

THE Kentucky ACCOUNTANT



BULLETIN OF THE KENTUCKY SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

Vol. 2

JANUARY, 1950

No. 1

REEVES TO ADDRESS SOCIETY FEBRUARY 28

At the Society's next meeting, in the Seelbach Hotel, Louisville, Tuesday evening, February 28, at 6:30, H. Clyde Reeves, Kentucky Commissioner of Revenue, will outline the Department's tax collecting procedures and administrative policies. A capacity crowd is expected; Society members and staff and all public accountants, are invited and urged to reserve their places immediately for this dinner meeting. Write the Society office, or call Jackson 4211.

Reeves will be accompanied by R. H. Allphin, Income Tax Division Supervisor, and other Revenue Department staff members. Allphin recently assumed the post vacated by Russel C. Jones, who resigned to engage in the practice of law at Owensboro.

Wage-Hour Law Changed

The January meeting of the Society, arranged jointly by meetings committee Chairman Gordon Ford and Albert Foley, president of the Kentucky Society of Public Accountants, was hailed by the 105 persons present as a success in every way. The speaker, Patrick M. Meloan, Investigation Supervisor, Wages and Hours Division, U.S. Department of Labor, stressed the "interstate" basis for coverage of industry and business under the "Wage-Hour Law," and cited circumstances under which certain employees, in his opinion, would be considered subject to its provisions.

Meloan pointed out that the following principal changes had been made in the law, and would become effective on January 25:

(1) *Minimum wage.* Raised from 40c per hour to 75c per hour. (2) *Employee exemption test.* Term "necessary" to interstate production, changed to "closely related process or occupation directly essential" (for determination of employees covered). (3) *Class of business exemption.* Retail or service establishment employees are exempt if 75% of dollar sales are retail and 50% of total dollar sales are made within the State.

Although he responded graciously to numerous questions from the floor, Meloan hesitated to venture an opinion as to what set of facts might justify an exemption in a particular case. He pointed out that court interpretation of the change in "2" above, would be necessary to resolve such questions.

Permit Fee Increase Favored

At a meeting of Society directors on January 24, at which the three members of the State Board of Accountancy were present, by invitation, a resolution was adopted, calling attention to the board's need for additional revenue to maintain effective administration of the public accountancy law "for the benefit and protection of the public" and for the maintenance of standards of professional practice by "all persons who have been granted certificates or registered as public accountants." The resolution specifically approved an increase in the annual fee for a permit to practice public accounting from \$5.00 to \$15.00, and suggested that the Board should have discretionary power to revoke a certificate or registration for failure to pay the permit fee for three successive years.

The Society directors' action supplemented the results of a post-card poll of all certified public accountants and public accountants holding permits issued by the State Board of Accountancy. Of 387 responses, 301 approved the fee increase and 86 disapproved. Of those disapproving, 59 are not in public accounting practice or employment in Kentucky. Only 9 CPA and 18 public accountant practitioners opposed the fee increase, and there were indications that, upon reflection, some of these would have altered their views.

A bill to accomplish the purposes outlined above has been introduced in the General Assembly by Senator Edward C. Gallagher, of Jefferson County (Senate Bill 89).

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EARLE B. FOWLER, *Editor*

VOL. 2 January, 1950 No. 1

The KENTUCKY SOCIETY of
CERTIFIED PUBLIC ACCOUNTANTS

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Radio Contact Volunteers Needed

Can you arrange with your local radio station for the presentation of a quarter-hour transcribed public service feature (meaning without charge for radio time)? The Society office will provide the transcribed radio show, which is both educational and entertaining. Characters are portrayed by professional actors, employed by the American Institute of Accountants for the purpose. The subject is "Income Taxes," and the station will be able to select either of two skits—one on one side of the record and the other on the reverse side.

A similar program was presented over nine Kentucky stations last year, through the efforts of: Estil Smith, Ashland; J. R. Meany, Bowling Green; Espy Bailey, Covington; Jess C. Paris, Lexington; Frank J. Dooley, Middlesboro; J. O. Boswell, Owensboro; Ralph G. Schuette, Paducah; John C. McNeil, Wheelwright (over Pikeville's WLSI); and your executive secretary (over Louisville's WKLO).

