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TAXATION OF PROFESSIONAL PENSION PLANS

One of the inequalities of present day federal taxation is that self-employed professional men do not qualify for many pension plan advantages enjoyed by their economic counterparts, the executives and shareholder employees of corporations. Sections 401-404 of the Internal Revenue Code of 1954 give many pension plan benefits¹ to those who can qualify as employees if their corporate employer has established an approved pension plan. Non-professional self-employed persons can establish the employer-employee relationship needed to set up an approved pension plan by incorporation of their business. This relationship and its tax advantages would seem to be lost to the self-employed professional man, who is often denied by state statute the right to incorporate for the practice of his profession.²

The best solution to the inequality of the tax treatment of pension plans would be to allow professional self-employed the benefits of sections 401-404. This simple step would completely eliminate the necessity of taking the trip to corporate employee status. Bills were introduced in the last session of Congress³ to amend section 7701(a) of the Internal Revenue Code to accomplish this result, by amending the definitions of "person," "corporation," "stock," and "shareholder" to embrace professional corporations and associations formed under state law. The attempt was unsuccessful.

The purpose of this note is to examine the two roads by which a self-employed professional man can arrive at the federal tax classification of employee. The starting point is to find or create an employer who is capable of establishing an approved pension plan. The most obvious candidate for this position is the corporation. For those denied the right to incorporate, there is the unincorporated association that is taxed as a corporation. However, a map pointing the way to employee status that shows two roads, incorporation or association, without showing the detours and roadblocks, is unfortunately too simplified. But neither road leads to a dead end. The federal courts have established road signs pointing to the increasingly desired classification of employee.

One detour is the Self-Employed Persons Retirement Act of 1962,⁴ commonly called "H.R. 10." This is an attempt to correct the tax inequality by establishing a separate set of rules for the pension plans of the self-employed. It has achieved partial success. If it provided benefits equal to those available to corporate employees, H.R. 10 would eliminate the necessity of taking the trip to corporate employee status.

It is beyond the scope of this note to discuss the provisions of H.R. 10. Suffice it to say that those covered by it are denied many benefits available to corporate employees. A comparison of the benefits of H.R. 10 and those available to em-

¹ Two of the more important benefits are that the employee is not taxed for the money placed in the plan until it is actually received by him, INT. REV. CODE OF 1954, § 402, and that the accumulated earnings of the fund are exempt from income tax until distribution, INT. REV. CODE OF 1954, §§ 401, 501.

² See Anderson, *Tax Aspects of Professional Corporations*, 1963 SOUTHERN CAL. TAX INSTITUTE 309, 311. See generally *id.* at 309-36.

³ S. 2403, H.R. 9217, 88th Cong., 2d Sess. (1964).

⁴ 76 Stat. 809, which amends INT. REV. CODE OF 1954, §§ 401-405.

ployees under sections 401-404 has been made in several articles.⁵ The conclusion generally reached is that the act completely falls short of its pre-enactment billing.⁶ It does not give self-employed persons access to retirement plans on a reasonably similar basis to that accorded corporate stockholder employees.⁷ The best thing that can be said about the act is that it may be amended in the future to provide greater benefits.⁸

H.R. 10 can be an acceptable alternative to attainment of employee status. Some professional men will find in their particular financial situations that the disadvantages of corporate taxation more than outweigh the retirement plan benefits. Taxation as a corporation involves many more considerations than a mere calculation of retirement plan benefits.⁹ For this group, H.R. 10, as limited as its benefits might be, is better than no plan at all.

Problems of professional ethics, particularly concern over the destruction of the client-professional man relationship by the interposition of a corporation or association, might convince many unimpressed with the financial advantages of H.R. 10 that it is their best alternative. It allows them to continue to work in the traditional partnership form or as individuals. The ever present possibility of tax reform in the corporate taxation field is an additional factor that will convince some to provide for their retirement under the provisions of this act rather than attempt formation of a corporation or association.

Even after considering all the above factors, many persons are still not satisfied with the Self-Employed Persons Retirement Act. They do not wish their only other hope for tax relief to be a possible reform of the Internal Revenue Code. These professional men should examine more closely the two roads to the tax status of corporate employee.

