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# Statement of Principles of Federal Income Tax Practice by Lawyers and Certified Public Accountants

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## STATEMENT OF PRINCIPLES OF FEDERAL INCOME TAX PRACTICE BY LAWYERS AND CERTIFIED PUBLIC ACCOUNTANTS

THE promulgation of a *Statement of Principles Relating to Practice in the Field of Federal Income Taxation* by the National Conference of Lawyers and Certified Public Accountants constitutes a major step in an effort to minimize the jurisdictional disputes between the two professions that have been unreasonably prevalent over the past twenty years. This *Statement of Principles* was approved by the House of Delegates of the American Bar Association at the end of February and by the Council of the American Institute of Accountants at its meeting in May.

In general, the *Statement of Principles* reflects sound and well considered conclusions of the conference members from the two organizations. It sets forth very clearly principles to which all qualified attorneys and certified public accountants should readily agree; it attempts to establish a basis for rationalizing the more controversial phases of tax practice. The *Statement* points out the desirability of lawyers and certified public accountants collaborating in the handling of tax work, restates the propriety of either lawyers or certified public accountants preparing federal income tax returns, delimits broadly the areas of practice which are restricted either to lawyers or to certified public accountants,

and attempts to resolve the conflict as to which profession is to render advice concerning the tax consequences of proposed transactions. If the *Statement* succeeds in accomplishing its objectives, as it should, it will be a major landmark in the relations between the professions.

## I.

### *The History of Income Tax Practice*

Before specifically examining the points set forth in the *Statement of Principles*, it seems desirable to consider briefly the history of federal income tax practice from its inception.

#### *The Changing Character of Income Tax Practice:*

When the Sixteenth Amendment was adopted in 1913, followed by the enactment of the income tax law in the same year,<sup>1</sup> the determination of net income, which was the fundamental basis for measuring tax liability, was primarily and entirely an accounting function involving the application of accepted accounting techniques. In fact, the law so stated.<sup>2</sup> The intricacies and exceptions that have developed since that time were not then a problem. As a result, the responsibility for the determination of the elements of income and expense that gave rise to the data necessary to prepare tax returns was undertaken by members of the accounting profession as a matter of course. By training and experience their qualifications were so far superior to those of any other professional group that there was just no question of the right of accountants to assume full responsibility for the preparation of the tax return as part of the services rendered their clients.

As succeeding revenue acts and judicial determinations introduced complications into the computation of net taxable income, the accountants, as a professional group, kept pace with the developments and continued to enlarge their

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<sup>1</sup> 38 STAT. 166 (1913).

<sup>2</sup> 38 STAT. 166-81 *passim* (1913).

activities in federal tax practice. From the assembly of basic accounting data and the preparation of tax returns, their work expanded into the field of analyzing and advising clients of the tax effects of proposed transactions, and handling disputes at all levels within the Treasury Department. Meanwhile, some attorneys became cognizant of the specialized field that was rapidly developing. As complexities in the law became more numerous, the public's need for individuals trained in interpreting confusing portions of the law became more pronounced. Increases in tax rates multiplied the instances in which taxpayers felt warranted in disputing conclusions of the Treasury Department, with a resultant flood of tax controversies and litigation. These developments obviously increased substantially the number of lawyers handling federal tax matters. For the most part, however, apparently there was general recognition that certain tax problems were best handled by accountants, such as the assembly of basic accounting data, while, on the other hand, certain matters were best handled by attorneys, such as all forms of litigation. Between these two extremes, however, there obviously existed a wide area in which both accountants and attorneys felt qualified by experience and training to practice on a more or less equal basis.

#### *The Advent of Professional Conflicts:*

The activities of both professions continued substantially on this basis until about 1932. At that time it became evident that certain committees of the American Bar Association, as well as of local bar associations, were endeavoring on both a national and local scale to restrict practices of accountants which the committees felt encroached on the practice of law. Action was taken, for example, to restrict the practice of accountants before the Board of Tax Appeals because of the expressed belief of attorneys that the incompetent conduct of cases by men not trained in legal

trial practice was injuring many taxpayers, and was therefore contrary to the public interest. Over a period of years, attempts were made to enact legislation in a number of states setting forth and defining what constituted the practice of law and limiting such practice to attorneys. These attempts were resisted by certified public accountants<sup>3</sup> in all instances in which it appeared that their legitimate right to practice was being usurped.

