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Taxation of Professional Service Corporations -- Regulation Discriminatory and Legislative and Therefore Invalid

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TAXATION OF PROFESSIONAL SERVICE CORPORATIONS—REGULATION DISCRIMINATORY AND LEGISLATIVE AND THEREFORE INVALID

Plaintiff physician sought a refund of federal income taxes on the ground that he was taxed as a partnership rather than as a corporation.[1] The United States District Court for the Southern District of Florida entered an order granting plaintiff-taxpayer a refund on the basis that he was entitled to corporate tax treatment.[2] On appeal by the government to the United States Court of Appeals for the Fifth Circuit, *held*, affirmed: Treasury Regulation § 301.7701-2(h) is invalid because it is arbitrarily discriminatory in its tax treatment of professional service corporations as opposed to nonprofessional service corporations, and is legislative in nature.[3] Said regulation was not promulgated contempora-

1. Plaintiff was an employee of an entity organized in accordance with the Florida Professional Service Corporation Act, FLA. STAT. ch. 621 (1961). (1965 amendments to chapter 621 are not applicable to this case.)

2. Kurzner v. United States, 286 F. Supp. 839 (S.D. Fla. 1968).

3. Treas. Reg. § 301.7701-1(c), T.D. 6797, 1965-1 CUM. BULL. 553:

> [T]he labels applied by local law to organizations, which may now or hereafter be authorized by local law, are in and of themselves of no importance in the classification of such organizations for the purposes of taxation under the Internal Revenue Code. Thus, a professional service organization, formed under the law of a State authorizing the formation by one or more persons of a so-called professional service corporation, would not be classified for purposes of taxation as a "corporation" merely because the organization was so labeled under local law. *See* Morrissey v. Commissioner, 296 U.S. 344 (1935). The classification in which a professional service organization belongs is determined under the tests and standards set forth in §§ 301.7701-2, 301.7701-3, and 301.7701-4.

Treas. Reg. § 301.7701-2, T.D. 6797, 1965-1 CUM. BULL. 553, as pertinent hereto provides:

> (h) *Classification of professional service organizations.* (1) (i) A professional service organization is treated as a corporation (or as an association and, therefore, taxable as a corporation) only if it has sufficient corporate characteristics to be classifiable as a corporation . . . rather than as a partnership or proprietorship. For purposes of determining the classification of an organization under these regulations, the term "professional service organization," as used in this paragraph, means an organization formed by one or more persons to engage in a business involving the performance of professional services for profit which under local law, may not be organized and operated in the form of an ordinary business corporation having the usual characteristics of such a corporation. Thus, even if a professional service organization is organized as an ordinary business corporation, this paragraph applies if such corporation is subject to local regulatory rules which deprive such corporation of the usual characteristics of an ordinary business corporation. This paragraph applies irrespective of whether an organization is labeled under local law as a professional service corporation, a professional service association, a trust, or otherwise.
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> (ii) In determining whether a professional service organization has the major characteristics ordinarily found in a business corporation and whether any other significant factors are to be taken into account in classifying the organization, the special professional requirements of the profession engaged in by the members of the organization must be taken into consideration. Although such an organization may have associates and is engaged in business for profit, the relationships of the members of such an organization to each other as well as their relationships to employees, to clients, patients, or customers and to the public are inherently different from the relationships characteristic of an ordinary business corporation. In determining the nature of these relationships, consideration must be given to the law under which the organization is formed, the character, articles of association, bylaws, or other documents relating to the formation of the organization, and all other facts and rules

governing or pertaining to such relationships in the usual course of the practice of the profession of the participants.

(2) A professional service organization does not have continuity of life . . . if the death, insanity, bankruptcy, retirement, resignation, expulsion, professional disqualification, or election to inconsistent public office of any member will (determined without regard to any agreement among the members) cause under local law the dissolution of the organization. . . . If local law, applicable regulations, or professional ethics do not permit a member of a professional service organization to share in its profits unless an employment relationship exists between him and the organization, and if in such case, he or his estate is required to dispose of his interest in the organization if the employment relationship terminates, the continuing existence of the organization depends upon the willingness of its remaining members, if any, either to agree, by prior arrangement or at the time of such termination, to acquire his interest or to employ his proposed successor. The continued existence of such a professional service organization is similar to that of a partnership formed under the Uniform Partnership Act, whose business continues pursuant to an agreement providing that the business will be continued by the remaining members after the withdrawal or death of a partner . . . and is essentially different from the continuity of life possessed by an ordinary business corporation. Consequently, such a professional service organization lacks continuity of life.

