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CORPORATIONS—COMMUNITY PROPERTY: NON-TAX ASPECTS OF THE WASHINGTON PROFESSIONAL SERVICE CORPORATION ACT.—Ch. 122, Laws of 1969, now codified as RCW ch. 18.100 (1969).

The purpose of Washington's Professional Service Corporation Act is to provide for the incorporation of an individual or group of individuals to render professional services.¹ Since organizations of professional people under state professional corporation acts will be considered corporations for federal income tax purposes,² this development offers potential tax advantages to professional persons who choose to incorporate their practices. However, the Washington statute also raises certain non-tax issues that must be resolved by professional persons seeking to incorporate. Since the tax issues have received extensive and eminent treatment elsewhere,³ this Note will focus on the less-discussed non-tax issues, and the scope of this Note is accordingly limited to a discussion of: (1) the relationship between the Washington Business Corporation Act⁴ and the incorporation of a practice by a sole practitioner, (2) the limitation of stockholders' liability for claims against the professional corporation, and (3) the various provisions of the act which restrict ownership of stock in a professional corporation to individuals who are professionally qualified.⁵

1. Ch. 122, § 1, [1969] Wash. Sess. Laws 367; WASH. REV. CODE § 18.100.010 (1969).

2. In the light of recent decisions of the Federal courts, the [Internal Revenue] Service generally will treat organizations of doctors, lawyers, and other professional people organized under state professional association acts as corporations for tax purposes.

Rev. Rul. 70-101, 1970 INT. REV. BULL. No. 9, at 13. The Service has further indicated that professional service organizations formed under certain designated state statutes will be treated as corporations for tax purposes. *Id.* at 14-16. (The new Washington Professional Service Corporation Act is included in the list of approved statutes. *Id.* at 16.)

However, it is still possible that a professional service corporation will be disallowed corporate tax treatment if it is not operated in fact as a corporation. In a recent Tax Court case, it was ruled that where a professionally incorporated group of doctors did not operate as a unit, except as to bookkeeping functions, the business was not carried on by a corporation. Jerome J. Roubik, 53 T.C. 365 (1969).

3. For discussion of the income tax considerations relative to professional corporations consult: Worthy, *IRS Chief Counsel Outlines What Lies Ahead for Professional Corporations*, 32 J. TAXATION 88 (1970); O'Neill, *Professional Corporations: Coping with the Operational Problems*, 31 J. TAXATION 94 (1969); Hall, Gissel, & Blackshear, *Professional Incorporation in Texas—A Current Look*, 48 TEXAS L. REV. 85 (1969); C. BROSNAHAN, *ATTORNEY'S GUIDE TO CALIFORNIA PROFESSIONAL CORPORATIONS* (1969) (an especially helpful analysis of the situation in one jurisdiction).

4. WASH. REV. CODE ch. 23A (1965).

5. The first four sections of the act state its purpose and define the key words and phrases used in the statute (WASH. REV. CODE §§ 18.100.010-.040 (1969)). Section 3

1. Incorporation by a Sole Professional Practitioner

Under the terms of the Professional Service Corporation Act it would appear that a sole practitioner can incorporate his practice⁶ without having to obtain other members of the profession to serve as directors and officers of the corporation. The Washington Business Corporation Act sets the minimum number of corporate directors at three⁷ and requires a minimum of two persons to hold the required offices of a corporation.⁸ However, the provisions of the Business Corporation Act apply to a professional corporation only to the extent that they are consistent with the terms of the Professional Service Corporation Act. Where a conflict exists, the Professional Service Corporation Act controls.⁹

When called upon to interpret the Washington Professional Service Corporation Act, the courts should conclude that in a professional

(WASH. REV. CODE § 18.100.030) defines "professional services" as personal services accorded to the public, the rendering of which requires a license or other legal authorization and which could not legally be performed by a corporation prior to the passage of the act. A "professional corporation" is a corporation organized under the act for the purpose of rendering professional services.

Sections 3 (WASH. REV. CODE § 18.100.030) and 6 (WASH. REV. CODE § 18.100.060) provide that all of the corporation's shareholders, directors, officers and employees must be qualified to render the same professional service as the corporation. However, the term "employees" does not include clerks, secretaries, bookkeepers, technicians, and other assistants who are not customarily considered to be rendering professional services for which a license is required.

Section 5 (WASH. REV. CODE § 18.100.050) states that one or more registered architects may join with one or more registered engineers to render their individual services through a single corporation. This provision may aid in clarifying the seeming inconsistency that appears in section 4 WASH. REV. CODE § 18.100.040 which states that the act does not apply to any person who prior to the passage of the act was permitted to perform personal services to the public through a corporation. However, the section further provides that an existing corporation may become a professional corporation by amending its articles of incorporation to make them consistent with the provisions of the act. Therefore, since engineers were allowed to incorporate prior to the act, WASH. REV. CODE § 18.41.130(8) (1967), a corporation of professional engineers may wish to join with professional architects to perform services for the public through a professional corporation. Whether any other type of existing corporation would be allowed to come under the act remains uncertain.