*The Original National Conference:*

It soon became evident that some attempt at cooperation between the two professions was necessary. Early in 1942, representatives of the American Institute of Accountants met with members of the Unauthorized Practice Committee of the American Bar Association. This was the first of many meetings that were to be held between representatives of the two groups until 1944, culminating in the formation in that year of the National Conference of Lawyers and Certified Public Accountants. A public announcement of the creation of the Conference indicated that it was established as a means by which lawyers and certified public accountants could discuss mutual problems affecting the interests of business and the general public. Representatives of the American Bar Association at the Conference included a member of its Board of Governors, the vice president of its Tax Section, a representative of its Administrative Law Committee, and two members of its Unauthorized Practice Committee. The American Institute of Accountants' representatives numbered the chairman of its Committee on Cooperation with the Bar Association, a past president and member of its Ethics Committee, the chairman of its Tax

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<sup>3</sup> The use in this article of the term "accountant" or "certified public accountant" has reference only to those professional individuals who have met the stringent requirements set forth in each of the states as a condition precedent to the issuance of the degree "Certified Public Accountant," and who have maintained their professional standing by appropriate ethical conduct. No attempt has been made to evaluate the position of laymen or non-certified accountants in income tax practice. The *Statement of Principles* deals only with certified public accountants.

Committee, a member of its Executive Committee and the chairman of its Committee on Cooperation with the Securities and Exchange Commission. At the first meeting of the Conference it was agreed that its basic objectives were to further the development of professional standards of both professions; to encourage cooperation between the professions; to examine misunderstandings involving fundamental issues between the two professions and recommend means for disposing of them; to devise ways and methods of expanding the usefulness of both professions to the public; to seek means of protecting the public against practice of these respective fields by persons not qualified to serve the public. Subsequent meetings of the group gave every indication that eventually an agreement in principle would result defining the respective scope of practice of the professions.

*The Bercu Case:*

Meanwhile, Bernard Bercu, a New York certified public accountant, sued a client, Croft Steel Products Company, Inc., for a fee for tax advice. The case was dismissed on the plea of the defendant's counsel that Bercu was practicing law without a license. Apparently Bercu intended to appeal but later decided to the contrary. With the matter in this state, the members of the National Conference of Lawyers and Certified Public Accountants felt it unnecessary to take any action in the matter. Subsequently, however, the New York County Lawyers' Association brought injunction and contempt proceedings against Bercu for having engaged in the illegal practice of law. The trial court held that Bercu had not engaged in the unauthorized practice of law in rendering the services in issue.<sup>4</sup> On appeal, the Appellate Division of the New York Supreme Court reversed the finding of the trial court and held Bercu guilty of unauthorized practice of law for giving tax advice to a taxpayer who

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<sup>4</sup> *In re Bercu*, 188 Misc. 406, 69 N.Y.S.(2d) 730 (Sup. Ct. 1947).

was not a regular accounting client.<sup>5</sup> The court distinguished between giving an opinion on tax matters to one for whom the accountant did not render regular accounting or auditing services, and giving advice as incident to regular accounting services. The decision of the Appellate Division was affirmed without opinion by the Court of Appeals.<sup>6</sup>

*Reactivation of the National Conference:*

During the years 1945 through 1949, antagonistic activities engaged in by both attorneys and certified public accountants precluded the possibility of any significant accomplishments by the National Conference of Lawyers and Certified Public Accountants. Both professions, through their respective organizations, were far more occupied in propounding their own viewpoints than in objectively evaluating the basic issues that were involved. Under these circumstances little could be accomplished. It was not until the end of 1949 that informal meetings of representatives of the American Institute and the Bar Association finally resulted in the reactivation of the National Conference.