(3) . . . [A] professional service organization does not have centralization of management where the managers of a professional service organization under local law are not vested with the continuing exclusive authority to determine any one or more of the following matters: (i) The hiring and firing of professional members of the organization and its professional and lay employees, (ii) the compensation of the members and of such employees, (iii) the conditions of employment—such as working hours, vacation periods, and sick leave, (iv) the persons who will be accepted as clients or patients, (v) who will handle each individual case or matter, (vi) the professional policies and procedures to be followed in handling each individual case, (vii) the fees to be charged by the organization, (viii) the nature of the records to be kept, their use, and their disposition, and (ix) the times and amounts of distributions of the earnings of the organization to its members as such. Moreover, although a measure of central control may exist in a professional service organization, the managers of a professional service organization in which a member retains traditional professional responsibility cannot have the continuing exclusive authority to determine all of the matters described in the preceding sentence. Instead, such measure of central control is no more than that existing in an ordinary large professional partnership which has one or more so-called managing partners and in which a member retains the traditional professional autonomy with respect to professional decisions and the traditional responsibility of a professional person to the client or patient. Such measure of central control is essentially different from the centralization of management existing in an ordinary business corporation. Therefore, centralization of management does not exist in such a professional service organization.

(4) A professional service organization has the corporate characteristic of limited liability . . . only if the personal liability of its members, in their capacity as members of the organization, is no greater in any aspect than that of shareholder-employees of an ordinary business corporation. If under local law and the rules pertaining to professional practice, a mutual agency relationship, similar to that existing in an ordinary professional partnership, exists between the members of a professional service organization, such organization lacks the corporate characteristic of limited liability.

(5) (i) If the right of a member of a professional service organization to share in its profits is dependent upon the existence of an employment relationship between him and the organization, free transferability of interests . . . exists only if the member, without the consent of other members, may transfer both the right to share in the profits of the organization and the right to an employment relationship with the organization.

(ii) The corporate characteristic of free transferability of interests exists in a modified form . . . when a shareholder in an ordinary business corporation can transfer his interest in such corporation only after having offered such interest to the other shareholders at its fair market value. In such a case, the so-called right of first refusal applies only to an interest which has a right to share in the profits, the assets, and the management of the enterprise. However, if the interest of a member of a professional service organization constitutes a right to share in the profits of the organization which is contingent upon and inseparable from the member's continuing employment relationship with the organization, and the transfer of such interest is

neously with the applicable statute and was considered inconsistent with the statute's longstanding interpretation.[4] *Kurzner v. United States*, 413 F.2d 97 (5th Cir. 1969).

The term "association" has long been treated as synonymous with the term "corporation" for purposes of taxation, and thus the definition of these forms of business entities is necessarily the first step in the treatment of professional service corporations by the courts and the Internal Revenue Service. The leading case which defines "association" and "corporation" as business entities is *Morrissey v. Commissioner*,[5] where trustees of an express trust sought to upset a ruling of the Commissioner of Internal Revenue which treated the trust as an association for purposes of taxation. The Court stated that:

> [Association] implies the entering into a joint enterprise and as the applicable regulation imports,[6] an enterprise for the transaction of business.
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> . . . .
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> The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity. The resemblance points to features distinguishing associations from partnerships as well as from ordinary trusts. . . . [T]he classi-

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subject to a right of first refusal, such interest is subject to a power in the other members of the organization to determine not only the individuals whom the organization is to employ, but also who may share with them in the profits of the organization. The possession by other members of the power to determine, in connection with the transfer of such an interest, whom the organization is to employ is so substantial a hindrance upon the free transferability of interests in the organization that such power precludes the existence of a modified form of free transferability of interests. Therefore, if a member of a professional service organization who possesses such an interest may transfer his interest to a qualified person who is not a member of the organization only after having first offered his interest to the other members of the organization at its fair market value, the corporate characteristic of free transferability of interests does not exist.

4. INT. REV. CODE of 1954, § 7701, as pertinent hereto provides:

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

. . . .

