, unworkable, estimated tax rules—are now included in the Senate's version of the House-passed urban aid bill. The Senate recessed on August 12, 1992; however, it did not complete work on H.R. 11, which leaves the fate of the bill uncertain.

The House-passed version of H.R. 11 also includes the fiscal year and personal estimated tax provisions.

The AICPA's fiscal year provi-

sion is almost certain to be included in any urban aid bill passed by Congress this year. The outlook for the provision regarding the personal estimated tax is less clear. The House version of H.R. 11 would replace the current law with a 115 percent of prior year's tax "safe harbor" for all taxpayers, while the Senate version raises the safe harbor to 120 percent to help pay for proposals added by the Senate Finance Committee, including Chairman Lloyd Bentsen's (D-TX) provision to

continued on page 3

AICPA KEY PERSONS SUCCEED IN REMOVING OBJECTIONABLE PROVISIONS FROM HOUSE FINANCIAL PLANNING BILL

AICPA Key Persons were the critical players in having provisions opposed by the AICPA removed from legislation to provide broader regulation of financial planners.

Answering a request for help from the AICPA, federal Key Persons lobbied their members of Congress serving on the House Telecommunications and Finance Subcommittee about the need to drop from the bill a provision that would have granted investors a private right of action under which to sue advisers, and a provision that would have granted the Securities and Exchange Commission (SEC) the rulemaking authority to interpret provisions of the Investment Advisers Act of 1940. The effectiveness of their efforts was demonstrated when the Subcommittee took out the two objectionable provisions during a July 30, 1992 markup session. Deletion of the rulemaking authority preserves the present registration exclusion granted under the Investment Advisers Act of 1940 to accountants who provide investment advice to clients as an incidental part of their services.

The modified bill was introduced by Rep. Rick Boucher (D-VA) as H.R. 5726 and was approved by the full House Energy and Commerce Committee on August 4, 1992 with the AICPA's support.

Under the bill, the SEC's enforcement resources would be increased by requiring the Commission to charge higher registration fees, based on the amount of assets the adviser manages, so that more examiners could be hired. Existing self-regulatory organizations that govern broker/dealers, but not

CPAs, are required by H.R. 5726 to conduct periodic examinations to determine compliance with the measure. Few, if any, CPAs would be covered under the provision. The bill also encourages the SEC to cooperate with state securities agencies to achieve maximum effectiveness of regulation, inspection, and enforcement, as well as maximum uniformity in federal and state regulatory standards. No state investment adviser statutes or regulations would be pre-empted by H.R. 5726.

Senate Action

On August 12 the Senate passed a related bill, S. 2266, which would also authorize the SEC to increase its registration fees for investment

advisers to pay for more SEC examiners. The bill, introduced by Senator Christopher Dodd (D-CT) (*Capitol Account*, March 1992), does not contain the two provisions to which the AICPA objected in the House bill.

Outlook

Senate passage of S. 2266 increases the chances that such legislation will be approved by Congress this year. However, very little time remains after Congress returns in September for it to consider anything other than essential legislation, such as appropriations bills. And the House still must pass H.R. 5726 before House and Senate conferees can begin resolving differences between the two bills. ★

AICPA CONTINUES OPPOSITION TO WYDEN BILL

The AICPA continues to oppose the Financial Fraud Detection and Disclosure Act, H.R. 4313, introduced by Rep. Ron Wyden (D-OR), which was approved by the full House Energy and Commerce Committee on July 28, 1992.

Opposition to the bill, by the Institute, is based on sections transferring the setting of auditing standards from the private sector to the federal government and allowing the courts to interpret professional literature, which would broaden the profession's exposure to liability.

The House of Representatives is expected to pass H.R. 4313 before Congress adjourns for the year, although Senate consideration of the measure is unlikely this year. However, the measure will be considered again next year when the new Congress convenes.

LIABILITY *continued from page 1*

establishing a rule of proportionate liability:

■ **Fee Shifting**—Unsuccessful litigants would be required to pay the legal fees and expenses of the prevailing party under certain circumstances. Enactment of such a provision would discourage the filing of meritless suits.

■ **Elimination of Abusive Litigation Practices**—To discourage the phenomenon of “professional plaintiffs,” the payment of bonuses or bounties to representative plaintiffs in class action suits would be prohibited. Attorneys would be prohibited from representing a class when they are the beneficial owner of the securities that are the subject of the litigation. Stockbrokers, and other third parties, would be prohibited from receiving payments for referring plaintiffs. Funds disgorged as a result of an SEC action could not be used to pay the attorneys’ fees of injured investors seeking a share of the funds.

In introducing H.R. 5828, Rep. Billy Tauzin (D-LA) said his bill would reduce the “litigation tax” levied on American business “by a handful of speculators and attorneys abusing a well-intentioned anti-fraud rule” promulgated by the SEC. He said a “few simple principles” drive H.R. 5828. “Plaintiffs and their lawyers must be given incentives to concentrate their efforts on meritorious claims,” Rep. Tauzin said. “Defendants must be given incentives to fight unjustified claims and settle only meritorious ones. And the litigation system must be restructured to make possible early resolution of warranted claims.”