In the last four years many states have passed statutes that attempt to erase the tax inequality by modifying the prior state law concerning professions. The purpose of these modifications is to allow the professional man to qualify for employee status by providing him with an opportunity to organize a professional corporation, or a professional association that qualifies for taxation as a corporation. These statutes were passed in response to the invitation held out by the Internal Revenue Service regulations of 1960, the "Kintner regulations," which placed a great deal of emphasis on the legal relationships possible under state law.¹⁰ Changes in state law would seem to be one adequate solution to the

⁵ Grayck, *Self-Employed Retirement Plans*, 63 COLUM. L. REV. 415 (1963); Snyder & Weckstein, *Professional Corporations*, 48 CORNELL L.Q. 613 (1963); Forster, *Deferred Compensation Plans for Lawyers and Law Offices*, 1964 SOUTHERN CAL. TAX INSTITUTE 393.

⁶ H.R. REP. NO. 378, 87th Cong., 1st Sess. (1961).

⁷ Grayck, *supra* note 5, at 432.

⁸ S. 2229, H.R. 8771, 88th Cong., 2d Sess. (1964), was a recently offered amendment that was not reported out of committee.

⁹ For an analysis of the tax problems involved in the establishment and operation of a professional association or corporation (for example, possible double taxation on dividends paid to the stockholders) see Snyder & Weckstein, *supra* note 5, at 634.

¹⁰ Treas. Reg. § 301.7701-1(c) (1960) provides that although it is the Internal Revenue Code rather than local law which establishes the tests or standards which will be applied in determining the classification in which an organization belongs, local law governs in determining whether the legal relationships which have been established in the formation of an organization are such that the standards are met.

problem but for the 1965 amendments to the Internal Revenue Service Regulations.¹¹ These amendments attempt to destroy completely the effect of the recent state statutes. The regulations and amendments will be discussed in detail below.

Taxation of an unincorporated association as a corporation is based on the Internal Revenue Code of 1954, section 7701(a)(3), which states that "the term corporation includes associations . . ." The term association is undefined in the code; however, there is a long line of cases providing a definition. The early case of *Hecht v. Malley*¹² established that an association does not have to be a corporation created under the laws of a state to be taxable as a corporation. *Morrissey v. Commissioner*¹³ and three companion cases¹⁴ established criteria for determining whether a particular association is taxable as a corporation. The association that is taxed as a corporation is one that can pass the test of corporate resemblance. The test requires a consideration of four factors: centralized control, continuity, limited personal liability, and transferability of beneficial interests.¹⁵ This test, as applied by the courts, is not rigid, but is flexible enough to take into account all possible fact variations in the substance and form of the particular association under consideration. The test has been applied to a marketing arrangement,¹⁶ an investment arrangement,¹⁷ a professional clinic operating under a trust,¹⁸ a commodity trading partnership,¹⁹ and professional association,²⁰ to name but a few. It requires consideration of each case as a special, separate problem.²¹ "The inclusion of associations with corporations implies resemblance, but it is resemblance and not identity."²² If the association has more corporate than non-corporate characteristics, based on a consideration of the four factors, it will be taxed as a corporation.

There is a large group of decisions that support taxation of varying types of associations as corporations. The test of corporate resemblance has been applied to professional groups in four federal cases.²³ In all four cases, the unincorporated professional group has been found to be properly taxed as a corporation. Thus, there should seemingly be no difficulty if self-employed professional men wish to

¹¹ T.D. 8797, 1965 INT. REV. BULL. No. 9, at 38.

¹² 265 U.S. 144 (1924).

¹³ 296 U.S. 344 (1935).

¹⁴ *Helvering v. Coleman-Gilbert Associates*, 296 U.S. 369 (1935); *Helvering v. Combs*, 296 U.S. 365 (1935); *Swanson v. Commissioner*, 296 U.S. 362 (1935).

¹⁵ *Smith v. Commissioner*, 313 F.2d 724, 735 (8th Cir. 1963). After stating that the lower federal courts have not universally agreed about the elements of the resemblance test as set forth in *Morrissey*, the court concludes that there is substantial agreement that the four critical elements are those listed in the text.

¹⁶ *John Province #1 Well v. Commissioner*, 321 F.2d 840 (3d Cir. 1963).

¹⁷ *United States v. Stierwalt*, 287 F.2d 855 (10th Cir. 1961).

¹⁸ *Pelton v. Commissioner*, 82 F.2d 473 (8th Cir. 1936).

¹⁹ *Smith v. Commissioner*, 313 F.2d 724 (8th Cir. 1963).

²⁰ *United States v. Kintner*, 216 F.2d 418 (9th Cir. 1954); *Foreman v. United States*, 232 F. Supp. 134 (S.D. Fla. 1964); *Galt v. United States*, 175 F. Supp. 360 (N.D. Tex. 1959).