(2) PARTNERSHIP AND PARTNER.—The term "partnership" includes a syndicate, group, pool, joint venture, or other *unincorporated* organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate *or a corporation*; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization. (Emphasis added.)

(3) CORPORATION.—The term "corporation" includes *associations*, joint stock companies, and insurance companies. (Emphasis added.)

. . . .

(b) INCLUDES AND INCLUDING.—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

5. 296 U.S. 344 (1935).

6. Treas. Reg. 65, § 2, art. 1504, T.D. 3748, IV-2 CUM. BULL. 7 (1925), in pertinent part provides:

[e]ven in the absence of any control by the beneficiaries, where the trustees are not restricted to the mere collection of funds and their payment to the beneficiaries, but are associated together with similar or greater powers than the directors in a corporation for purpose of carrying on some business enterprise, the trust is an association within the meaning of the statute.

> fication cannot be said to require organization under a statute, or with statutory privileges. The term embraces associations as they may exist at common law.[7] (Footnote 6 added.)

Five factors were determined by the Supreme Court as providing a basis for treating the trust therein as a corporation. Continuity of life, limited liability, opportunity for centralized management, ability to hold title to property, and transferability of interests were to become the criteria for passing the "resemblance test,"[8] as it was established by the *Morrissey* decision and used in *Pelton v. Commissioner*[9] and subsequent cases.[10] This test is often argued by the Government in its constant litigation of the issue of professional-corporation taxation.

In 1960, the Internal Revenue Service suffered resounding defeats in *United States v. Kintner*,[11] in the Ninth Circuit, and *Galt v. United States*,[12] in the Northern District of Texas. These cases held that professional associations formed by physicians were sufficiently corporate in form to constitute associations for purposes of federal taxation. The Internal Revenue Service attempted to counter these defeats through the passage of Treasury Regulations sections 301.7701-1 through 301.7701-11,[13] which have come to be known as the Kintner Regulations. These regulations constituted an attempt on the part of the Internal Revenue Service to restrict the definition of "corporation." Four criteria were established as a test of corporateness: (1) continuity of life; (2) centralization of management; (3) limited liability; and (4) free transferability of interests.[14] The regulations further state that a general or limited partnership "subject to a statute corresponding to the Uniform Partnership Act"[15] cannot possess the first three characteristics.

These regulations thus excluded any entities subject to a partnership act, which would insure exclusion of most professional groups. Then the Internal Revenue Service seemingly defeated its own purpose through the passage of a Treasury Regulation in 1960, which provided that "[l]ocal law governs in determining whether the legal relationships which have been established in the formation of an organization are such that

7. Morrissey v. Commissioner, 296 U.S. 344, 356-57 (1935). The Court held that trusts created as mediums for carrying on a business enterprise and sharing its gains were sufficiently analogous to corporate organizations to justify the conclusion that Congress intended that the income of the enterprise should be taxed in the same manner as that of a corporation. The trust method permits continuity, centralized management, and limited liability and facilitates the transfer of beneficial interests and the introduction of large numbers of participants. *Id.* at 359.

8. *Id.* at 359.

9. 82 F.2d 473 (7th Cir. 1936).

10. United States v. Kintner, 216 F.2d 418 (9th Cir. 1954); Galt v. United States, 175 F. Supp. 360 (N.D. Tex. 1959); Foreman v. United States, 232 F. Supp. 134 (S.D. Fla. 1964).

11. 216 F.2d 418 (9th Cir. 1954).

12. 175 F. Supp. 360 (N.D. Tex. 1959).

13. Treas. Reg. §§ 301.7701-1 to -11 (1960).

14. Treas. Reg. § 301.7701-2(h), T.D. 6797, 1965-1 CUM. BULL. 553.

15. Treas. Reg. §§ 301.7701-2(b)(3), (c)(4), (d)(1), T.D. 6503 (1960).

the standards are met."[16] This regulation was the *raison d' etre* behind the passage of professional service corporation statutes or attorney generals' opinions in many states.[17]

When the Internal Revenue Service realized what it had done, it sought to remedy its action by amending the Kintner Regulations to provide that professional groups cannot be corporations for purposes of federal taxation.[18] Enforcement of the amendment, however, has proved to be unsuccessful for the Internal Revenue Service. In the instant case, *Kurzner v. United States*,[19] the court declared that the regulations as amended are "arbitrary and discriminatory legislation by an administrative agency which is only authorized to interpret congressional acts."[20]