Contact your local station and arrange for the radio time; then write the Society office, giving (1) the name and address of the station, and (2) the time of the scheduled broadcast. The record will be sent about three days in advance. This is a real opportunity to do a public relations job in your community—ACT NOW, if you possibly can.

The President's Message . . .

Of paramount importance to all members of the accounting profession in Kentucky is the bill now before the General Assembly at Frankfort which will (1) increase the fee for permits to practice public accounting from \$5.00 to \$15.00 per year and (2) grant to the State Board of Accountancy discretionary authority to revoke or suspend a certification or registration for failure to pay the annual permit fee for three successive years.

The necessity for the proposed increase in the permit fee has been recognized by almost every certified public accountant and public accountant currently holding a Kentucky permit, and the provisions of the proposed bill have been approved by the Board of Directors of the Society.

For you and all members of the accounting profession in our State, the passage of the bill will mean that the State Board of Accountancy can maintain its administrative and enforcement activities at the present level through its executive secretary and the office which he provides. For the benefit of the public, high standards of accounting practice will be assured.

The 1950 amendment to the accounting law has been introduced in the Senate by Senator Edward C. Gallagher (Dist. 35, Louisville) and has been referred to the Senate Committee on Kentucky Statutes No. 2. Members of that committee, in addition to Senator Gallagher, are: Louis Cox (Dist. 20, Frankfort), chairman; Stanley Hoffmann (Dist. 4, Henderson); Bert Kiser (Dist. 32, Olive Hill) Richard P. Maloney (Dist. 13, Lexington); and Cortis K. Stacy (Dist. 34, West Liberty). You can help the progress of the accounting profession in our state by contacting any one of those Senators, or any member of the General Assembly, giving your views as to why Senate Bill 89 should be enacted into law. A personal call or visit to your Senator or Representative would be most effective, but a letter stating your opinion would be helpful if a personal visit cannot be made.

In the envelope with your notice of our next meeting you will receive a roster of members of the 1950 General Assembly. Let your legislators know that the members of the accounting profession in Kentucky favor the passage of Senate Bill 89. You will be rendering a service to yourself, your fellow practitioners, and the public.

Banks Favor Form 1940

L. B. McIntire, chairman of the Society's committee on accounting and auditing procedure, has reported to President Grogan that Louisville banks prefer standard Bank Confirmation Form 1940 to any alternative form which might be developed by the Society for use by its members. The text of McIntire's report follows:

"On December 23, 1949, pursuant to instructions by the Committee on Accounting and Auditing Procedure, I wrote to nine Louisville banks relative to a standardized form for verification of bank account balances, notes, collateral, etc. I posed questions asking for their reaction and advice as to such a form.

"The following banks specifically expressed preference for Standard Bank Confirmation Form 1940, approved by American Institute of Accountants and National Association of Bank Auditors and Comptrollers:

Citizens Fidelity Bank & Trust Company
 Liberty National Bank & Trust Company
 Lincoln Bank & Trust Company
 The Louisville Trust Company

"The First National Bank referred us to the National Association of Bank Auditors and Comptrollers, which reference I would interpret as probably also indicating preference for the form mentioned.

"The United States Trust Company stated that the forms now generally being used by accountants are entirely satisfactory. . . ."

"Three banks have not replied.

"As you know, it had been suggested that our Committee consider the desirability of designing a standardized form. The replies received indicate preference for a form already in use. I assume you will want to communicate this information to the membership."

A.I.A. Asks Program Support

Sam W. Eskew, member of Council of the American Institute of Accountants, and Society president Waller Grogan have been asked by the Institute to call to the attention of Kentucky practitioners the plan for voluntary contributions, of \$3.00 per accountant, to be paid in support of the Institute's activities by individual practitioners and firms represented in the Institute's membership. If you have not made your contribution, Eskew and Grogan would appreciate your consideration of the Institute's need for such funds for its many and varied activities in the interest of our profession.

Income Tax Encyclopedia

A review by Earle B. Fowler

THE 1950 TAX ATLAS: Samuel A. Monatt and Sidney L. Krawitz; Matthew Bender and Company, New York, 1949. \$8.60.

