Response to Stremba on Commercial Corporation Issue: Certified Public Accountant
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The CPA Journal; Mar 1991; 61, 3; ProQuest Central
pg. 6

Guest Editorial
Response to Stremba on Commercial Corporation Issue

By Thomas W. Rimerman, CPA, Chairman of the Board of Directors of the AICPA

The AICPA proposal to amend Rule 505 of the Code of Professional Ethics to permit CPAs to practice as general commercial corporations (or in Kansas under the Limited Liabilities Company Act) has resulted in a challenging article by Lee F. Stremba, "The AICPA Proposal to Permit Practice in Commercial Corporations—Potential Cure or False Hope for Limiting Liability?" (*The CPA Journal*, December 1990).

There seems, however, to be much common ground on the fundamental issues between Mr. Stremba's views and the AICPA proposal. There is little disagreement on the need for CPAs to seek every available means to limit unreasonable liability exposure. Mr. Stremba's quarrel with the proposed AICPA rule amendment really boils down to the contention that the interests of CPAs are better served by pushing for reform of the professional corporation laws than by permitting incorporation under general corporate law.

But, why force a choice between these plausible avenues to an agreed upon professional goal? The point of the amendment is to allow AICPA members to select from a variety of options the form of practice unit that best serves their objectives. Mr. Stremba never shows why it is bad to afford AICPA members these options, and there are sound reasons to believe that the availability of choice in this matter is good for CPAs and for the profession.

Mr. Stremba recognizes the compelling need to limit the personal liability exposure of CPAs for the work of others, but he argues that the AICPA has failed to "fully enforce and access" alternative and more promising ways of achieving that objective.

In the process he suggests that the wording of the AICPA proposal may have misled members "to believe that CPA shareholders of a commercial corporation would have significantly better protection from personal tort liability than shareholders of a PC [professional corporation]." Yet, in the course of his article, Mr. Stremba highlights many of the factors that weigh in favor of allowing CPAs the option contemplated by the proposed amendment.

For instance, even while pressing for exclusive reliance on PCs, Mr. Stremba admits that "PC status is not the answer for every firm." He goes on to point out that "not all states authorize the formation of PCs . . . [and] the degree of protection offered in a practitioner's home state [by a PC] may not be sufficient to be attractive." Finally, the article indicates that "PC statutes universally contain restrictions that make it impossible or impractical for firms with multi-state practices to incorporate . . . as a result, only those firms that are willing to limit their practice to a single state are likely to find the PC form attractive."

All of this would seem to be powerful support for allowing CPAs afflicted by the inadequacies of PCs the option to form their practices in a different way.

The AICPA, in proposing amendment of Rule 505, certainly does not disagree that reform of PC laws would be a desirable outcome for the profession; its only assertion is that it need not be the only desirable or permitted outcome. As the article indicates, the AICPA has for some time promoted the same type of legislative initiative advocated by Mr. Stremba. Over four years ago, the AICPA Special Committee on Accountants' Legal Liability sent a memorandum to each state CPA society recommending that existing PC statutes be modified both to limit the personal liability of CPA shareholders not directly involved in an engagement, and to permit multi-state practice. This was on the original agenda of the AICPA Special Committee as part of its charge to bring fairness and balance back to our judicial and legal systems. The AICPA continues to advocate such legislative changes (which remain part of the current AICPA Tort Reform Handbook for State Societies).

Unfortunately, however, there have been few, if any, improvements in existing PC statutes since issuance of the 1986 memorandum.

In light of that fact, the current AICPA proposal to permit practice in general corporate form (also supported by the Special Committee) does not represent a "radical departure" from the approach recommended in 1986; instead, it reflects an attempt to afford greater flexibility to state CPA societies and individual firms in what Mr. Stremba so aptly describes as "the quest for reasonable limits on personal liability."

As a political matter, changing existing PC laws to conform to a Model PC Act may be more difficult to achieve than a statute permitting CPAs to practice in general corporate form. The involvement of others permitted to practice as PCs—such as doctors, attorneys, and other professionals, each with a special agenda and each representing very different public interest issues—could serve more to complicate matters than to create the "united front" that Mr. Stremba foresees.

As a legal matter, it is an oversimplification to say that CPAs would be just as liable for malpractice in a general corporation as in a PC, and it is wrong to suggest that the AICPA proposal is misleading in this regard. Mr. Stremba correctly notes that a negligent practitioner is liable under ordinary principles of tort law whether he or she is a shareholder in a general corporation or a PC. It does not follow, however, that there is no difference in the liability exposure of CPAs between the two corporate forms. The AICPA has been advised that the personal exposure of individual

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practitioners may be greater in PCs than in general corporations, among other reasons, because the *statutory* exposure created by the language of most PC laws could be given a more expansive interpretation and be held to require a lower level of proof than the *common-law* exposure to liability generally created by the tort law; supervisors and executives of a PC might be more exposed to liability under some PC laws than they would be under ordinary tort principles; and a shareholder of a professional corporation may, under some PC laws, be personally liable in contract for the debts of the corporation to a significantly greater degree than would a shareholder in a general corporation.

It is entirely appropriate for the AICPA to remove obstacles to the exercise of choice in the form of corporate practice. AICPA members belong to an array of practice units, large and small, local, regional and national. It would seem to be unwise and unfair under these circumstances to promote "one remedy" that may solve the liability problem for some but not all public practitioners.

The important point apparently missed by Mr. Stremba is that the AICPA's proposed amendment does not represent a mandate; it is a means of removing yet another barrier by providing practitioners with more options as to their form of practice, and providing state CPA societies with another avenue for achieving limits on unreasonable liability in their states. Even with the AICPA's present limitation to proprietorship, partnership or PC, some states already allow accountants to incorporate as general corporations. Why should the AICPA impede CPAs from taking advantage of this option in those states that presently allow it? And why shouldn't CPA societies in other states, whose legislatures may be reluctant to amend the PC laws, be encouraged to push for general corporate treatment of CPAs instead? The goal is to provide the flexibility needed to permit each state and each practitioner to find the best route to reach the acknowledged goal of limiting liability exposure in a reasonable and prudent way. **Ω**

[Editor's Note: Comments by Lee F. Stremba on Mr. Rimerman's response will appear in the April issue of The CPA Journal.*]*

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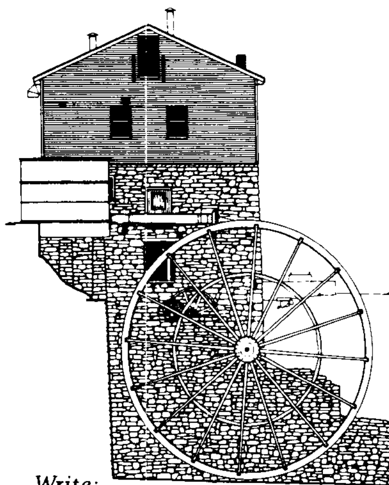

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