The court went on to say that:

> [a] professional service corporation is virtually identical in operation to a nonprofessional service corporation, the real difference—for tax purposes—being that professionals have traditionally been barred from operating in corporate form while nonprofessionals have not. Since December 31, 1921, personal service corporations have been taxed as corporations rather than partnerships. There is no reason, in either policy or fact for different tax treatment of various kinds of personal service corporations. The preclusion of professional service corporations from corporate status is wholly arbitrary and discriminatory and, therefore, cannot and will not be countenanced by this court.[21]

The plaintiff in *Kurzner* was an employee of Gregory Orthopedic Associates, P.A., an entity organized in accordance with Florida's Professional Service Corporation Act, which was passed in 1961. This professional association had been formed in 1961 by an orthopedic surgeon practicing in Dade County for the purpose of acquiring all of the assets and liabilities of his medical practice. On June 1, 1961, plaintiff entered into an employment contract with the association, and in December, 1962, he became a director and vice president. In response to an attempt by the Government to hold the plaintiff liable as a 50% partner for purposes of taxation, with an assessment and collection of taxes from the plaintiff as though he were a partner in a partnership, plaintiff brought suit against the Government in the district court.[22] The plaintiff

16. Treas. Reg. § 301.7701-1(c) (1960).

17. Forty-seven states now have professional association permissive laws; only Wyoming, Iowa, the District of Columbia, and New York do not permit professional corporations. Many states require only one incorporator, *e.g.*, CONN. PUB. ACT No. 729, § 2 (1969); N.C. LAWS ch. 751 (June 24, 1969); MASS. GEN. LAWS ANN. ch. 392, § 12 (1969). FLA. ATT'Y GEN. OP. 61-109 (July 7, 1961).

18. Treas. Reg. § 301.7701-2(h), T.D. 6797, 1965-1 CUM. BULL. 553.

19. 413 F.2d 97 (5th Cir. 1969).

20. *Id.* at 106.

21. *Id.* at 111.

22. 286 F. Supp. 839 (S.D. Fla. 1968).

alleged that he should have been taxed as a corporation rather than as a partnership. The court sustained his contention, as did the Court of Appeals for the Fifth Circuit.[23] Gregory Orthopedic Associates, P.A., was determined to be qualified as a corporation under the pre-1965 regulations, and section 301.7701-2(h) of the 1965 Treasury Regulations was declared invalid. Plaintiff was thus entitled to a refund for the Government's improper assessment of taxes.[24]

The court in *Kurzner* could see no reason, as stated in the opinion on appeal,

> in either policy or fact for different tax treatment of various kinds of personal service corporations. . . . Since 1936 the courts have permitted professional associations to achieve corporate status . . . . If Congress has intended to exclude professional groups from corporate status, it seems quite likely that it would have passed legislation to counteract . . .[25]

the judicial decisions in *Pelton*,[26] *Kintner*,[27] *Galt*,[28] and *Foreman*.[29]

Throughout the numerous litigations since the *Kintner* and *Galt* decisions,[30] the Government had contended that Treasury Regulations

23. Kurzner v. United States, 413 F.2d 97 (5th Cir. 1969).

24. *Id.* at 112.

25. 413 F.2d 97, 111 (5th Cir. 1969).

26. Pelton v. Commissioner, 82 F.2d 473 (7th Cir. 1936), wherein a group of physicians operated a clinic as a trust. The physician-trustees divided transferable shares representing beneficial interests, exempting themselves from personal liability for duties performed, and allowing modification of the trust on a vote of 51% of the shareholders. The court held the entity was taxable as an association (in effect, as a corporation).

27. United States v. Kintner, 216 F.2d 418 (9th Cir. 1954). A group of doctors adopted articles of association which appear to have been designed to reflect the incidents of corporateness enunciated in Pelton v. Commissioner, 82 F.2d 473 (7th Cir. 1936), and Morrissey v. Commissioner, 296 U.S. 344 (1935). After the *Kintner* decision, the Commissioner of Internal Revenue, "[a]s guardian and protector of the public exchequer" [Kurzner v. United States, 413 F.2d 97, 101 (5th Cir. 1969)], changed his attitude toward professional service corporations and attempted to narrow the definition of "corporation" and "association" for purposes of taxation.