A press release at that time announced that representatives of the two organizations had revived the National Conference to deal with problems involving the two professions. It was to be the endeavor of the newly activated Conference to formulate a *Statement of Principles* which, as a substitute for litigation or legislation, would serve as a guide for resolving jurisdictional disputes. The release further indicated that at the earliest possible date the Conference would attempt to formulate specific recommendations or principles for lawyers and certified public accountants in all phases of tax practice.

It was entirely as a result of the activities of this Conference that the current *Statement of Principles* was eventually

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<sup>5</sup> *Application of New York County Lawyers Ass'n*, 273 App. Div. 524, 78 N.Y.S.(2d) 209 (1st Dep't 1948).

<sup>6</sup> *In re Bercu*, 299 N.Y. 728, 87 N.E.(2d) 451 (1949).

submitted to the governing bodies of the American Bar Association and the American Institute of Accountants, and ultimately approved by them.

## II.

### *Analysis of the Statement of Principles*

The *Statement of Principles*, the full text of which is set forth in the appendix, states nine principles ranging from general statements of what actions are desirable under certain conditions to specific prohibitions.

#### *Accounting Problems or Legal Questions:*

The first three principles attempt to promote collaboration between lawyers and certified public accountants. They set forth, in general, the desirability of lawyers encouraging their clients to seek the advice of certified public accountants whenever an accounting problem arises and, on the other hand, the desirability of certified public accountants encouraging their clients to seek the advice of lawyers whenever a legal question is involved. The second principle specifically refers to the need for the assistance of a certified public accountant when a question of accounting arises in connection with a lawyer's preparation of a tax return, and the converse thereof when a question of law arises in a return being prepared by a certified public accountant. The third principle outlines the scope of activity of both lawyers and certified public accountants in situations involving the ascertainment of probable tax effects of transactions.

All three principles purport to be specific outlines of the function of certified public accountants in dealing with accounting problems and lawyers in resolving legal questions. Nowhere, however, is there a definition of exactly when a problem involving the determination of income ceases to be purely one of accounting and becomes one of legal import, and, on the other hand, when a legal question becomes an accounting question.



It would seem that the members of the National Conference sensibly recognized that the accounting and legal aspects of federal income tax practice do and of necessity overlap. They, therefore, felt it inadvisable or impracticable to attempt to draw any fine line of demarcation between the two. Accordingly, it was only logical that they adopted a viewpoint which seeks complete cooperation between attorneys and certified public accountants within the spirit of the principles promulgated.

*The Preparation of Tax Returns:*

The intertwining of legal and accounting questions throughout the entire field of federal taxation is particularly obvious in the preparation of tax returns. If a certified public accountant may prepare a federal tax return (and that is agreed in the second principle), then at what point in the preparation of that return do his activities cease to involve matters of accounting and become questions of law? For example, a premium paid on insurance on the life of an officer of a corporation, where the proceeds of the policy are payable to the corporation, is deductible as a business expense as a matter of accounting, but is specifically prohibited as a deduction for federal income tax purposes.<sup>7</sup> Is the application of the section of the Code prohibiting the deduction a matter of accounting, or is it a legal question? In other words, must the certified public accountant at this point stop and suggest to the taxpayer that he engage the services of an attorney, or can he, in connection with his work of preparing the tax return, make his own determination based upon the exact language of the Code? Obviously, the particular question presented is so clear-cut that the determination of the treatment is almost automatically handled by the certified public accountant as a matter of course, as it should be.

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<sup>7</sup> INT. REV. CODE 24(a)(4); Treas. Reg. 111, 29.24-3.

On the other hand, it cannot be denied that provisions of the Code and regulations frequently require an interpretation of the law as applied to a particular set of facts. It cannot be the intention of the drafters of the *Statement of Principles* to hold that a certified public accountant may prepare a tax return only so long as the determination of net income is in accord with generally accepted accounting principles. If that is not the intention, just how does the certified public accountant ascertain the distinction between those simple matters of statutory provision or regulatory interpretation, which he should automatically recognize and apply, as distinguished from those which should require the assistance of an attorney?

