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Report of the Committee for Liaison with the Internal Revenue Service

Wyoming State Bar

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COMMITTEE ON LEGISLATION
AND LAW REFORM

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**REPORT OF THE COMMITTEE FOR LIAISON WITH THE
INTERNAL REVENUE SERVICE**

The Committee for Liaison with the Internal Revenue Service reports to the President and members of the Wyoming State Bar as follows:

This is a new committee which was created by the President at the suggestion of Mr. Paul A. Schuster, District Director of the Internal Revenue Service which was made at the 1962 Annual Meeting of the Wyoming State Bar. Following several informal discussions, a formal meeting was held with representatives of the office of the District Director of the Internal Revenue Service on 3 January 1963. Those in attendance were: Richard V. Thomas and James L. Applegate, representing your committee; Mr. Paul A. Schuster, District Director of the Internal Revenue Service; Mr. William H. Boyle, Chief of the Audit Division; Mr. Albert F. Siebert, Chief of the Collection Division; and Mr. Robert A. Clark, Chief of the Intelligence Division.

Pursuant to a suggestion made by Mr. William A. Cole, of your committee, a request was submitted that the Internal Revenue Service send directly to the membership of the Wyoming State Bar an announcement concerning the substantive aspects of account numbers, particularly as they pertain to probate practice. Mr. Cole made the suggestion because attorneys can become liable for penalties if they fail to follow the account number requirements. This led to a general discussion concerning the possibility of mailing items directly to members of the Wyoming State Bar, and, at the request of Mr. Schuster, a copy of the mailing list for the Wyoming Law Journal was obtained so that the Internal Revenue Service would have available current addresses for all lawyers. Other matters of general interest which were covered at this formal meeting included a statement by the representatives of the Internal Revenue Service to the effect that they believed that attorneys should make an effort to appear in tax proceedings at an earlier stage. They felt that in many instances lawyers would appear only when the matter was ready to go to the Tax Court or was ready for a formal conference, and at that point it became necessary to acquaint the lawyer with all that had previously happened often involving repetition of what had occurred at earlier conferences. The I.R.S. representatives stated that they felt it was important for all attorneys

to obtain Treasury cards so that when occasion arises no delay will be encountered with respect to becoming formally qualified to represent clients in proceedings before the Service. They further stated that in many instances taxpayers seem to have a misconception with respect to Congressional intervention. From their point of view, Congressional intervention frequently results in additional workload without changing the result of the particular controversy. The Service representative suggested that in most instances further efforts to resolve problems with the local Internal Revenue Service office would be more effective. Since this meeting other contacts with the office of the District Director of the Internal Revenue Service have been on an informal basis. No comments or suggestions with respect to areas in which discussions would be helpful have been received from the members of the Wyoming State Bar.

The chairman of your committee, representing the Wyoming State Bar, attended two meetings of the Lawyers Liaison Committee with Internal Revenue Service (Omaha Region). These meetings were extremely interesting, and served to provide some guide lines with respect to appropriate areas in which liaison between the Wyoming State Bar and the office of the District Director of the Internal Revenue Service can be helpful. One of these meetings was held in Kansas City, Missouri, November 14 - 15, 1962, and a summary of the minutes of that meeting is attached to this report. The last meeting was held in Colorado Springs, Colorado, July 18 -19, 1963. Those minutes have not yet been published, but when the summary is available your committee will ask that it be published in the Wyoming Law Journal. As a result of the reorganization of the Internal Revenue Service regions, that particular Lawyers Liaison Committee will no longer function since the region has been divided between Chicago and Dallas. The State of Wyoming will be included in the Dallas region of the Internal Revenue Service, and your chairman was advised at Colorado Springs that the members of the Lawyers Liaison Committee for that region are selected by the Regional Commissioner, and that his selection did not necessarily include a representative from every State or Bar Association in the region. Your chairman advised the Regional Commissioner that the Wyoming State Bar would like to have an opportunity to participate in the functions of such a committee, and we are still awaiting developments in that regard.

As a collateral benefit of the meetings of the Lawyers Liaison Committee with Internal Revenue Service (Omaha Region), and with the assistance of Mr. Paul A. Schuster, District Director of the Internal Revenue Service, we requested an article concerning the appeal procedures in the Internal Revenue Service for publication in the Wyoming Bar Journal. Mr. Vance N. Bates, Assistant Regional Commissioner (Appellate) for the Omaha region prepared a very readable and comprehensive paper which is being published in Vol. 17, No. 3, of the Wyoming Law Journal and which your committee believes all members of the Wyoming State Bar will find interesting and helpful.