6. Section 5 (WASH. REV. CODE § 18.100.050) of the act provides that:

An *individual* or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a *shareholder* or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23A RCW for the purpose of rendering professional service: PROVIDED, That one or more of such legally authorized individuals shall be the incorporators of such professional corporation. . . . (Emphasis added.)

However, it is uncertain whether a one-man corporation can achieve corporate tax status. See Hall, Gissel & Blackshear, *Professional Incorporation in Texas—A Current Look*, 48 TEXAS L. REV. 84, 111 (1969).

7. WASH. REV. CODE § 23A.08.350 (1965).

8. WASH. REV. CODE § 23A.08.470 (1965).

9. Ch. 122, § 13 [1969] Wash. Sess. Laws 371; WASH. REV. CODE § 18.100.130 (1969).

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corporation the number of corporate directors and officers need not exceed the number of shareholders.¹⁰ The general intent of the Professional Service Corporation Act should take precedence over the Business Corporation Act. Clearly, the Professional Service Corporation Act contemplates a corporation with only one shareholder since the act refers to incorporation by only one shareholder in several of its sections.¹¹

There is already some authority in support of this interpretation. A recent memorandum of the Washington Attorney General's Office, using an analysis similar to the foregoing, has advised the Washington Secretary of State's Office that it may accept papers of incorporation from professional service corporations having only one incorporator, even if he is also the only officer.¹² Furthermore, in construing a similar statute, the Oklahoma court in *Christian v. Shideler*¹³ found that the legislative intent was to allow one or more individuals to incorporate and held that a professional corporation with only two shareholders need have only two directors. And the Attorney General of Florida has issued an opinion stating that the Florida Professional Service Corporation Act should be interpreted to require no more directors than incorporators.¹⁴

2. *Limitation of Liability for Professional Service Corporation Stockholders*

The shareholders of a professional service corporation have a limited personal liability not enjoyed under the partnership form of associa-

10. The California statute specifically provides that a professional corporation with only one shareholder need have only one director and the shareholder shall serve as the president and treasurer of the corporation; the other officers need not be professionally qualified. A professional corporation with only two shareholders need have only two directors. CAL. CORP. CODE § 13403 (West Supp. 1969).

A similar statutory clarification was considered by the Washington legislature; the proposed bill passed the House, but died in Senate committee. H. B. 3, 41st Leg. [1970] Wash. 1st Ex. Sess.

11. Ch. 122, § 1, 3(2), 5 [1969] Wash. Sess. Laws 367; WASH. REV. CODE § 18.10.010, .030(2), .050 (1969).

12. Memorandum opinion from Richard A. Heath, Assistant Washington Attorney General, to Don MacKinnon, Office of the Washington Secretary of State, Oct. 29, 1969, as reprinted in PROFESSIONAL SERVICE CORPORATIONS 103-05 (Continuing Legal Education in Washington: Reference Manual 1970).

13. 382 P.2d 129, 134 (Okla. 1963): "[T]o require the board of directors to have three or more members would conflict with the intent of the legislature. . . ."

14. [1961] FLA. OP. ATTY. GEN. 061-109, as reported in FLA. STAT. ANN. § 621.01 (1961). See Buchman & Bearden, *The Professional Service Corporation—A New Business Entity*, 16 U. MIAMI L. REV. 1, 8 (1961) [hereinafter cited as Buchman & Bearden].

tion.¹⁵ However, the limitation on personal liability is not as great as that provided for in the Business Corporation Act¹⁶ since the person who renders professional services remains personally accountable to the recipient of those services “. . . for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control”¹⁷ Furthermore, although the Act speaks of personal liability only to the recipient of the professional services, the professional person probably remains liable to third parties who have been affected by the services rendered. That is to say, because the Professional Service Corporation Act is not to be interpreted as modifying or restricting the pre-existing law “. . . applicable to the professional relationship and liabilities between the person furnishing professional services and the person receiving such professional services . . . ,”¹⁸ the Act should not alter the professional person’s normal liability to third parties who are not the actual recipients of the

15. In a partnership all partners are jointly and severally liable for partnership tort obligations, and are jointly liable for partnership contract obligations. WASH. REV. CODE §§ 25.04.130-.150 (1955).

16. Shareholders in a business corporation are under no obligation to the corporation or its creditors except for unpaid obligations on share subscriptions. WASH. REV. CODE § 23A.08.210 (1965).