If a lawyer is preparing a tax return, the second principle declares that he should advise the taxpayer to enlist the assistance of a certified public accountant when problems of accounting arise. Such a question clearly exists, for example, in matters of inventory valuation, amortization or depreciation, factors in almost every business operation. It would therefore seem that the determination of net income in the first instance is a matter of accounting which ordinarily involves the application of basic accounting principles, particularly if the taxpayer is engaged in the operation of a business. Should a lawyer never assume responsibility for this initial determination of net income even in the simplest cases? Should this function be restricted entirely to the certified public accountant?

The *Statement of Principles* does not explicitly answer these questions, but it is doubtful that they require an explicit answer. If either a lawyer or a certified public accountant may prepare a tax return, the only sensible implication is that either may resolve the *ordinary* matters necessary to the application of the statute and regulations. When doubt on a particular point arises, or the question is clearly one in controversy, the advice of a member of the other profession should be sought.

*Tax Advice on Proposed Transactions:*

The impossibility of drawing a line becomes even more pronounced in the third principle which governs the rendering of advice as to the probable tax effects of proposed transactions. This principle, in part, provides:

When such ascertainment raises uncertainties as to the interpretation of law (both tax law and general law), or uncertainties as to the application of law to the transaction involved, the certified public accountant should advise the taxpayer to enlist the services of a lawyer. When such ascertainment involves difficult questions of classifying and summarizing the transaction in a significant manner and in terms of money, or interpreting the financial results thereof, the lawyer should advise the taxpayer to enlist the services of a certified public accountant.

Who determines whether an uncertainty exists either as to the interpretation of the law or as to the application of the law to the transaction? If the certified public accountant is advising the taxpayer in the first instance, what standard of certainty should be followed? If the accountant has resolved the question of interpretation and application to the point where he feels certain of the results, a literal interpretation of the third principle ostensibly precludes the necessity of the services of a lawyer. It would appear, therefore, that the test of uncertainty must be a relative and subjective one having as its basis the capabilities and attainments of the individual certified public accountant in each instance.

A similar situation is presented when the advice is being given by a lawyer. The principle refers to "difficult questions of classifying and summarizing transactions in a significant manner and in terms of money, or interpreting the financial results thereof." When this is the problem, it is recommended that the services of a certified public accountant should be enlisted. But who determines whether the question of classifying, et cetera, is difficult or simple? If the lawyer makes this determination, such as on a question of depreciation or inventory pricing, is he then assum-

ing a full knowledge of all the accounting principles that might have a bearing on the issues? Here again the test is obviously a subjective one, looking specifically to the capabilities and attainments of the individual lawyer. If, in his opinion, the issue is clear-cut and simple, regardless of his qualifications from an accounting standpoint, there would seem to be no requirement that he advise a taxpayer to enlist the services of a certified public accountant.

*The Preparation of Financial Statements  
and Legal Documents:*

The restrictions of the fourth principle that only lawyers may prepare legal documents and only accountants may advise in the preparation of financial statements or accounting systems require no comment. They are so clearly a statement of accepted practices guiding all competent practitioners, both attorneys and certified public accountants, that there can be no valid disagreement. It should be noted, however, that the principle provides that only an accountant may advise as to the preparation of financial statements submitted with tax returns. From this it appears that the assistance of an accountant would be required, for example, on every tax return requiring a balance sheet.

*Self-Designation as Tax Expert:*

The fifth principle prohibits accountants or lawyers from describing themselves as "tax consultants" or "tax experts." This also requires no comment. The lack of an objective standard for measuring competency in federal tax practice makes any such self-designation without merit and completely meaningless.