It appears that at the present time no particular areas of conflict exist between the members of the Wyoming State Bar as a group and the Internal Revenue Service as represented by the District Office . As tax practice increases among attorneys in the State of Wyoming, however, this committee will be called upon more and more frequently to assist in resolving points of conflict. For that reason, the present committee does recommend that such a committee be continued as a standing committee of the Wyoming State Bar.

RICHARD V. THOMAS, Chairman
William A. Cole
James L. Applegate

SUMMARY OF
MINUTES OF MEETING
LAWYERS LIAISON COMMITTEE WITH INTERNAL REVENUE
SERVICE AND REPRESENTATIVES OF IRS (OMAHA REGION)

November 15 - 16, 1962
Kansas City, Missouri

The second meeting of the Lawyers Liaison Committee with IRS (Omaha Region) was held with representatives of the Internal Revenue Service at Kansas City, Missouri on November 15 and 16, 1962.

Harry A. Morris, Chairman of the Committee, called the meeting to order at 9:00 A.M. on November 15, 1962. Mr. Morris introduced the lawyer-members of the Committee, and Regional Commissioner Homer O. Croasmun introduced representatives of the Internal Revenue Service. They were:

Bar Association and Special Representatives

Name	Organization
Keith Miller	American Bar Association Delegates
William D. Crampton	Vice-Chairman, ABA Section on Taxation, Committee on Cooperation with State and Local Groups
Leslie H. Wald	Colorado Bar Association
Milton E. Mayer, Jr.	Denver, Colorado Bar Association
Maurice E. Stark	Iowa Bar Association
Ervin G. Johnston	Kansas Bar Association
Joseph A. Hoskins	Kansas City, Mo. Bar Association
Kenneth Cohn	Kansas City, Mo. Bar Association (Alternate)
William P. Van Evera	Minnesota Bar Association
Robert J. Johnson	Minneapolis-St. Paul Bar Association
Harry A. Morris	Missouri Bar Association
Paul J. McCann	North Dakota Bar Association
James E. Moore	South Dakota Bar Association
Richard V. Thomas	Wyoming Bar Association

Internal Revenue Service Representatives
Omaha Regional Office

Name	Title
Homer O. Croasmun	Regional Commissioner
Frank C. Conley	Regional Counsel
Ivan L. Onnen	Assistant Regional Counsel
Claude K. Sanders	Assistant Regional Counsel
Robert J. McCauley	ARC (Audit)
Vance N. Bates	ARC (Appellate)
Harold B. Holt	ARC (Intelligence)
Clarence Raish	ARC (Collection)

District Directors

Name	Address
Harry F. Scribner	Wichita, Kansas
Edwin O. Bookwalter	Kansas City, Missouri

Welcoming addresses were given by James J. Waters, Chairman of the Missouri Bar Association Tax Committee, representing Roy P. Swanson, President of the Missouri Bar Association, who was unable to be present; Allan R. Browne, President of the Kansas City Bar Association; and Douglas Stripp, President of the Lawyers Association of Kansas City. The greeters stressed the splendid opportunity the forum provided for the solution of problems of mutual interest and expressed the expectation that substantial progress would be made during the meeting to achieve success in those areas which had been assigned for preparation and discussion at the meeting. Reference was made to the excellent start in this direction which had been initiated at the organization meeting.

It was the carefully considered and unanimously expressed thought of the Service and Lawyer participants that the abiding purpose of the Committee should be revised so as to announce publicly that:

PURPOSE. The purpose of the organization is to provide an opportunity for lawyers to meet regularly with representatives of the Internal Revenue Service to the end that there will be an appreciation of each others problems, a more reasonable attitude in the whole process of determining tax liabilities, and an awareness of the mutual obligations of tax practitioners and the Internal Revenue Service to do everything reasonably possible to see that our self-assessment tax system works fairly and properly. Frank discussions of problems encountered in tax practice and in the administration of the Internal Revenue Service will be conducted with these objectives:

- (a) Constructive recommendations for changes in policies and procedures of the Internal Revenue Service, other Federal administrative and judicial instrumentalities, and those of members of the Bar which will further the desired objective of the tax practice and the tax administration to seek only the proper tax due —

nothing more, nothing less.

- (b) Dissemination of information on recommendations and conclusions of the Committee to members of Bar Association represented and to the appropriate Internal Revenue Service officials at the regional level and above.