A 500-page compilation which includes check lists, rate tables, and specimen returns as well as a digest of tax law, the Atlas affords maximum current information, for the small practitioner, within the covers of a single volume.

Eighty paragraph headings, and numerous subparagraphs, are devoted to the principal factors which affect the determination and reporting of income for federal tax purposes. A detailed index permits quick reference to the paragraph covering almost any question which may arise during the preparation of a return.

This book, unlike most services published for the practitioner, is evidently not intended to be supplemented. However, if it meets with the reception from small practitioners which it deserves, it will probably be revised and brought up to date each year—as a manual for the expert, not for the individual taxpayer.

What To Do With Old Files

A review by Earle B. Fowler

PUBLIC RECORDS MANAGEMENT: Philip C. Brooks; No. 103 Public Administration Service; Chicago, 1949, 19pp. \$1.00.

Any unit of government may find itself swamped with unorganized or useless records unless some attention is given to organization of records and files. Here is an authoritative work which will serve to focus the thinking of the chief administrative officer or the assistant to whom he delegates the job of records management.

After discussing the principles which should govern the creation of records and the mechanical operations involved in their maintenance and use, the author adds some advice on evaluation and retirement, including archival custody. The monograph is concluded with a check list for the records manager, a list of objectives to be considered in records legislation, and a reference list for those inclined to study the subject further.

When auditing a governmental agency, you may have occasion to refer the official in charge to this excellent monograph. He will appreciate your thoughtfulness.

STATE BOARD OF ACCOUNTANCY OF KENTUCKY

John S. Petot, *President*; J. O. Boswell, *Member*; L. C. J. Yeager, *Sec'y-Treas.*

Thirty-one New Kentucky CPAs

The following 28 men passed the November, 1949, examination and were granted certificates as "certified public accountant" at a meeting in Louisville on January 24, 1950:

Edward F. Altes, Jr.
R. T. Baker
Erle W. Bishop
John Robert Brown
Joseph L. Buckler
P. H. Bufkin, Jr.
Claude I. Cohron
Henry A. Cox
Lyman H. Everly
Robert J. Fitzpatrick
Allen R. Galloway
Emil P. Grass
Gaylord C. Hall, Jr.
Kenneth S. Kane
William Owen Laslie
O. F. Layten
Cary B. Lewis, Jr.
Howard M. May
John V. McReynolds, Jr.
John Sargent Miller
Willis C. Nale
Rex Beresford Potter
James F. Queenan
Littleton C. Rice
Joseph R. Riedel
Wallace B. Southall, Jr.
Ernest Ellis Sutton
Marvin H. Warren

The following three men submitted evidence that each held a certificate issued by the accountancy board or commission of another state and that each possessed all other qualifications required of candidates for a Kentucky certificate, and accordingly they were granted certificates by Board action at the same meeting:

Philip L. Bird (Indiana)
Theodore C. Conrad (Illinois)
J. M. Conder (Indiana)

Approval was given for registration as a public accountant partnership of Queenan, Fisher & Wooldridge (James F. Queenan, CPA; Charles B. Queenan; Charles S. Fisher; Joseph T. Wooldridge). Notice of admission of Clarence A. Veatch and J. Robert Shine (Indiana) to partnership of Brown & Imhof, certified public accountants, was accepted.

The application of Mrs. Katherine K. Hastings to sit for the certified public accountant examination in May, 1950, was approved.

Other Board Actions

Upon being informed that the cities of Covington, Ludlow, Newport, and South Fort Mitchell had invited bids for auditing city records for the year 1949, the Secretary of the Board requested each city to send to the board office copies of bids submitted in response to such invitations to bid. The information thus obtained will be the basis for board action at a meeting on February 11, 1950, in Louisville, wherever holders of Kentucky permits are involved.

Violation of the board's rules by holders of certificates issued by the State of Ohio has occurred in the case of two recent competitive bids. Evidence of these violations will first be submitted to the Accountancy Board of Ohio. In the event that the Ohio board is unable to take appropriate action, the Kentucky board will review the facts to determine whether or not the Ohio certificate holders should forfeit the privilege of interstate practice otherwise granted them under Kentucky board regulations.

