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## THE LAWYER AND FEDERAL TAXES

J. A. C. LIGHTNER\*

THE present Congress has again demonstrated its ability at reaching a state of "ambiguity par excellent" through the medium of the latest income tax law: namely, the Federal Revenue Act of 1924, and the taxpayer is again confronted with the problems that even the members of the bar will shirk or avoid solving, mainly because the average lawyer is too busy to keep pace with the many congressional changes, departmental rulings and interpretations of the new law.

A field of legal practice devoted exclusively to making life easier and happier for the taxpayers of America has not been eagerly seized upon by the members of the bar of this country. Many accountants have found the field most profitable, but their service, at its best, lacks the effectiveness that could be brought into being by the attorney who specializes in taxation problems. The accountant can but unravel after a mistake has been made, whereas the lawyer, with his trained legal mind, could anticipate rulings and interpretations. This foresight would result in the rendering of real service to the client, avoiding errors and rendering the unraveling of mistakes unnecessary. The lawyer in the field of taxation would be the preventative—the accountant is merely the antidote after the poison. In spite of this real service that taxpayers all over the country are demanding, the lawyer specializing in the field of taxation is sorely missing.

There are, perhaps, many reasons why lawyers will not specialize in a purely taxation practice. It surely cannot be for lack of work. Thousands upon thousands of cases are filed with the Commissioner of Internal Revenue every month. Each and every one of these cases presents a problem new and distinct, upon which the lawyer would delight in bringing his trained legal mind into play. Is it because our tax laws are continually changing? Is it because to specialize would cause a ceaseless study of laws, born of the caprice of a new administration, and fostered by the strength of a new thought with an ever changing populace? And yet, even though the tax laws are ever changing, the field remains and lawyers are being constantly sought who will devote their time and energy to relieving industry of the problems that confront its operations and activities because of effects made possible by a new law.

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Income tax problems are not the sole prospects in the field of taxation. There is the Inheritance Tax, Excise Tax, Narcotic Tax, Duties and Customs, Capital Stock Tax and various other forms of taxation arising out of the Eighteenth Amendment, Interstate Commerce, and Export and Import. But by far the most perplexing, ever-changing tax of general applicability is the Federal Income Tax of this country.

Regulation 65, issued November 12, 1924, on the Revenue Act of 1924, in section 1001 specifically gives the Commissioner of Internal Revenue the authority, with the approval of the Secretary of the Treasury, "to prescribe all needful rules and regulations for the enforcement of this Act." The Regulations furnish, therefore, (1) the outline of the administrative procedure adopted by the department, and (2) the official interpretation of the provisions of the Act. The effective date of the income tax provisions of the Revenue Act of 1924 was, in general, January 1, 1924. During the first six months of that year, the country experienced a discussion of some of the features of a highly technical statute—the Revenue Act of 1924. There are some outstanding legal problems presented by the provisions which are new in the Act or in the Regulations.

Since any of the major changes in the Act would, alone, deserve an article by itself, the best that can be hoped for here is to emphasize the existence of those problems, and to encourage, if possible, the entrance of the lawyer into a practice of law with taxation problems as a specialty. Certain laws and regulations govern the recognition of attorneys, agents and other persons representing claimants before the Treasury Department and officers thereof. The following is an example:

"The Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner, wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement." (Act of July 7, 1884, 23 Stat., 258)

The Committee on Enrollment and Disbarment consists of six members appointed by the Secretary of the Treasury, of whom two are detailed from the office of the Secretary, three from the office of the Commissioner of Internal Revenue, and one from the Division of Customs. The Secretary designates the chairman and vice-chairman from the members detailed from his office. The Secretary also designates the secretary of the Committee.

By authority granted by the Secretary of the Treasury, April 15, 1924, an attorney may now advertise his admission before the Department only in this wise: "an enrolled attorney may use on his letterheads the words 'enrolled to practice before the Treasury Department,' or words of similar import." Before that date it was unethical and improper to capitalize in any way one's admission to practice before the Department. An attorney, in order to represent a claimant before the Treasury Department, must be enrolled in that Department, and to be enrolled means to satisfy the requirements of the statute previously cited. Having once been admitted to practice before the Treasury Department, certain rules and regulations govern the manner of practicing, the conduct of the representative, and the method of charging for the services rendered. Violations result in disbarment.

Causes for rejection, suspension or disbarment are quoted from the Act and are as follows: In general, any conduct which would preclude an applicant from enrollment will be sufficient to justify his suspension or disbarment. Specifically, the following matters, among others, will be considered grounds for suspension or disbarment:

(a) Violation of the statutes or rules governing practice before the Treasury Department.

(b) Conduct contrary to the canons of ethics as adopted by the American Bar Association.

(c) False or misleading statements or promises made by the attorney to a taxpayer or misrepresentation to the Department.

(d) Solicitation of business by the attorney. This includes letters, circulars, and interviews not warranted by previous associations; printed matter appearing on the letterheads or cards of the attorney indicating previous connection with the Treasury Department, or representations of acquaintance with treasury officials or employees. It includes also the use by attorneys of any titles which might imply official status or connection with the Government, such as, "Federal Tax Expert" or "Federal Tax Consultant." Announcement cards of former departmental employees are permissible if sent to friends or business acquaintances.

(e) Negligence in furnishing evidence required in matters pending before the Treasury Department, and in the use of any means whereby the final settlement of the matter is unjustifiably delayed.

(f) The employment by an enrolled attorney as correspondent in any matter pending before the Treasury Department, or the acceptance by such enrolled attorney of employment as correspondent of or from any person who has been denied enrollment or who has been suspended or disbarred from practice.

(g) Any other matter which, in the opinion of the Committee on Enrollment and Disbarment, is unfair to the taxpayer or to the Treasury Department or interferes unduly with the orderly disposition of matters pending before the Department.

Even though enrolled to practice before the Department, it is wise for the attorney to file in each and every individual case a properly executed power of attorney. The regulations have this to say on that score: A power of attorney from the principal in proper form may be required of attorneys by heads of bureaus, offices, and divisions, in any case. In the prosecution of claims involving payments to be made by the United States, proper powers of attorney shall always be filed before an attorney is recognized. No power of attorney shall be recognized which is filed after a settlement is made by the accounting officials, even though the settlement certificate may not yet have issued, unless such power of attorney recites that the principal is fully cognizant of such settlement and of the balance found due.

Substitution of attorneys in cases pending before the Department may only be made with the consent of the attorney of record and with the approval and assent of the head of the office, bureau or division concerned; providing, however, that where the power of attorney under which an attorney is acting expressly confers the power of substitution. The principal in any claim may not revoke the authority of his legal representative without the consent of the head of the division, office or bureau concerned. And, unless such revocation is so assented to, it will not be recognized.

Such, in brief, are the preliminary steps, rules and regulations governing the attorney enrolled to practice before the Department. The regulations are severe, but the opportunities are many and well worth the price. A day-to-day study of the tax legislation enacted, together with a thorough system of retaining decisions rendered with a view to applying the trend of the Department's action with legislation contemplated, will simplify the labors of the tax lawyer. Because so many of the older members of the bar are already firmly established in a specialty of the law, and because the tax problems of the nation are but in its infant stage, the lawyer specializing in taxation will come from the rank and file of the younger lawyer, and they, like the law, will grow, develop and become more stable.