Following a full and very frank discussion of the advisability of adapting the discovery features of the Federal Rules of Civil Procedure to U.S. Tax Court cases at issue, the lawyer representatives on the Committee only unanimously adopted the following resolution:

“WHEREAS, there is general agreement between lawyers on the Committee and the Regional Counsel’s staff that cases in the Tax Court can be most fairly and efficiently disposed of where full disclosure of the evidence to be presented and stipulation of facts not in dispute are made in advance of trial, and

WHEREAS, the lawyers on the Committee from their long experience with discovery procedures in civil cases in the Federal Court and in State Courts having modern procedural rules, overwhelmingly agree that modern discovery and other pre-trial procedures have promoted the fair and expeditious disposition of cases, and

WHEREAS, the Committee is of the opinion that improved pre-trial procedures would aid in the orderly disposition of cases in the Tax Court,

BE IT RESOLVED, that the Committee recommends that the Rules of Practice of the Tax Court of the United States be amended to incorporate the provisions of the Federal Rules of Civil Procedure for discovery depositions, interrogatories, admissions and other pre-trial procedures and that copies of this resolution be sent to the Tax Court of the United States, the Commissioner of Internal Revenue, and the Section on Taxation of the American Bar Association.”

Concerning ADP (Automatic Data Processing) scheduled to commence January 1, 1963 in the Omaha Region initially with the filing of Corporate Federal Tax returns it was stressed that in order to utilize the efficiency of the new high-speed ADP system it is important that the corporate returns be fully and properly completed so the information can be rapidly extracted by punch card operators since these operators will not have the technical knowledge required to make even minor corrections. The IRS representatives expressed their sincere appreciation for the spirit of cooperation manifested time after time by tax practitioners in the Omaha Region and because of this spirit stated that the Internal Revenue Service definitely intends to take a reasonable approach in applying the new requirements concerning the preparation of corporate returns.

Regarding the previously controversial and hotly debated subject of the Appellate Division function and the role of the Technical Advisor in pre-90-day cases, at the direction of the Chairman the following comments were prepared after the meeting by a member of the Committee as representing the consensus of the Lawyer members:

1. *Threats to Raise New Issues* No Technical Advisor may seek the disposition of a case on a basis favorable to the Government by use of a technique whereby he threatens to raise a new issue or suggests that other issues will be raised if an agreement on the issues in controversy is not reached. Such action by a Technical Advisor is the basis for a legitimate grievance against the Service employee and should be brought to the attention of the employee's supervisor in the Appellate office, the head of the Appellate Division in the Regional Office, or the Regional Commissioner.

2. *Raising new issues — New Theories* The rules and instructions under which the Appellate Division operate permit the Technical Advisor to raise a new issue in a case if it is substantial, important, and one in which the Government has a reasonable prospect to prevail. They also appear to authorize a Technical Advisor to defend an adjustment by any theory which seems appropriate to him, regardless of whether the theory was used to support the proposed adjustment in the District Office. (The lawyer-members of the Committee strongly urged that no issue or theory should be presented by the Government for the first time in an Appellate Division conference — that either the Appellate Division should be prohibited from raising new issues and theories or that it should adopt a procedure whereby the taxpayer's representative should be advised that the new issue or theory has been raised. Preferably, this should be done in a 30-day letter from the District Office, but in any event the taxpayer's representative should be advised prior to the first conference in the Appellate Division. Furthermore, the Lawyer-members of the Committee raised the question whether the rules and instructions referred to above are violative of the statement appearing in Section 601.106 (f) of the Code of Federal Regulations that requires the conferee to determine the correct tax "with strict impartiality between the taxpayer and the Government," inasmuch as these rules and regulations appear to permit the raising of new issues and theories only where "the Government has a reasonable chance to prevail.")

3. *Cost of Litigations* It is understood that present instructions to Technical Advisors prohibit so-called "nuisance value" type settlements. (The Lawyer-members of the Committee had some feeling that Technical Advisors do consider the costs of litigation to the taxpayers, particularly in small cases. Accordingly, Technical Advisors should be given the strongest possible admonition that any consideration of the nuisance value or the cost of litigation will not be tolerated in settlement negotiations.)

The Committee expresses some concern that Technical Advisors frequently compute the dollar value of one or more issues before approving a settlement offer. Technical Advisors are enjoined by their rules and regulations to "give serious consideration to an offer of settlement. . . . on a basis which fairly reflects the strength or weakness of the opposing views." This would seem to have nothing to do with the dollar value of a particular issue. Technical Advisors are cautioned to confine their evaluation of an issue to its merits, excluding consideration of dollars.

4. *Technical Advice from the National Offices* Under present procedures, the taxpayer's representative is not informed that the

advice of the National Office has been sought and the Technical Advisor is not required to follow the advice after it is obtained. In situations where the Technical Advisor requests advice of the National Office in a case, the taxpayer's representative should be so informed and be given the opportunity, if he chooses, of appearing before the person in the national office who is responsible for giving the advice. The Appellate Division would then be required to follow the advice if it were favorable to the taxpayer.