17. Section 7 (WASH. REV. CODE § 18.100.070) of the act provides that:

Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent or employee of a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents or employees while they are engaged on behalf of the corporation, in the rendering of professional services.

Note, a person remains personally liable for the professional services that he renders and, in addition, for professional services rendered by any one under his “direct supervision and control.” Because the statute offers no guidelines, the meaning of “direct supervision and control” remains uncertain.

However, “direct supervision and control” seems more limited in scope than a mere application of the doctrine of respondeat superior. The word “direct” implies actual direction and coordination of the employee’s work. Apparently the person is not responsible for the conduct of all employees of the corporation. If the legislature had intended such a meaning, they could have stated it more clearly. “Direct supervision and control” probably means that the individual personally directs the rendering of the services, decides who shall receive the services, and determines the degree and amount of services to be rendered. Cf. *Industrial Commission v. Navajo County*, 64 Ariz. 172, 167 P.2d 113, 118 (1946).

18. Ch. 122, § 7, [1969] Wash. Sess. Laws 369; WASH. REV. CODE § 18.100.070 (1969).

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services.¹⁹ The impact of the limited personal liability that accompanies incorporation is reduced even further yet since the Act makes the corporation liable for misconduct committed by any of its directors, officers, shareholders, agents or employees in the rendering of professional services.²⁰ The shareholders in the professional corporation will thus be vulnerable to the extent of their equity in the corporation for any such claims against the corporation.²¹

On the other hand, because the Professional Service Corporation Act only provides for personal liability arising out of the rendition of professional services, the liability for other activities of the corporation should follow general corporation law. Therefore, the stockholders would not be personally liable to general business creditors of the corporation.²² Nor would the stockholders be personally liable for claims arising out of the investment of corporate funds.²³ Thus, the professional corporation form of association does at least have the advantage of limiting the liability of the shareholders for general business debts of the corporation and for activities not associated with the rendering of professional services, and further insulation is provided by the restriction of liability for acts of others to those committed under "direct supervision and control."²⁴

19. For example, under some circumstances a person rendering professional services may be liable to a third party with whom there was no privity of contract. For a discussion of liability to persons other than the testator for drawing an invalid will, see Annot., 65 A.L.R.2d 1363 (1959). For a discussion of accountants' liability to third parties, see Comment, *Auditors' Responsibility for Misrepresentation: Inadequate Protection for Users of Financial Statements*, 44 WASH. L. REV. 139 (1968); and Annot., 54 A.L.R.2d 324 (1957).

20. The act retains the principle that a corporation is liable for wrongful acts committed by its officers, employees or agents acting within the scope of their employment under the rule of respondeat superior. Ch. 122, § 7 [1969] Wash. Sess. Laws 369; WASH. REV. CODE § 18.100.070 (1969). The corporation and the employee who committed the wrongful act are jointly liable to the injured person. See Annot., 98 A.L.R. 1057 (1935).

21. However, the professional corporation may wish to carry malpractice insurance on all of its personnel and on itself to eliminate this vulnerability.

Interestingly, in California and Colorado, conventional corporate stockholders' limited liability is allowed so long as the professional corporation maintains a sufficient amount of professional liability insurance. CAL. BUS. & PROF. CODE § 1808 (dentists), § 2508 (doctors), and § 6171 (lawyers) (West 1968); COLO. R. CIV. P. 2656 (1965).

22. See Buchman & Bearden, *supra* note 14, at 12.

23. A professional corporation cannot engage in any business other than rendering the professional services for which it was organized, but may make any type of investments, ch. 122, § 8 [1969] Wash. Sess. Laws 369; WASH. REV. CODE § 18.100.080 (1969). Thus situations will arise where courts are called upon to distinguish between engaging in a business and making investments. See Buchman & Bearden, *supra* note 14, at 9.

24. See notes 16 & 17 *supra*. See also Buchman & Bearden, *supra* note 14, at 12.

3. *Restriction of Stock Ownership to Professionally Qualified Individuals*

The ownership of shares in a professional corporation is restricted to individuals who are legally authorized to render the professional services, and a shareholder may sell or transfer his stock only to an individual who is eligible to be a shareholder, *i.e.*, professionally qualified.²⁵ These restrictions on ownership could conceivably be violated in certain situations by a spouse's community interest in a shareholder's professional corporation stock.

