Enrolled Agents Since 1884?

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It may be general knowledge among those in our industry that the roots of the designation "Enrolled Agent" can be traced back to the Enabling Act of 1884. It also may be general knowledge that the origin of "man" can be traced back 1.6 million years, but they were not homo sapiens; i.e., modern man. I use this corollary to make this point: the Enrolled Agent of today has traveled a long road of evolution; evolution that will continue into the future.

My next point, and the major focus of this article, is that the members of the National Society of Accountants can take great pride in their Society's continuing role in this evolution.

The Enabling Act or General Deficiency Appropriation Bill (H.R. 2735) also known as the "Horse Act of 1884," was signed into law July 7, 1884. Congress, following the Civil War, enacted legislation giving citizens of the U.S. authority to make claims for the value of horses and other property lost during the War. Claims were to be filed with the Treasury Department. Very soon it became apparent that more claims had been submitted than horses lost. Consequently in July 1884, Congress gave the Secretary of the Treasury authority to regulate the admission of attorneys and agents who represented claimants before the Treasury Department and to take appropriate disciplinary action against those who were incompetent or failed to comply with the regulations as promulgated.

Between 1884 and 1921, the general statute remained virtually unchanged and was the only enactment concerning attorneys, agents and other persons representing claimants before the Treasury Department. Following the Revenue Acts of 1918 and 1919, a number of circulars dating back as far as 1886 were combined with other statutes into a singular Treasury Departmental Circular known as Circular #230. Effective February 19, 1921, this first Circular 230 addressed "the laws and regulations governing the recognition of agents, attorneys and other persons representing claimants before the Treasury Department and offices thereof."

Before May 15, 1939, under Circular 230, accountants who wanted to enroll with the Treasury Department were required to show that they were of good reputation, possess necessary qualifications (which may have included an exam, but varied from administration to administration) and take an oath of allegiance. Following the Revenue Act of 1936, Circular 230 was revised to allow only lawyers and CPAs to represent clients before the Internal Revenue Service. This, in large part, was the result of lobbying efforts by the American Bar Association (ABA) and the American Institute of Accountants (the forerunner of the AICPA). During this period, many states also adopted Uniform Accountancy Acts (UAAs) that prevented the nonlicensed accountant from providing accounting services other than bookkeeping or tax preparation and limited the services of Licensed Public Accountants.

The day had come for public accountants to organize and to secure public and legal recognition. The National Society of Public Accountants (NSPA) was formed in 1945 to champion the rights of all accountants in public practice, to assist states in fighting UAA-type legislation and to secure for its members the right to represent clients before the Treasury Department and the Internal Revenue Service (IRS). Between 1945 and 1959, NSPA conducted numerous fundraisers to help support court cases, to assist states in lobbying efforts and to fund delegations to testify before Congress and the Treasury Department. In many cases, officers of NSPA personally financed these efforts, contributing as much as $25,000 each.

In December 1951, NSPA felt it had achieved a major victory when Circular 230 was revised to allow qualified persons other than attorneys and CPAs to practice before the Treasury Department. Any feelings of joy quickly disappeared when the Treasury Department used the exam prepared and administered by the American Institute of Certified Public Accountants (AICPA) as the standard to determine a "qualified person."

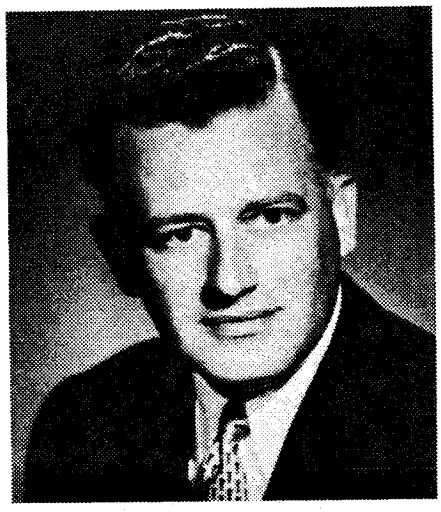
As the '50s moved on, NSPA funded delegation after delegation to meet with the Treasury Department to develop a more reasonable means to determine who was qualified to practice before the Treasury Department. By 1957, it was becoming quite apparent that the current system was not providing an adequate supply of Representing Agents, as they were then known, to meet the demand. To compound the problem, published interpretations of Circular 230

were misinterpreted, leading to prosecutions of practitioners who represented clients before even the lowest offices of the IRS.