An unlicensed practitioner who is listed in the telephone directory (yellow pages) of his city under the heading "Accountants" has been requested to state the reasons, if any, why he should not be directed to appear at a hearing before the board, under the provisions of KRS 325.350 and 325.360. In another instance investigation is being made of a press report that an unlicensed individual identified as an "accountant," had opened an office in a Kentucky city.

Examination Data

Statistics compiled by the American Institute of Accountants, covering the November, 1948, examination results, indicated that "the possession of both formal education (college work) and actual accounting experience were helpful to candidates" on the examination. The accompanying analysis cautioned the reader that (1) variation in aptitudes and (2) variations in quality of experience might have affected the results of the study, which was based on a relatively small sample (366 successful and 1,101 unsuccessful candidates).

In Kentucky more than half of the candidates sitting for the November, 1948, examination had accumulated four or more years of accounting experience before sitting for the first time, and more than half were college graduates.

NOTES and QUOTES

The Oregon Certified Public Accountant says: A member writes his reaction to "Tax Consultant," which was discussed in the November, 1949, issue—"I am happy to know that others feel as I do about the use of the term 'tax consultant.' It is my opinion that it has no place on the door or letterhead of a firm of certified public accountants. I agree with the American Institute that the term 'certified public accountant' is all inclusive and describes the scope of professional work being done."

(NOTE: We are happy to know that members of the Oregon Society write their reactions to articles in their magazine. We hope Kentucky Society members will be tempted to do so from time to time.—Ed.)

The Florida Institute of Accountants Newsletter describes an action taken on an ethics case:

"The Committee on Professional Ethics of the Florida Institute of Accountants recently preferred charges against a member in violation of Article VII of the Constitution and By-Laws and Rule 15 of the Rules of Professional Conduct. In keeping with the Constitution and By-Laws, a hearing was held on Thursday morning, November 18, in Miami, before the Executive Committee. The evidence was presented by the chairman of the Committee on Professional Ethics, witnesses heard, and the member against whom charges were made was heard.

"The decision of the Executive Committee was that the charged member was guilty of the violations listed, and he was expelled from membership in the Florida Institute of Accountants.

"The State Board of Accountancy is being advised of the case and the findings."

From a transcribed radio show dramatizing the income tax problems of a married couple: REV. AGENT—"Of course, there are some complications in the law, but certainly the average citizen can figure out his taxes accurately if he puts his mind to it." TAXPAYER—"But suppose there are complications?" TAXPAYER'S WIFE—"I've heard that if you have a complicated tax problem you need the services of a certified public accountant—or if there are legal complications, of a tax lawyer."

(NOTE: To secure transcription for your local station, write the Society office at once.—Ed.)

AROUND THE STATE

- The Owensboro firm of Boswell and May, certified public accountants (J. O. BOSWELL; F. L. MAY) has been employed to "prepare and submit a statement of the financial condition of the city of Owensboro on December 31, 1949," according to the *Messenger* of that city.

- The Louisville firm of Brown & Imhof, certified public accountants, (J. B. BROWN; IRVIN W. IMHOF; T. J. SCHULER; V. G. MONROE; A. FRERMAN; CLARENCE A. VEATCH; J. ROBERT SHINE) recently completed audit reports on the city of Leitchfield, the Leitchfield Gas Company, and the Leitchfield Water Company, according to the *Gazette* of that city.

- The Owensboro firm of Alexander & Company, public accountants, (E. T. ALEXANDER, CPA; H. H. HUMPHREY; MARY E. RAPIER) has submitted to the city council an audit of the records of the city of Earlington.

- A new firm, *Queenan, Fisher & Wooldridge*, public accountants (JAMES F. QUEENAN, CPA; CHARLES B. QUEENAN; CHARLES S. FISHER; JOSEPH T. WOOLDRIDGE) has been formed by the merger of Queenan & Queenan, Louisville, with Fisher & Wooldridge, Frankfort.

- R. J. SNOW, public accountant, has returned from Trinidad, renewed his permit to practice, and opened offices in Richmond and McKee.