²¹ *United States v. Davidson*, 115 F.2d 799 (6th Cir. 1940).

²² *Morrissey v. Commissioner*, 296 U.S. 344, 357 (1935).

²³ *United States v. Kintner*, 216 F.2d 418 (9th Cir. 1954); *Pelton v. Commissioner*, 82 F.2d 473 (8th Cir. 1936); *Foreman v. United States*, 232 F. Supp. 134 (S.D. Fla. 1964); *Galt v. United States*, 175 F. Supp. 360 (N.D. Tex. 1959).

form an unincorporated association that qualifies for federal taxation as a corporation. But there is presently a great deal of difficulty.

The roadblock with which the self-employed professional man has to contend is the adamant opposition of the Internal Revenue Service. The Service is presently opposed to self-employed professional men attaining employee status, whether they travel the road of incorporation or the road of association. This is inconsistent with the Service's former position. In 1936, in the first case involving a professional group,²⁴ the Service argued successfully that an unincorporated clinic of doctors, operating and organized under a trust indenture, should be taxed as a corporation. But the subsequent rise in income tax rates and the establishment of the pension plan benefits available to corporate employees made the tax classification of employee more financially advantageous to the taxpayer than it was in 1936. Thus the Service is found in court in 1954,²⁵ 1959,²⁶ and 1964,²⁷ arguing that unincorporated associations of doctors, organized and operating under articles of association, should not be taxed as corporations. There was nothing in the difference between the organization and operation under the trust indenture in the 1936 case and that under the articles of association in the three later cases that warranted the change of position by the Service. The statutory definition of "corporation" remained unchanged.²⁸ The change of position is explainable only by a policy of collecting the maximum number of tax dollars.

At present, the Internal Revenue Service appears dedicated to maintaining a roadblock against professional men attaining employee tax status. The core of the roadblock is opposition in court. The outer layer is the promulgation of regulations which deny that there is a way to achieve this status. Before examining the arguments used in court by the Service and the regulations, let us examine how the four provisions of the corporate resemblance test were applied to the fact situations in the four cases involving professional associations.

The doctors in the case of *Pelton v. Commissioner*²⁹ sought unsuccessfully to avoid being taxed as a corporation. Pursuant to the terms of the trust indenture, the trustees exercised centralized control of the operation of the clinic. The criteria of transferability of beneficial interests and continuity were satisfied by shares which were transferable, subject to an option to purchase held by the remaining beneficiaries, even though the trust was to last only ten years. The court did not discuss the question of limited liability, concluding that it was clear that all the substantial points of resemblance to a corporation were present.

The *Kintner*³⁰ case is the only decision rendered by a federal appellate court passing on the tax classification of a professional unincorporated association

²⁴ *Pelton v. Commissioner*, 82 F.2d 473 (8th Cir. 1936).

²⁵ *United States v. Kintner*, 216 F.2d 418 (9th Cir. 1954).

²⁶ *Galt v. United States*, 175 F. Supp. 360 (N.D. Tex. 1959).

²⁷ *Foreman v. United States*, 232 F. Supp. 134 (S.D. Fla. 1964).

²⁸ The *Pelton* decision is based on the Revenue Act of 1924, ch. 234, § 2(a)(2), 43 Stat. 253, and the Revenue Act of 1926, ch. 27, § 2(a)(2), 44 Stat. 9. *Kintner* is based on Int. Rev. Code of 1939, ch. 2, § 3797(a)(3), 53 Stat. 469. *Galt* and *Foreman* are based on INT. REV. CODE OF 1954, § 7701(a)(3). All sections provide that the term "corporation" includes associations.

²⁹ 82 F.2d 473 (8th Cir. 1936).

³⁰ *United States v. Kintner*, 216 F.2d 418 (9th Cir. 1954).

organized with articles of association and intended by its organizers to be taxed as a corporation. The articles provided for centralized control, transferability of interests, and continuity. Even though there was no limitation on the personal liability of the members for professional misconduct, the association was held to be a corporation for federal tax purposes, rather than a partnership.

The court in *Galt*³¹ views the question as one of elementary justice and cites no authority for its finding that the clinic was an association taxable as a corporation. The articles of association covered in substance all things that would have been covered by articles of incorporation had incorporation been permitted by the laws of the state. The fact that it was not permitted was no ground for a different tax treatment of the association when the relationship among the members and to the public was similar to that of a corporation.