*Treasury Department Practice and Refund Claims:*

The problems of representation of taxpayers before the Treasury Department are dealt with in the sixth principle. Here again the question of what is a legal question and

what is an accounting question is presented without any specification of the actual distinction that should be recognized. The eighth principle involving the preparation of claims for refunds is subject to the same limitation. This principle mentions the possible existence of a "controversial legal issue" and the consequent need for the services of a lawyer. Just what is a "controversial legal issue" and who decides when it exists? The volume of tax litigation that has reached the courts since 1913 might lead a lawyer to contend that practically every phase of the Code or the regulations is subject to controversy. Moreover, the controversial aspect is not always settled by a decision of the Supreme Court. What in the opinion of the certified public accountant is settled, requiring no further consideration, might in the eyes of the lawyer be a highly disputatious matter, suggesting further litigation. Furthermore, except in those instances where the particular point is presently subject to a controversy that has reached the courts, a certified public accountant may be inclined to resolve any doubts in favor of the taxpayer without further concern at the time of preparing the claim as to whether or not the services of a lawyer are required. In other words, the principle must necessarily depend on the subjective test, individually determined, of what is a "controversial legal issue."

In this area, as in the rendering of tax advice, only reason, common sense and a due regard for the ethical obligation of competence, can guide the individual of either profession. It is unreasonable to suggest that every section of the regulations or Code that has been the subject of litigation is controversial; it is equally unreasonable to suppose that a claim involving a retroactive wage adjustment or a carry-back of a loss is controversial, even though it may ultimately be allowable in a lesser amount than that claimed; and it is absurd to hold that the usual accounting questions which the certified public accountant can resolve in preparing a return cannot likewise be dealt with by him

in the preparation of a claim. Of course, this works both ways. The same degree of competence that justifies a lawyer's preparation of a tax return including incidental accounting matters also should qualify him to prepare a claim for refund embracing the same questions.

*Tax Court Practice:*

If legal proceedings are contemplated after the receipt of a formal deficiency notice a lawyer should be consulted. This recommendation is adopted by the seventh principle because the best interests of the taxpayer demand that an attorney choose between the courses of action that are possible at this point. There should be little disagreement with this. It can hardly be contended that certified public accountants are in any position to adequately advise a taxpayer of the relative effects of one choice of legal remedy or forum as against another. The principle also, very properly, recognizes the desirability of utilizing the combined skills of both the lawyer and the certified public accountant in the trial of a case, whether before the Tax Court or in Treasury Department proceedings.

*Criminal Tax Investigations:*

The ninth and final principle advocates that a certified public accountant advise his client to secure the services of a lawyer to protect the client's legal and constitutional rights when he learns that the client is being specially investigated for possible criminal violation of the income tax law.

There can be no question whatsoever of the need for adequate legal advice when criminal fraud is in issue. There may be difficulty, however, in some cases in determining whether or not a particular examination is being specially directed to ascertaining the existence of criminal fraud. An objective criterion would, of course, exist when the taxpayer received a notice from the Penal Division of the Chief Coun-

sel's Office of the Bureau of Internal Revenue announcing that an indictment for criminal fraud is being considered and suggesting the submission of pertinent data before appropriate action is taken. At that point there is no question but that an attempt will be made to find the elements of criminal fraud, and under those circumstances no certified public accountant would have any right to jeopardize the position of his client by not insisting upon the advice and aid of an attorney.

### III.

#### *Conclusion*

From a review of the principles set forth by the National Conference of Lawyers and Certified Public Accountants it appears that the major achievement for both professions is the implied agreement that it is impossible to draw a clear distinction between a legal question and a matter of accounting. This implied agreement gives rise to the further conclusion that the two professions must of necessity cooperate in the field of federal income tax practice. This is substantial progress.