- P. WILLET HAGAN, certified public accountant, has been employed by the Bardstown city council to audit the city's books, according to the *Bardstown Standard*.

- Writing to the *Louisville Courier-Journal*, Allan M. Trout informs us that "certified public accountants in private business make around \$10,000 a year. Their fee is from \$30 to \$35 a day" . . . Assuming it to be possible to charge for 300 days' work per year, a CPA might take in that \$10,000 at those rates, but he does have to maintain an establishment, Mr. Trout . . . Possibly \$45 to \$50 a day would produce that \$10,000 income . . . would come closer, anyway.

- A report by the State Auditor on operations of the State Fair Board drew fire from board members, according to the *Owensboro Messenger*, because—several members said—the comments in the report on the way certain concession contracts were carried out were "unjustified." Board chairman Smith Broadbent, Jr., said the "fairness" of the auditor's comments was the issue.

Minnesota Court Rules

"Tax Expert" Illegally Practiced Law

After considering the fact that an individual (neither a lawyer nor a certified public accountant) had held himself out to the public "as a duly qualified *income tax expert*," the Minnesota district court held, on January 23, 1950, that the defendant was guilty of unauthorized practice of law.

The decision is interesting as another indication, as in the *Bercu* case, of the judicial viewpoint on a question of vital concern to the accounting profession. It appears to be more sweeping and extreme in its terms than the decision of the New York court; however, unless appealed and sustained by a higher court it will probably have little authority outside Minnesota.

The text of the decision will be published in the March issue of the *Journal of Accountancy*. A supplemental memorandum opinion was given, primarily for the benefit of the Minnesota Society of Certified Public Accountants (brief submitted as *amicus curiae*) and other Minnesota accountant organizations; excerpts from the memorandum follow:

Some of the matters discussed in those briefs are not strictly germane to the issues in this case because

"It is the duty of this court so to regulate the practice of law and to restrain such practice by laymen in a common sense way in order to protect primarily the interest of the public and not to hamper and burden such interest with impractical technical restraints no matter how well supported such restraint may be from the viewpoint of pure logic." *Cowern v. Nelson* 207 Minn. 642, 290 N. W. 795,

and any rule requiring every Federal Income Tax Return to be prepared by a licensed attorney and counselor-at-law would be impracticable. Also, no exact and comprehensive definition of "practice of law" nor of an "ordinary" or "simple" tax return can be enunciated; and whenever definition is given, it must be limited by application to the facts of a particular case. Most likely, in the overwhelming majority of returns, the preparation requires of the taxpayer only average intelligence, fair knowledge of English and arithmetic, plus some concentration and patience. The fact that many taxpayers do not possess all of those attributes and some have none and therefore must have the advice of others does not make the rendition of such advice the practice of either law or accountancy.

Beyond that class of returns which I designate as "the more numerous," and not as "simple," are three classes presenting problems properly in the field of (1) law only, (2) accountancy only, and (3) both law and accountancy. While there is no such express admission in any brief, my analysis leads me to conclude (1) that in no brief is it claimed that the acts of the Defendant fall into the class referred to as "the more numerous," (2) that the Plaintiffs' claim that while the

acts of the Defendant included the preparation of a return which was a "reckoning," "calculation" or "rendition of account," was not in the field of accountancy for law accounting was merely a vehicle through which he carried on work which was in the field of law only, and (3) while the Defendant does claim that the return was "simple" one, his basic claim, as well as that of each *Amicus Curiae* is that the preparation of the return falls within class 3 above, the field of both law and accounting and that the Defendant's acts in the field of law were proper because incidental to the accounting.

