

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-25
Issued: January 1979

Question: Does the conduct of an income tax instructional course by an organization or lay individuals constitute the unauthorized practice of law?

Answer: Qualified no.

OPINION

The dividing line between what constitutes the practice of accounting and constitutes the practice of law is one of the most vexing unauthorized practice problems which the Courts have faced:

While it cannot be denied that there is inconsistency in the result, it is worth mentioning that Courts have had markedly less trouble in deciding whether or not a given activity was a transgression than in handing down a formula of much use in predicting the turn of cases yet to come. (9 A.L.R.2d 797)

The preparation of the simplest income tax return involves the expression of multiple legal conclusions. It also may involve accounting principles with which attorneys are ordinarily only peripherally concerned. The provinces of accountants and lawyers thus overlap in the tax field. Since non lawyers can often provide economy, efficiency, convenience, and skill in their own area of expertise, it would not be in the public interest to declare that their every involvement in legal principles and conclusions amounts to the unauthorized practice of law.

On the other side of the spectrum, the preparation of a brief in the Court of Appeals in a tax matter is obviously beyond the scope of an accountant's function. The same overlap has resulted in conflicting decisions where advice is given by laymen in tax matters (*see* 9 A.L.R.2d 798). To advise a taxpayer to be sure to name all his dependents could never be objectionable, but to advise him of the possibility of success before the Courts in a sophisticated corporate spin-off situation would be a legal function. One of the main problems with a nonlawyer providing tax advice is that although that advice may be sound from a tax viewpoint, it frequently has ramifications in other areas of the law.

The teaching of a course in taxation is a form of giving advice. The fact that it is generalized advice rather than advice to a particular person about a particular fact situation removes it somewhat from the practice of law. Such a course, carefully planned and presented by individuals knowledgeable in the accounting field would serve the public interest. Indeed, accountants for the Internal Revenue Service frequently hold or participate in tax seminars. Education of the public in the tax area cannot, in and of itself, be considered the unauthorized practice of law.

While tax courses conducted by laymen are not improper, it is possible that they could be used as a vehicle for impropriety. It would be improper for a lay instructor to suggest a device for saving taxes other than a device which clearly appears on the tax statutes. It would be improper for him to suggest or recommend the use of any particular corporate formation, the establishment of a trust, the particular wording of a will, or any other step of a peculiarly legal nature. However, he would not be prohibited from describing generally the tax consequences of various corporate structures, wills, or trusts. He should scrupulously avoid speculation with respect to the action a Court might take and scrupulously avoid individualized questions by students which call for legal conclusions.

In conclusion, the conduct of a course of instruction covering provisions of the Internal Revenue law is a proper lay function, but going beyond the statute and providing legal conclusions is not.

Note to Reader

This unauthorized practice opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides in part: "Both informal and formal opinions shall be advisory only."