The most recent case is *Foreman v. United States*.³² Here, the association acquired all of the assets of a former partnership, and the former partners now considered themselves employees. The important provisions of the articles of association followed closely the form and substance of typical articles of incorporation. The court also looked at the actual operation of the association. Centralized control was found to be exercised since the Board of Governors determined salary, hours, working conditions and vacations. No fees were retained by the individual doctors. One doctor had the sole power to make purchases and bind the association by contract. The court held that the association met the first three criteria of the *Morrissey* case more closely than did the *Kintner* or *Galt* associations. The fourth criterion, limited liability, was not met; the court said that neither the *Kintner* nor *Galt* associations met this criterion. Nonetheless, the association was held properly taxed as a corporation.

The Internal Revenue Service has used three different arguments in each of the last three cases to attempt to convince the court that the association should not be taxed as a corporation. The first is that a professional association can never have the requisite substantial resemblance to a corporation if members of the profession cannot incorporate. This argument was expressly rejected, the court saying:

[I]t would introduce an anarchic element in federal taxation if we determined the nature of associations by state criteria rather than by special criteria sanctioned by the tax law It would destroy the uniformity so essential to a federal tax system — a uniformity which calls for equal treatment of taxpayers, no matter in what state their activities are carried on.³³

The second contention is that the decision in *Mobile Bar Pilots Ass'n v. Commissioner*³⁴ is controlling in cases involving professional associations. In this case the association was held not to be taxable as a corporation. But the case was easily distinguished³⁵ on the basis of the limited functions of the Bar Pilots Association (it was a mere agent).

The third contention is that the income earned by a professional association, being from personal services, is not the type of income a normal corporation

³¹ *Galt v. United States*, 175 F. Supp. 360 (N.D. Tex. 1959).

³² *Foreman v. United States*, 232 F. Supp. 134 (S.D. Fla. 1964).

³³ *Foreman v. United States*, *supra* note 32, at 136, quoting *United States v. Kintner*, 216 F.2d 418, 424 (9th Cir. 1954).

³⁴ 97 F.2d 695 (5th Cir. 1938).

³⁵ *United States v. Kintner*, 216 F.2d 418, 423 (9th Cir. 1954).

earns. This contention, though true, is meaningless. There are many corporations whose corporate tax status is not altered by the fact that they derive their primary income from personal services, such as advertising, promotion, and sales. This analogy was used by the court in rejecting the contention.³⁶

The Internal Revenue Service has not accepted the precedents of the cases it has lost. Its opposition in court, though unsuccessful there, has been effective in deterring the formation of more professional associations. This is because it will require litigation to establish corporate tax status.

The other aspect of the roadblock erected by the Internal Revenue Service is the deterrent effect of its regulations. Revenue Ruling 23³⁷ was issued several months after the decision in *Kintner*. It stated that the decision in that case would not be accepted as a precedent for disposition of similar fact situations. But in 1960 final regulations were issued pursuant to section 7701(a)(3) of the Internal Revenue Code of 1954.³⁸ These regulations accepted the *Kintner* case holding. The presence of the four characteristics of the corporate resemblance test was to be determined by the relationships permissible under state law. This regulation led to the enactment of the state professional incorporation statutes mentioned earlier in this note. But professional men were not given a chance to use these regulations to qualify for employee status. Soon the taxpayer was required to obtain a determination that the group was taxable as a corporation and that an employment relationship existed between the association and its officers and employees.³⁹ The Internal Revenue Service treated this requirement as applicable both to professional associations and professional corporations. Very few determinations have been issued, though requests for many were received.⁴⁰

On December 17, 1963, new proposed amendments to the *Kintner* regulations were issued.⁴¹ On February 2, 1965, these proposals were adopted.⁴² With the exception of deleting Example (1) to § 301.7701-2(g), the amendments leave the *Kintner* regulations of 1960 intact, but add two new paragraphs. These paragraphs are intended to be fatal to professional associations and corporations, referred to as "professional service organizations."⁴³ The amendments attempt to show how a "professional service organization" can never pass the test of corporate resemblance and thus cannot qualify for taxation as a corporation.

³⁶ *Foreman v. United States*, 232 F. Supp. 134 (S.D. Fla. 1964).

³⁷ 1956-1 CUM. BULL. 598.

³⁸ Treas. Reg. § 310.7701-1 to -11 (1960).

³⁹ REV. PROC. 61-11, 1961-1 CUM. BULL. 897.