28. Galt v. United States, 175 F. Supp. 360 (N.D. Tex. 1959), involved a situation similar to *Kintner* (*See* note 28 *supra.*), and the Internal Revenue Service was again the loser.

29. Foreman v. United States, 232 F. Supp. 134 (S.D. Fla. 1964), was the first decision in Florida dealing with the taxation of professional service corporations. The Internal Revenue Service was defeated.

30. United States v. Empey, 406 F.2d 157 (10th Cir. 1969), *aff'g* 272 F. Supp. 851 (D. Colo. 1968), held that a professional service corporation organized under a state corporation code was entitled to be taxed as a corporation and that the 1965 Treasury Regulations providing that such an organization should not be so classified for purposes of taxation as a corporation were unreasonable, inconsistent with the revenue statutes, invalid, and amounted to an attempt to legislate. *See also* Wallace v. United States, — F.2d — (8th Cir. 1969), *aff'g* 294 F. Supp. 1225 (E.D. Ariz. 1968) (Regulation under § 7701 precluding professional associations from corporate status invalid because such regulations are inconsistent with the statute and judicial construction thereof); O'Neill v. United States, 410 F.2d 888 (6th Cir. 1969), *aff'g* 281 F. Supp. 359 (N.D. Ohio 1968) (Reg. §§ 301.7701-1(c), -2(h) (1965) invalid insofar as they require a corporation created under state law to be treated as something other than a corporation for federal tax purposes); Smith v. United States, 301 F. Supp. 1016 (S.D. Fla. 1969) (Treas. Reg. § 301.7701-2(h) (1965) invalid because of an apparent inconsistency between the regulation and the Code and because the regulation is unreasonable,

section 301.7701-2(h) (1965) was merely a definition of the corporate characteristics set forth in the 1960 Regulations and in *Morrissey* with particular application to professional service corporations. The court in *Kurzner* felt that "[p]aragraph (h) was obviously designed to thwart the efficacy of state professional association acts to confer corporate status under the Kintner Regulations."[31]

The *Kurzner* case was the test case on the issue of federal taxation of professional service corporations for the Fifth Circuit, and the defeat of the Internal Revenue Service follows similar defeats in the Sixth[32] and Tenth Circuits.[33] On August 8, 1969, the Internal Revenue Service announced that it is conceding that organizations of doctors, lawyers and other professional people organized under state professional associations acts will, generally, be treated as corporations for tax purposes.[34] The Solicitor General, with the concurrence of the Assistant Attorney General (Tax Division), the Commissioner of Internal Revenue, and Chief Counsel of the Internal Revenue Service, decided not to apply to the Supreme Court for certiorari in the *Kurzner*[35] case. This decision does not preclude the Government from drawing different conclusions in any case presenting different circumstances.

The Government will not seek certiorari in *O'Neill v. United States*,[36] *United States v. Empey*,[37] *Holder v. United States*,[38] and *Wallace v. United States*,[39] and no appeal will be prosecuted in any other pending cases decided adversely to the government on the same issue involving similar facts. All similar cases now in litigation or under audit will be reviewed to see if they should be conceded.[40]

Implementing instructions will be issued to field personnel—if

providing stricter criteria for professional service as opposed to nonprofessional service organizations); Cochran v. United States, 299 F. Supp. 1113 (D. Ariz. 1969) (Treas. Reg. §§ 301.7701-2(a) to (h) (1965) invalid as an attempt to legislate); Holder v. United States, 289 F. Supp. 160 (N.D. Ga. 1968), *aff'd*, 412 F.2d 1189 (5th Cir. 1969) (*mem.*) ("[T]he issues presented in this case have been fully decided adversely to the appellant, United States of America, in Kurzner v. United States, 5 Cir. 1969, 413 F.2d 97.").

31. 413 F.2d at 109 (5th Cir. 1969).

32. O'Neill v. United States, 410 F.2d 888 (6th Cir. 1969), *aff'g* 281 F. Supp. 359 (N.D. Ohio 1968).

33. United States v. Empey, 406 F.2d 157 (10th Cir. 1969), *aff'g* 272 F. Supp. 851 (D. Colo. 1967).

34. INT. REV. SERV. Technical Information Release No. 1019 (Aug. 8, 1969) (INT. REV. CODE of 1954, § 7701).

35. Kurzner v. United States, 413 F.2d 97 (5th Cir. 1969).

36. 410 F.2d 888 (6th Cir. 1969), *aff'g* 281 F. Supp. 359 (N.D. Ohio 1968).