Between February and October of 1958, at the direction of the Treasury Department, Russell C. Harrington, then Commissioner of the Internal Revenue Service, conducted a series of meetings to revise the rules for taxpayer representation and to address a series of proposals submitted by NSPA. Those present at the meetings included the Commissioner of the Internal Revenue Service, his chief staff, the general counsel of the Treasury Department, and representatives of the AICPA, American Bar Association and the National Society of Public Accountants. NSPA's team included Past President S. W. Frankford, Chairman of the Committee on National Affairs; R. E. Jennison, Executive Director; Carl K. Goodson, General Counsel; and at some meetings, Allan A. Drummond, Acting President. In addition to this series of meetings, NSPA participated in a series of bi-monthly meetings with the IRS and the Treasury Department. The stage was set for the Treasury Department to radically revise Circular 230.

Although Mr. Frankford was pushing for NSPA members to automatically be enrolled as Representing Agents by virtue of being licensed public accountants with 7 years of experience, a compromise was reached. The Treasury Department would allow qualified individuals, other than CPAs and attorneys, to represent clients before the Treasury Department and the IRS. The qualifying factor would be passing a new Special Enrollment Examination developed and administered by the Treasury Department. Questions in the Special Enrollment Exam would not be taken from previously used CPA exams and would be based on practical knowledge, not theory, and special applications in federal tax and tax representation. NSPA was also successful in securing recognition of unenrolled persons to represent taxpayers before a revenue agent or examining officers of the audit division at the District Director's office.

To develop the exam, the Treasury Department created a Special Enrollment Examination Committee made up of representatives from the ABA, AICPA, NSPA, and two individuals at large. NSPA totally supported the development of the Special Enrollment Exam and ran a major promotional campaign soliciting questions and paying as much as $30 per question. NSPA scored a major victory, one that had taken 15 years to accomplish, when the long-awaited revision of Circular 230 became effective March 15, 1959. NSPA put its full support behind its implementation, developing a training course to assist members to prepare for the first Special Treasury Examination. This exam was given on June 24 & 25, 1959 to 2,188 accountants in public practice. Treasury cards were issued to 1,264 individuals —46% of them were NSPA members.



Stuart Frankford

Now, for the first time, under the new Treasury Card program, tax practitioners would enjoy the same rights and privileges accorded attorneys and CPAs. But, NSPA's work was not done. It would be another seven years before holders of Treasury Cards would have a title that signified their accomplishment to the general public. Because individuals were limited in the ways they could advertise their services, NSPA thought it was very important for tax practitioners who had passed the Special Treasury Exam to have a specific title that identified them to the general public as being qualified to represent taxpayers at all levels of the IRS. Until 1966, individuals other than attorneys and CPAs who were issued Treasury Cards, were referred to by a wide range of names; i.e., enrolled tax preparer, enrolled tax practitioner, agent, representing agent and enrolled agent.

Once again, proposed legislation that could have been very detrimental to independent accountants provided an opportunity for success. In the mid 1960s, the ABA lobbied for legislation that would allow attorneys to automatically represent clients before any federal administrative agency. Past President Stuart Frankford was once again called upon to present NSPA's views. The Agency Practice Act or Public Law 89-332 became law in 1965. It allowed attorneys to automatically represent clients before any federal administrative agency, except the Patent Office, without special registration. At the 12th hour, the AICPA was successful in its lobbying efforts to allow CPAs to automatically be recognized before the Internal Revenue Service. NSPA initially tried to block the legislation on the grounds that all persons representing clients before the IRS should be required to pass a written examination in the specialized field of federal taxation. Once the law appeared destined to pass, NSPA tried to secure automatic recognition for its members. Although NSPA was not able to obtain the privilege of automatic representation, it was successful in ensuring that NSPA members and independent tax practitioners would not lose the privileges they currently enjoyed .

