

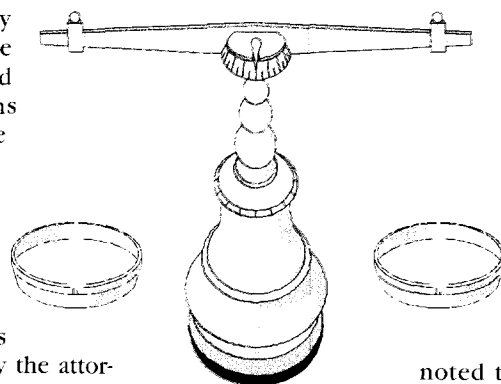
CPA FIRM'S MEMO TO CLIENT'S IN-HOUSE ATTORNEY NOT PRIVILEGED

Sequa Corp., acquired Atlantic Research Corp. and later sought to combine it with another subsidiary. Sequa's tax vice president (VP) requested a memorandum from Arthur Andersen concerning the tax implications of the acquisition.

The IRS audited the return for the year of the subsidiary reorganization and requested the Arthur Andersen memo and related correspondence. The

company refused. The IRS issued a summons and the tax VP still refused on the grounds that the correspondence was protected by the attorney-client privilege and the work-product doctrine.

The IRS sued to enforce the summons. The taxpayer presented affidavits from the taxpayer's management stating that it relied on the tax VP for legal advice, and from the tax VP



that he relied on Arthur Andersen to assist in rendering legal advice. Nevertheless, the U.S. District Court held the documents were neither privileged nor protected by the work-product doctrine and ordered the documents

to be produced. The taxpayer appealed and now the Second Circuit's Court of Appeals has entered into the fray.

The circuit court noted that there was no contemporaneous evidence supporting the claims made in the affidavits. There was no separate engagement letter, indicating the services relating to the reorganization were separate from the ordinary accounting and consulting services rendered to the company. The client was not separately billed for the services. The tax memorandum was prepared by the accounting firm, not the tax VP, and was presented directly to management not to the tax VP.

The court held that documents were not privileged, but still remanded to the lower court for a determination of whether the work-product doctrine protected the documents. The district court held that the doctrine did not apply because the actionable event, the reorganization, had not yet occurred. The circuit court noted that, while this is a factor in determining if the doctrine applies, this factor alone is not determinative. □

Source: *U.S. v. Adleman*, __ F.3d __ (2d. Cir 10/26/95).

CONSOLIDATION AT THOMSON COMPANIES

The Canadian-based Thomson Corporation recently announced the consolidation of three of its well-known tax and accounting publishing companies—Research Institute of America (RIA), Practitioners Publishing Company, and Warren Gorham & Lamont—into the Research Institute of America Group. The group will be headed by Euan Menzies, who stated that the consolidation into the RIA Group is an internal strategic move that will not overtly affect customers in their day-to-day relationships with the three companies. It is expected that this reorganization will enable all the companies to react more rapidly than ever before possible to changes in tax and business law. RIA Group is a unit of Thomson Financial & Professional Publishing.

In a separate announcement, Research Institute of America (RIA) invited Internet browsers to visit its homepage featuring weekly tax news on current Federal, state, and local tax, and pension and benefits news.

The Internet address is <http://www.riatax.com>. □

FEDERAL DISTRICT COURT RULES IN FAVOR OF 17TH LARGEST ACCOUNTING FIRM

Florida Federal District Court ruled that CPAs employed by American Express Tax and Business Services in the state of Florida have the first amendment right to inform consumers in marketing and promotional material that they hold the CPA designation. The Florida Board of Accountancy had taken the position that CPAs who perform services for the public that are typically performed by licensed CPAs and who hold themselves out to the public to be CPAs are subject to licensing and regulation by the State Board. One of the licensing restrictions is that the organizations for whom the CPAs are employed must be wholly-owned by licensed CPAs. American Express Tax and Business Services, obviously not owned by CPAs, challenged the Board and the State of Florida saying its employees had the first amendment right to inform its customers of those employees that held the CPA designation.

The court decision will require careful study to fully comprehend its consequences. The court did not challenge Florida's right to license and regulate those that practice public accounting. The issue will rest on the extent employees of American Express Business and Tax Services holding the CPA designation who perform tax and accounting services for the public can and should be regulated by the state board.

American Express Tax and Business Services, in announcing the verdict, claimed a major victory that "will have far reaching effects within the tax and accounting industry." It announced that it will continue to acquire accounting firms, expanding from its present 50 offices in 22 states. According to that organization, it now ranks as the 17th largest accounting firm in the U.S.

Florida and the Board of Accountancy have not announced whether they plan to appeal the decision. □