In evaluating the *Statement of Principles* there is, however, a factor that assumes major importance. This factor is competence. The American Institute of Accountants would not contend that the certification of a public accountant upon the fulfillment of certain requirements automatically qualifies that individual to effectively handle all matters of federal taxation. Neither would the American Bar Association contend that the admission to the bar of a state of an individual automatically qualifies him to adequately handle questions involving the application of so-called "legal principles" in the field of federal taxation. Therefore, the ethical obligation of competency is vital to the public interest. It would be as unrealistic for a certified public accountant to insist that all members of his pro-

fession should be considered as having equal abilities in matters of federal taxation, as it would be for lawyers to contend that all individuals who have been admitted to the bar are automatically qualified to advise clients on matters of federal taxation. In this regard the lawyers are in a somewhat more dubious position than the certified public accountants because of a wide diversity between the states in their standards for admission to the bar. The certified public accountants, on the other hand, have achieved a degree of standardization through almost universal use of uniform examinations designed by the American Institute of Accountants.

There is no doubt but that the *Statement of Principles* represents a long step forward in the eventual clarification of the differences between lawyers and certified public accountants. At the very least it represents a statement of an intention to agree rather than disagree. It sets up the criteria which can be used by reasonable men in rationalizing specific issues within the spirit, if not within the letter, of the principles. It outlines the framework of a program of voluntary cooperation between the two professions, with the objective of utilizing the knowledge and skills of both to the best advantage of the public.

To most accountants and lawyers there is nothing new in the *Statement*. Reputable members of both professions have been cooperating in tax practice for many years to the benefit of their clients. Practically no certified public accountant ever drafts a will or trust instrument. Very few certified public accountants consider themselves qualified to handle the trial of a case before the Tax Court even though they might be admitted to practice. No sensible lawyer would attempt to draft a balance sheet or income statement for credit purposes, nor would he assume full responsibility for the propriety of a reconciliation of surplus to be incorporated in a federal income tax return.



There are, of course, extremists in both professions whose unenlightened self-interest causes them to be attracted by the lucrative possibilities of a closed field. The *Statement of Principles* should, to some extent, restrict the activities of these self-seekers by its recognition of the extent to which a coordination of the skills of both professions is required. The more enlightened attorneys and certified public accountants recognize the complete futility of either profession competing for what amounts to a "spoils system," which in the final analysis can only result in a substantial disservice to taxpayer-clients.

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## *Appendix*

### STATEMENT OF PRINCIPLES RELATING TO PRACTICE IN THE FIELD OF FEDERAL INCOME TAXATION PROMULGATED BY THE NATIONAL CONFERENCE OF LAWYERS AND CERTIFIED PUBLIC ACCOUNTANTS

#### *Preamble*

In our present complex society, the average citizen conducting a business is confronted with a myriad of governmental laws and regulations which cover every phase of human endeavor and raise intricate and perplexing problems. These are further complicated by the tax incidents attendant upon all business transactions. As a result, citizens in increasing numbers have sought the professional services of lawyers and certified public accountants. Each of these groups is well qualified to serve the public in its respective field. The primary function of the lawyer is to advise the public with respect to the legal implications involved in such problems, whereas the certified public accountant has to do with the accounting aspects thereof. Frequently the legal and accounting phases are so interrelated and interdependent and overlapping that they are difficult to distinguish. Particularly is this true in the field of income taxation where questions of law and accounting have sometimes been inextricably intermingled. As a result, there has been some doubt as to where the functions of one profession end and those of the other begin.

For the guidance of members of each profession the National Conference of Lawyers and Certified Public Accountants recommends the following statement of principles relating to practice in the field of Federal income taxation:

1. *Collaboration of Lawyers and Certified  
Public Accountants Desirable*

It is in the best public interest that services and assistance in Federal income tax matters be rendered by lawyers and certified public accountants, who are trained in their fields by education and experience, and for whose admission to professional standing there are requirements as to education, citizenship and high moral character. They are required to pass written examinations and are subject to rules of professional ethics, such as those of the American Bar Association and American Institute of Accountants, which set a high standard of professional practice and conduct, including prohibition of advertising and solicitation. Many problems connected with business require the skills of both lawyers and certified public accountants and there is every reason for a close and friendly cooperation between the two professions. Lawyers should encourage their clients to seek the advice of certified public accountants whenever accounting problems arise and certified public accountants should encourage clients to seek the advice of lawyers whenever legal questions are presented.