After passage of the Agency Practice Act, NSPA efforts switched to working with the IRS on the incumbent revision of Circular 230. Past President Frankford, along with Past President J. B. McIlroy, then Chair of the NSPA Committee on National Affairs, worked with William H. Sager, Director of Practice at the U.S. Treasury Department, to ensure the right to practice by independent tax practitioners. Mr. Sager would later say that "NSPA played a significant part in proposed changes to the Revised Circular 230."

When Revised Circular 230 became effective in September 1966, it was apparent that once again NSPA had triumphed. The Treasury Department/IRS agreed to continue the Special Enrollment Exam and best of all provide an official name for these representatives by establishing the "Enrolled Agent" designation. Although it was not the name NSPA lobbied for, nevertheless, enrolled tax preparers now had an official title that identified them as having special skills and expertise in tax matters, as evidenced by the Special Enrollment Examination.

Mr. Sager, in an address before the NSPA Convention in Miami Beach in 1967, said: "The drafting of the revised regulations (of Circular 230) was an undertaking of considerable magnitude. I am pleased to say that the National Society of Public Accountants

played a significant part by submitting its views to the Treasury Department and by expressing its views on the proposed changes. Mr. J. B. McIlroy, Chairman of the NSPA committee on National Affairs, appeared as your representative before the Treasury Department and succinctly expressed the high standards of proficiency and integrity for which your membership strives."

Following the 1966 revision, NSPA continued to work closely with the Treasury Department and the IRS to secure additional recognition for Enrolled Agents. NSPA's proposals found an ally in Leslie Shapiro, who became Director of Practice in 1972. Mr. Shapiro pushed through the issuance of certificates in 1972. Twenty years later he secured approval for the use of the E.A. initials after a name to denote Enrolled Agent (1994 revision of Circular 230). Meanwhile, in 1977, Past President Albert Van Tieghem proposed that the Special Enrollment Exam be offered in Spanish to accommodate Spanish-speaking accountants across the country and in Puerto Rico. Over the years, this has continued to be a NSA priority. In 1987, NSPA proposed a check-off box for third party representatives to eliminate the need for a power of attorney to resolve processing related matters. The IRS recently announced that this will become effective with the 2001 filing season. This issue was on every NSPA agenda at every annual meeting with the IRS since 1993.

NSPA, now known as the National Society of Accountants (NSA), continues an aggressive program to promote the welfare of Enrolled Agents. The new IRS "Pro Bono" program, introduced by Dr. William Stevenson, Chairman of NSA's Federal Taxation Committee, is a joint partnership between the IRS and NSA. It is designed to revolutionize the rights of taxpayers and to standardize IRS' acceptance of the right of third party representation. To this day, NSA lobbies to preserve the practice rights of EAs. As I write this, we are working on a cease and desist case involving EAs in the state of Florida.

We all owe a debt of gratitude to the illustrious and dedicated members of the National Society of Public Accountants who expended considerable money and effort to gain the right to practice before the Treasury Department. Think of them whenever you use your EA designation or strive to earn that credential.

For more information on current NSA activities, visit our website at *http://www.nsacct.org.*

Author's Note: Information for this article came from interviews with William Sager and Leslie Shapiro; the National Archives of the United States; Library of Congress; *Federal Register*; CCH Internet Tax Research; New York; NSPA *Washington Reporter*, 1960–1965; NSPA archives (meeting minutes, transcripts, correspondence and bulletins); Treasury Department Cumulative Bulletin #4, 1921; History of Public Accounting in the United States, James Don Edwards, 1960; The Rise of the Accounting Profession—1937–1969, John L. Carey, 1969; Professional Responsibility in Federal Tax Practice, Boris T. Bittker, 1970; and *The PA*, September 1956. ❖

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