I disagree with the broad claim of the Minnesota Society of Certified Public Accountants as applied to the facts here that

"the making of income tax returns and giving advice on tax laws and regulations in connection therewith does not constitute the unauthorized practice of law,"

although I agree with a great deal of what is said in its brief, especially that in business problems involving questions of accountancy and of law it is advantageous generally and absolutely necessary sometimes to engage both an accountant and a lawyer, to let them adjust the division of effort and responsibility so as to obtain the benefit of each practitioner's skill and judgment as regards matters within his grasp. Also I disagree with the claim of the Minnesota Association of Public Accountants that

"the preparation of an income tax return and decision of the various problems incidental thereto is an accountant's task,

unless the word "return" refers only to one of "the more numerous" kind, or to one in the field of accountancy only. And I see no basis whatever for the claim of the State Association of Public Accountants that

"it must be recognized that to one having the qualifications of an accountant all tax returns are likely to be relatively simple. . . . It would seem that where in a tax case you have gotten beyond the filing of the return and the explanation of it, the conference and the informal hearing, and when you come to where a record is to be made which may be used in an appeal to the courts that then the lawyer should be consulted."

because I have read no case which does not assume that the practice of law includes the giving of advice even though no appearance in court is necessary, desired, or contemplated.

Most of the foregoing is really immaterial to the issues in the case at bar. Notwithstanding that, it is submitted in grateful acknowledgment of the kind offer of help by the way of fine briefs presented on behalf of a great, though new, profession which has standards not wholly unlike those of the older legal profession. As I see it, the issue before me is not whether an accountant may or may not legally prepare a return. Because in each brief and in this memorandum that issue and the Bercu case have been considered, I may, perhaps with no impropriety, say that my views coincide with what is said in the Bercu opinion and the following comment thereon in 33 *Minnesota Law Review*, at 445:

"Although courts uniformly hold that preparation of tax returns by laymen is not 'practice of law,' they are careful to limit their decisions to the particular returns considered. Thus, while the layman can prepare a return of 'the least difficult kind,' he must stop when a doubtful question arises requiring construction of a statute or consideration of a decision. In the course of preparing a tax return, the accountant's client often requests advice. The nature of the request seems to determine whether or not the advice is permissible. If the accountant, having all the facts before him, gives advice on the necessity of filing a return, or conveys information describing tax laws and methods of making tax returns, he is not practicing law. However, if the advice is given not incidental to the preparation of a return, whether in regard to certain tax deductions, as in the instant case, or to a statutory interpretation permitting certain refunds, it is unauthorized practice of law. . . . Lawyers and accountants concede that in the field of taxation the line of demarcation between the two professions is difficult to draw,"

except that I disagree with the following sweeping language in the last sentence of that comment:

"But, in effect, the line has been drawn with respect to the preparation of tax returns and the appearance of accountants before tax commissioners in efforts to secure refunds for their clients."

because, as stated above, the practice of law includes the giving of advice respecting the construction and application of statutes and decisions even though no appearance before a formal tribunal is necessary, desired, or even contemplated. It seems to me that no "line has been drawn" and that none can be except in each case when presented and then only as respects the facts in such case.

The evidence shows that the Defendant held himself out to, and for a monetary reward actually did, advise as to whether or not a common law marriage and a partnership existed and as to whether or not the cost of a heating plant and of a roof, and damage to crops were deductible. In my judgment, this constitutes unauthorized practice of law. It seems also clear that the Court not only has the power, but for the protection of the public, it is compelled to punish a person not licensed to practice law for dispensing legal advice on such important and complex questions. In this case, the Defendant's qualifications are based upon an eighth-grade education, selling insurance, operating a collection agency, managing a hardware store, and doing other dissimilar work in no way whatever relating to law or law education, training or experience. For three years he was employed in the office of the Collector of Internal Revenue and undoubtedly became proficient in the purely clerical or routine aspect of tax returns. Whatever he did in any of these activities could not possibly give him the necessary training in the fundamental principles, history, development, and application of law in general or in any of its branches in which he gave advice for a professional fee. For more than a hundred years it has been almost universally considered that training, comparable with his, is an insufficient basis to enable a person to construe statutes, decisions, and legal documents without grave risk of harm to persons advised by him.

Wage-Hour Pamphlets Available

Through the courtesy of Prentice-Hall, Inc., a special issue of that company's Accountant's Weekly Report was sent to Society members on January 2. A few additional copies are available through the Society office.

The Research Institute of America, through Division Manager C. R. Waggoner, has offered to send a copy of that company's special analysis, "Adjusting to the New Wage-Hour Law," to any practitioner who requests it through the Society office.