5. *Audit Function in Appellates* It is understood that Appellate does not consider itself to be a fact finding activity, that the audit function of the Service is supposed to be performed by the audit divisions in District Offices. (Nevertheless, the Lawyer-members of the Committee felt that Technical Advisors often do act as auditors, either doing actual audit work in cases themselves or accomplishing the same result by directing the work of Revenue Agents in obtaining additional information in any given case. The instructions to Technical Advisors should emphasize that theirs is a semi-judicial tribunal to hear appeals from the findings of the District audit divisions and their duty is not to make investigations or require additional investigations to be made for the sole purpose of bolstering a case for the Government.)

6. *Possible Rejection of Settlement by Supervisor who Reviews Recommendation of Technical Advisor:* Under current procedures, the letter which transmits the Appellate Agreement Form 870-AD to the taxpayer or his representative states that the proposed settlement is subject to review and acceptance by or on behalf of the Commissioner. In fact, the supervisor of the Technical Advisor does review the Technical Advisor's report at a later date and may not approve it. The settlement will then not be accepted for the Commissioner. In such instances, the taxpayer and his representative who had good reason to believe their case was settled, possibly after long and laborious negotiations with the Technical Advisor, are embarrassed and dismayed to learn that the case has not been settled — that they may have been placed in a poor position for future negotiations by concessions they have made to the Technical Advisor. The Appellate Division should adopt procedures under which the taxpayer and his representative can be assured that their case is settled when they receive the official Appellate Agreement Form 870-AD.

7. *Right to Request a Change in Technical Advisor Assignments:* The ranks of Technical Advisors and Tax Attorneys are filled with individuals of different personalities, capacities, and backgrounds. Occasionally, there will be a Tax Attorney and a Technical Advisor who simply cannot work together because of personalty clashes, differences in approach, and established differences in concepts. Obviously, the chance of settlement of a case by two diametrically opposed individuals is remote, to say the least. It is understood that the Appellate supervisors will not assign a case to a Technical Advisor who is known to be persona non grata to the taxpayer's representative, but this circumstance may not be known to the official who makes the assignments. Tax Attorneys in the past have been reluctant to request a change in Technical Advisor assignments because they were not certain that a change

would be made and results might be reprisals at the worst and strained relations with the Appellate office at the best.

The Appellate Division should adopt as recognized policy the principle that taxpayer's representative may request a change in the assignment of the Technical Advisor on his case on the grounds that a reasonable disposition of the case is unlikely because of the personalities involved. This is not to say that the Tax Attorney will have any right to designate the Advisor who will handle the case or to request a "change of horses in midstream." It is to say that the tax attorney may expect the Appellate supervisor to honor his request for a change of assignment — before settlement negotiations have begun — on the grounds that the advisor assigned the case is one with whom the attorney has not been able to work and there is no reasonable prospect that the case can be settled unless the assignment is changed.

The foregoing is not to be construed as representing the views of the Internal Revenue Service representatives, nor those of all the Lawyer-members. Without conceding the deficiencies referred to in the items, the Internal Revenue Service representatives believe that the recommendations made in Items 1, 3, and 5 are already established in current Service procedures. With respect to Items 2, 4, and 6, the recommendations would require changes in long-established procedures promulgated in the National Office. The Service representatives believe that a reasonable application of the procedure recommended in Item 7 is so commonly accepted that any further addition to present Service instructions on the subject would be superfluous.

Following an extended but inconclusive discussion of Service policy regarding the conduct of Revenue Agents after the filing by a Lawyer of a Power of Attorney it was decided to present the problem, with the points raised by the Lawyers, for determination by the National Office and that the existence of the problem be brought to the attention of the American Bar Association Section on Taxation.

The next meeting of the Committee will be held July 18 and 19, 1963 in Denver, Colorado. Mr. Leslie H. Wald, representing the Colorado Bar Association, was elected Chairman for the meeting.

1963 ANNUAL REPORT OF THE COMMITTEE ON MINOR COURTS

MR. PRESIDENT AND MEMBERS OF THE WYOMING STATE BAR, your Committee on Minor Courts is pleased to report that the 1963 session of the Wyoming Legislature approved the Bar's proposal to lay the ground-work for modernizing our minor court system. Senate Joint Resolution No. 6 was adopted. By this proposed Constitutional Amendment all reference to minor courts, such as justice of the peace, municipal or police justice, and arbitration courts, would be removed