2. *Preparation of Federal Income Tax Returns*

It is a proper function of a lawyer or a certified public accountant to prepare Federal income tax returns.

When a lawyer prepares a return in which questions of accounting arise, he should advise the taxpayer to enlist the assistance of a certified public accountant.

When a certified public accountant prepares a return in which questions of law arise, he should advise the taxpayer to enlist the assistance of a lawyer.

3. *Ascertainment of Probable Tax Effects of Transactions*

In the course of the practice of law and in the course of the practice of accounting, lawyers and certified public

accountants are often asked about the probable tax effects of transactions.

The ascertainment of probable tax effects of transactions frequently is within the function of either a certified public accountant or a lawyer. However, in many instances, problems arise which require the attention of a member of one or the other profession, or members of both. When such ascertainment raises uncertainties as to the interpretation of law (both tax law and general law), or uncertainties as to the application of law to the transaction involved, the certified public accountant should advise the taxpayer to enlist the services of a lawyer. When such ascertainment involves difficult questions of classifying and summarizing the transaction in a significant manner and in terms of money, or interpreting the financial results thereof, the lawyer should advise the taxpayer to enlist the services of a certified public accountant.

In many cases, therefore, the public will be best served by utilizing the joint skills of both professions.

#### *4. Preparation of Legal and Accounting Documents*

Only a lawyer may prepare legal documents such as agreements, conveyances, trust instruments, wills, or corporate minutes or give advice as to the legal sufficiency or effect thereof, or take the necessary steps to create, amend or dissolve a partnership, corporation, trust, or other legal entity.

Only an accountant may properly advise as to the preparation of financial statements included in reports or submitted with tax returns, or as to accounting methods and procedures.

#### *5. Prohibited Self-designations*

An accountant should not describe himself as a "tax consultant" or "tax expert" or use any similar phrase. Law-

yers, similarly, are prohibited by the canons of ethics of the American Bar Association and the opinions relating thereto, from advertising a special branch of law practice.

6. *Representation of Taxpayers Before  
Treasury Department*

Under Treasury Department regulations lawyers and certified public accountants are authorized, upon a showing of their professional status, and subject to certain limitations as defined in the Treasury rules, to represent taxpayers in proceedings before that Department. If, in the course of such proceedings, questions arise involving the application of legal principles, a lawyer should be retained, and if, in the course of such proceedings accounting questions arise, a certified public accountant should be retained.

7. *Practice Before the Tax Court of the United States*

Under the Tax Court rules non-lawyers may be admitted to practice.

However, since upon issuance of a formal notice of deficiency by the Commissioner of Internal Revenue a choice of legal remedies is afforded the taxpayer under existing law (either before the Tax Court of the United States, a United States District Court, or the Court of Claims), it is in the best interests of the taxpayer that the advice of a lawyer be sought if further proceedings are contemplated. It is not intended hereby to foreclose the right of non-lawyers to practice before the Tax Court of the United States pursuant to its rules.

Here also, as in proceedings before the Treasury Department, the taxpayer, in many cases, is best served by the combined skills of both lawyers and certified public accountants, and the taxpayers, in such cases, should be advised accordingly.

### 8. *Claims for Refund*

Claims for refund may be prepared by lawyers or certified public accountants, provided, however, that where a controversial legal issue is involved or where the claim is to be made the basis of litigation, the services of a lawyer should be obtained.

### 9. *Criminal Tax Investigations*

When a certified public accountant learns that his client is being specially investigated for possible criminal violation of the Income Tax Law, he should advise his client to seek the advice of a lawyer as to his legal and constitutional rights.

### *Conclusion*

This statement of principles should be regarded as tentative and subject to revision and amplification in the light of future experience. The principal purpose is to indicate the importance of voluntary cooperation between our professions, whose members should use their knowledge and skills to the best advantage of the public. It is recommended that joint committees representing the local societies of both professions be established. Such committees might well take permanent form as local conferences of lawyers and certified public accountants patterned after this conference, or could take the form of special committees to handle a specific situation.