⁴⁰ Eber, *Professional Service Corporations*, 103 TRUSTS & ESTATES 420 (1964).

⁴¹ Proposed Treas. Reg. § 301.7701-1(d), 28 Fed. Reg. 13751 (1963); Proposed Treas. Reg. § 301.7701-2(h), 28 Fed. Reg. 13751 (1963).

⁴² T.D. 6797, 1965 INT. REV. BULL. No. 9, at 38.

⁴³ Treas. Reg. 301.7701-2(h) (1965) defines a professional service organization as an organization formed by one or more persons to engage in a business involving the performance of professional services for profit which, under local law, may not be organized and operated in the form of an ordinary business corporation having the usual characteristics of such an organization. Even if a professional service organization is organized as an ordinary business corporation, the amendment applies if such corporation is subject to local regulatory rules which deprive such corporation of the usual characteristics of an ordinary business corporation, and whether it is labeled a professional service corporation, professional service association, a trust, or otherwise.

The theory of the amendments that these organizations cannot pass the test appears unlikely to be upheld by the courts. Example (1) of the *Kintner* regulations is omitted because the conclusion of the example that the association described is taxable as a corporation would not be valid, according to the new amendments. Example (1) has been thought to be a description of either *Galt* or *Kintner*.⁴⁴ Deleting the example would, of course, not alter the holding of either case. The test of corporate resemblance, as applied to professional associations, has been interpreted by the courts in the four cases previously discussed. These decisions show, contrary to the theory of the amendments, that it is possible for a professional association to pass the test of corporate resemblance.

To summarize the present status of the regulations is difficult. We still have the 1960 "*Kintner*" regulations that apply to all associations. The two new paragraphs attempt to show that a professional service organization cannot meet the requirements of the corporate resemblance test as it is defined in the 1960 regulations. Even analyzing the test of corporate resemblance as interpreted by the regulations of 1960, which are still unchanged, the amendments do not appear to logically reach the conclusion that a professional service organization cannot pass the test.

The first criterion listed is continuity of life. "An organization has continuity of life if the death, insanity, bankruptcy, retirement, resignation or expulsion of any member will not cause a dissolution of the organization."⁴⁵ Dissolution is defined to mean an alteration of identity of an organization by reason of a change in the relationship between the members as determined under local law. The amendments deny that a professional service organization can have the continuity of life possessed by an ordinary business corporation, because the continuing existence of the organization depends upon the willingness of its remaining members (after the termination of the employment relationship of a member) to agree either by prior arrangement or at the time of such termination to acquire his interest or to employ his proposed successor. The amendments ignore those provisions of the recent local laws which commonly have provided for the continuance of the organization after the termination of the employment of a member. Failure of the remaining members to acquire the interest of the member whose employment relationship terminates would not automatically result in a dissolution of the organization. The continuity of life criterion should be satisfied if the organization would not be dissolved by those events which would normally terminate a partnership.

An organization has centralization of management if any person or group of persons (which does not include all the members) has continuing exclusive authority to make the necessary management decision.⁴⁶ These decisions must not require ratification by the members. The recent amendments say that there is no centralization of management in a professional service organization if a professional member retains professional responsibility for the handling of a particular

⁴⁴ Goldberg, *Professional Corporations—Current Status*, 19 BUS. LAW. 707, 718 (1964).

⁴⁵ Treas. Reg. § 301.7701-2(b)(1) (1960).

⁴⁶ Treas. Reg. § 301.7701-2(c)(1) (1960).

case.⁴⁷ This ignores the fact that all professionals must adhere to the same professional standards, whether practising as employees of an ordinary business corporation or as employees of a professional service organization. Centralization of management can exist in the latter as well as the former situation. Even the ordinary business corporation must delegate some decision-making authority to certain of its employees.

"An organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts of or claims against the organization."⁴⁸ Most of the recent state statutes provide for such a limitation of liability for professional service organization.⁴⁹ However, the amendments find limited liability in a professional service organization only if the personal liability of each of the members is no greater in any respect than that of shareholder-employees of an ordinary business corporation. This implies that there can be no limitation of liability in a professional service organization, because of personal liability to clients or patients. But if it is remembered that the nature of the liability of employees, professional or not, is the same—that is, all employees are personally liable for their own torts—it would seem that a professional service organization can possess the corporate characteristic of limited liability.⁵⁰

The final corporate characteristic to be considered is free transferability of interests. The member must be able to confer upon his substitute all the attributes of his interest in the organization. The 1960 regulations also provide for a modified form of free transferability of interest, if a member can transfer his interest only after having offered it to the other members at its fair market value.⁵¹ The amendment concludes that the corporate characteristic of free transferability of interests does not exist if the interest of a member consists of a right to share in the profits of the organization which is contingent upon and inseparable from his continuing employment, and the other members have a right of "first refusal" (an option to purchase the member's share). Free transferability would exist only if the member, without the consent of the other members, could transfer both his right to share in the profits of the organization and the right to an employment relationship with the organization. The amendments refuse to grant to a professional service organization the right to a modified form of free transferability that the 1960 regulations appear to give to all associations.