When Senator Pete Domenici (R-NM) introduced S. 3181 for himself and Senator Terry Sanford (D-NC), he said, “There is something wrong when cases settle regardless of the merits.... There is something wrong when accounting firms are with-

GERRY PADWE HEADS AICPA TAX DIVISION

Gerald W. Padwe has joined the AICPA Washington staff as vice president—taxation, replacing Donald H. Skadden, who retired July 1, 1992. Padwe was the Associate National Tax Director—Professional Practice, and a member of the Washington National Tax Group of Deloitte & Touche, before coming to the AICPA.

In addition to serving as the top staff officer of the AICPA’s 24,000-member Tax Division, he will lead the Institute’s efforts in the tax area, including its campaign to bring about tax simplification.

During his career with Deloitte & Touche, Padwe acted as a firm liaison with Congress and the federal agencies working on taxation and related areas, and served as a member of the IRS Commissioner’s Advisory Group in 1985–86. He has long been active with the AICPA, serving as a member of the Institute’s Federal Taxation Executive Committee, chairman of its Tax Policy Committee, chairman of its Tax Legislation Liaison Committee, and chairman of a policy committee task force on tax system restructuring, which published a study on Alternatives to the Present Tax System for Increasing Saving and Investment. ★

drawing from the auditing business and are shunning emerging, high tech companies as clients because high tech is a high risk target for 10b-5 securities litigation.... There is something wrong when accountants are paying more in legal fees than any other expense except salaries. What’s wrong is that we are suffering from hyperlexia, a serious disease caused by an excessive reliance on law and lawyers. It is pervasive throughout our society but has reached epidemic dimensions in the court-created private actions brought under section 10-b of the Securities and Exchange Act of 1934.”

The chief co-sponsors of H.R. 5828 are Reps. Norman Lent (R-NY), Ralph Hall (D-TX), and Don Ritter (R-PA).

Hearings are expected to be held in the House and Senate in early 1993. ★

CONCERNS *continued from page 1*

expand Individual Retirement Accounts. Many small firms and businesses say that the increase to 120 percent is unacceptable. The AICPA and the National Federation

of Independent Business are collaborating to get Congress to work out a solution to this problem.

H.R. 11 could become a victim of election year politics. Although there are many tax provisions incorporated in the bill, including tax simplification, the political engine driving the bill is urban aid in the form of economic enterprise zones. Democrats and Republicans continue to wrangle about what to do

Key Persons May Be Asked To Provide More Help On Tax Bill

about urban enterprise zones and how to pay for new urban aid. In addition, Congress is scheduled to adjourn on October 2. That leaves very little time for the Senate to finish work on the bill, especially in light of the more than 100 amendments pending, and still reach a compromise with the House.

When we have a clearer picture about what is likely to happen to H.R. 11, Key Persons may be asked to write or call their members of Congress about the bill. ★



SPOTLIGHT ON KEY PERSONS

Key Person: Gerald L. Tahajian, Gerald Lee Tahajian, Inc.

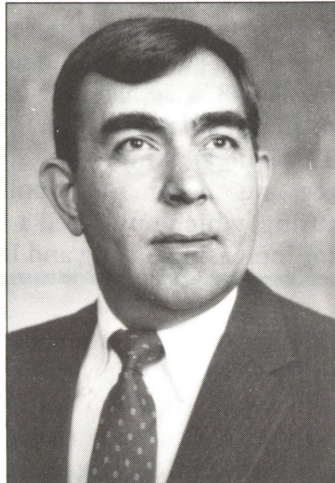
Contact For: Rep. Richard H. Lehman (D-CA)

Form of Relationship: Personal friend and co-chairman of re-election campaign

Number of Years: 6

Comments About Being a Key Person: "The Key Person Program has given me the wonderful opportunity to know that I have had a direct impact in shaping federal legislation. It makes me feel good to know our system really works and that our legislators want to know our perspective to help them make decisions.

"I have been fortunate to have had two sons serve as Congressional Pages in recent years, so I have visited Washington, D.C. often and personally observed our government in action. Generally, my observations have led me to the conclusion that we are fortunate to have the dedicated, hard working men and women serving us that we do. Helping them to help us is what the Key Person's role is all about."



THANK YOU, SENATOR DECONCINI

The Attorney Accountability Act, introduced by Senator Dennis DeConcini (D-NM), would provide for the payment of the prevailing party's attorney fees in federal civil suits. The measure, S. 2502, would exclude pending cases and class action suits, in which CPAs frequently are named. However, the Institute applauds the efforts of Senator DeConcini to discourage the filing of frivolous cases, and appreciates his concern about the need to restore equity to our present liability system.

AICPA

American Institute of Certified Public Accountants

1455 Pennsylvania Avenue, NW
Washington, DC 20004-1007

FIRST CLASS MAIL