37. 406 F.2d 157 (10th Cir. 1969), *aff'g* 272 F. Supp. 851 (D. Colo. 1967).

38. 412 F.2d 1189 (5th Cir. 1969), *aff'g* 289 F. Supp. 160 (N.D. Ga. 1968).

39. — F.2d — (8th Cir. 1969), *aff'g* 294 F. Supp. 1225 (E.D. Ark. 1968).

40. INT. REV. SERV. Technical Information Release No. 1019 (Aug. 8, 1969).

This announcement on the part of the Internal Revenue Service will probably preclude appeal by the Government in the following recent cases: Aloha v. United States, 300 F. Supp. 1055 (D. Minn. 1969); Williams v. United States, 300 F. Supp. 928 (D. Minn. 1969); Smith v. United States, 301 F. Supp. 1016 (S.D. Fla. 1969); Van Epps v. United States, 301 F. Supp. 256 (D. Ariz. 1969); First Nat'l Bank v. United States, Civil No. 68-C-28 (D. Okla., Mar. 4, 1969).

> necessary on a state-by-state basis—as soon as possible. In addition, appropriate modifications of existing regulations will be required consistent with these decisions.[41]

Treasury Regulation § 301.7701-2(h), promulgated in 1965, seems to be approaching rigor mortis. The Internal Revenue Service might, however, find new grounds for attack under section 269 of the Internal Revenue Code of 1954, which gives the Commissioner discretionary authority to attack the acquisition of control of a corporation if the principal purpose of the acquisition was to secure tax benefits.[42]

At the present stage, the Internal Revenue Service seems tired of the fruitless litigation in which it has engaged. The future seems bright for professionals who desire to incorporate, especially in light of Technical Information Release No. 1019, distributed August 8, 1969,[43] and the fact that:

> No case has been found holding that a business organized under a state corporation law, calling itself a corporation, and actually operating under that form, should be characterized other than as a corporation for federal income tax purposes.[44]

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41. INT. REV. SERV. Technical Information Release No. 1019 (Aug. 8, 1969).

42. Regulations promulgated pursuant to section 269 of the Internal Revenue Code of 1954 provide in part:

> [T]he principal purpose for which the acquisition was made must have been the evasion of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such other person, or persons, or corporation, would not otherwise enjoy. . . . If the purpose to evade or avoid Federal income tax exceeds in importance any other purpose, it is the principal purpose. This does not mean that only those acquisitions fall within the provisions of section 269 which would not have been made if the evasion or avoidance purpose was not present. The determination of the purpose for which an acquisition was made requires a scrutiny of the entire circumstances in which the transaction or course of conduct occured, [sic] in connection with the tax result claimed to arise therefrom.

Treas. Reg. 1.269-3(a)(2) (1962). *See also* Kurzner v. United States, 413 F.2d 97 n.17 (5th Cir. 1969), where the court refused to give any opinion as to the possibility of success for the Internal Revenue Service using section 269 as a ground for attack.

43. The amendment in Subtitle D contained in section 531 of the Tax Reform Act of 1969, H.R. 13270, 91st Cong., 2d Sess. (1969), which deals with Subchapter S Corporations, will probably not affect the number of professional service corporations being formed at the present. Section 531 applies the proprietorship or partnership rule to limit amounts set aside for pensions with respect to a proprietor or partner owning more than 5% of the outstanding stock of a tax-option corporation to 10% of the employee's income or $2,500 (if less than 10%), beginning with contributions made in 1971. This latter group would not include employees of professional service corporations electing treatment under Subchapter S. This amendment has been codified in section 1379 of the Internal Revenue Code. The possibility of further legislative revisions to the Internal Revenue Code with respect to professional service corporations still remains an active threat, even though the amendment contained in section 541 of the Tax Reform Act of 1969, H.R. 13270, 91st Cong., 2d Sess. (1969), was not passed. The latter section would have directly affected professional service corporations by limiting amounts set aside for pensions by such corporations that had elected treatment under Subchapter S.

44. Scallen, *Federal Income Taxation of Professional Associations and Corporations*, 49 MINN. L. REV. 603, 625 (1965).