⁴⁷ This view is contrary to a previous ruling of the Internal Revenue Service under the 1960 regulations that in the case of professional employees a greater degree of discretion in the performance of professional duties exists and is consistent with the employment relationship. The Colony Medical Group, Special Ruling, CCH 1961 STAND. FED. TAX REP. § 6375.

⁴⁸ Treas. Reg. § 301.7701-2(d)(1) (1960).

⁴⁹ Goldberg, *supra* note 44, at 716.

⁵⁰ The court in *Foreman* said that neither the *Kintner*, *Galt*, nor *Foreman* associations possessed the corporate characteristic of limited liability. Because the test of corporate resemblance requires only more corporate than non-corporate characteristics, this failure did not prevent the associations from being taxed as corporations. Most state statutes passed since 1960 either expressly provide for limited liability or provide that the general corporation statute of the state providing for limited liability for shareholders is applicable to the members of the professional service organization.

⁵¹ Treas. Reg. § 301.7701-2(e)(2) (1960).

In addition to the conflict between the conclusions of the amendments and those of the regulations, the amendments conflict with the cases which hold that professional associations can pass the test of corporate resemblance. There are two additional objections to the new amendments. First, they require that a professional service organization be identical to the "ordinary business corporation" and not merely to corporations in general. Second, they forget that the test of corporate resemblance is one of resemblance only, not of identity.⁵²

Public interest was immediately aroused by the attempt to nullify court decisions and recent state legislation. At the hearing on the amendments (held while they were still only proposals) more than 90 groups and individuals were heard, and more than 500 comments were filed. No other proposed amendments to the Internal Revenue Code regulations have ever caused such a response.⁵³ It was obviously to no avail.

The amendments should be rescinded or modified. They continue to reflect the past policy of placing a roadblock in the path of professional men who attempt to achieve employee status, even though the Internal Revenue Service has yet to win a case on the point. This policy has been described as attempting "to change existing law by administrative fiat."⁵⁴ It probably has been effective in preventing many professional men from even attempting to achieve employee tax status.

What chance do professional men, facing opposition of the Internal Revenue Service, have to achieve tax equality? Legislation or litigation appear to be the only two possibilities. The failure of attempted reforms and the legislative history of the Self-Employed Persons Retirement Act⁵⁵ indicate that legislation, though always a possibility, is not a very promising one. For those professional men who are reluctant to lose money each year that they are taxed under their present classification, litigation appears to be the only answer.

There is a strong general feeling that it is unprofessional and foolhardy to invite litigation. It is not good long-range tax planning to base the formation and operation of an organization on premises which can be established only by overturning the regulations of the Internal Revenue Service. Even so, several writers, apparently tired of administrative beating around the bush, advise that the Internal Revenue Service can be fought successfully in court.⁵⁶ They feel that the opposition of the Internal Revenue Service should not prevent formation of a professional organization, either corporation or association, in situations where it is authorized by local law, and that the immediate tax saving, both to employer and employee, greatly outweighs the expense of litigation. This opinion is sup-

⁵² *Morrissey v. Commissioner*, 296 U.S. 344 (1935).

⁵³ Goldberg, *supra* note 44, at 719.

⁵⁴ Eaton & Maycock, *Professional Corporations*, 20 J. TAXATION 150 (1964).

⁵⁵ A self-employed persons retirement bill was introduced in the House of Representatives in 1951, 1953, 1954, and 1957. A bill was passed by the House every year from 1958 to 1961, but no final passage through Congress was achieved until 1962.

⁵⁶ *E.g.*, Eaton & Maycock, *supra* note 54, at 153; Eber, *supra* note 40. Mr. Eber was one of the architects of the corporation and accounting procedures used successfully by the association in *Foreman v. United States*, 232 F. Supp. 134 (S.D. Fla. 1964).