If a husband owns shares in a professional corporation, his wife probably has a one-half interest in those shares as her part of the community property.²⁶ If she is not professionally qualified, there could conceivably be a violation of the terms of the statute, for the Washington Supreme Court has generally ruled that a spouse's community property interest is a present undivided one-half ownership in the community assets.²⁷ The husband and wife could make an agreement that the stock is the husband's separate property,²⁸ thereby eliminating the wife's ownership interest. However, a wife may be reluctant to make such an agreement, especially when the professional corporation stock may be the major asset of the marital community. The court, when faced with the problem of a wife's community property interest in professional corporation stock, should conclude that the Professional Service Corporation Act did not intend that such an interest bar the husband from owning stock in a professional corporation. The ownership restrictions seem to represent a policy restricting the class of persons who can exercise shareholder rights in a professional corporation.²⁹ In essence, "ownership" as used in the statute probably means management control. When the husband is

25. Ch. 122, § 9 [1969] Wash. Sess. Laws 370, WASH. REV. CODE § 18.100.090 (1969).

26. WASH. REV. CODE § 26.16.030 (1958).

27. *In Re Coffey's Estate*, 195 Wash. 379, 81 P.2d 283 (1938); *In Re Haringer's Estate*, 38 Wn. 2d 399, 230 P.2d 297 (1951).

28. *Burch v. Rice*, 37 Wn. 2d 185, 222 P.2d 847 (1950); *In Re Garrity's Estate*, 22 Wn. 2d 391, 156 P.2d 217 (1945).

29. The act prohibits a voting trust agreement or any other type of agreement whereby a person other than the shareholder is authorized to exercise the voting power of his stock, ch. 122, § 9 [1969] Wash. Sess. Laws 370; WASH. REV. CODE § 18.100.090 (1969). This suggests that the ownership restrictions are designed to prevent a person who is not professionally qualified from having an influence over the affairs of the corporation. Therefore, interpreting the ownership restrictions on the act to apply only to the stockholder of record is an unsatisfactory solution.

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the manager of the community assets, the wife's interest in the stock does not give her the right to exercise the voting power of the stock.³⁰ Therefore, when it is the husband who is professionally qualified, the Professional Service Corporation Act can be reconciled harmoniously with the community property aspects of ownership in the stock.

However, this rationale is not satisfactory when the wife is professionally qualified and the husband is not. Since the husband is typically the manager of the community assets under the community property law of Washington,³¹ he would control the voting rights to the extent that her professional corporation stock was community property. If he were allowed to exercise this control, the intent of the act would clearly be violated. If the husband and wife considered a separate property agreement to be unsatisfactory,³² the husband should be denied the power to manage the stock of the professional corporation. A basis for this denial might be that by allowing his wife to join or continue in a professional corporation he has consented to her control of the professional corporation stock as required by the statute.³³

30. Generally, the husband has the right to manage and control the community personal property. WASH. REV. CODE § 26.16.030 (1958).

31. WASH. REV. CODE §§ 26.16.030, 26.16.040 (1958).

32. See note 28 and accompanying text *supra*.

33. See Colagrossi v. Hendrickson, 50 Wn. 2d 266, 310 P.2d 1072 (1957); Bowers v. Good, 52 Wash. 384, 100 P. 848 (1909). This rationale could also be used to deny the wife's authority to exercise the voting power of her husband's professional corporation stock in situations where the wife has the power to manage the community assets. In Washington, the wife may exercise management powers over community assets in certain circumstances, e.g., when necessary to preserve the value of the community assets and the husband is not available. Marston v. Rue, 92 Wash. 129, 159 P. 111 (1916).

The foregoing analysis preserves the status of the shares as community property. When the spouse who is professionally qualified is the first to die, distribution of the proceeds of the redemption discussed below prevents no novel problems. Absent an agreement between the spouses, when the non-qualified spouse is the first to die, however, the problem is not so easily resolved. The whole of the community property is subject to administration, and one-half of that property is subject to testamentary disposition by the decedent. WASH. REV. CODE § 11.02.070 (1969). Washington apparently follows an *item* theory of division, which allows the decedent, if he so chooses, to dispose of his one-half interest in each community asset. *In re Viachos' Estate*, 60 Wn. 2d 179, 373 P.2d 125 (1962); *Occidental Life Ins. Co. v. Powers*, 192 Wash. 475, 74 P.2d 27 (1937). This would allow the non-qualified decedent to dispose of one-half of the shares. Under an *aggregate* theory of division, the decedent's testamentary power would extend to one-half the value of the total community property, and could be satisfied by liquidating one-half of the total community assets. Even under this method of division, some of the shares might be subject to the decedent spouse's power were there not enough other community property to set off against the shares. Consequently, the corporation should provide for redemption of all shares upon the death of either spouse and provide the surviving qualified spouse a right to repurchase.

On stock ownership restrictions generally, the articles of incorporation must require that ". . . each shareholder in the corporation provide for redemption or cancellation of all shares which are transferred to any person or entity ineligible to be a shareholder, whether such transfer be voluntary, involuntary, or by operation of law."³⁴ Similarly, when a shareholder becomes legally disqualified to render professional services he must sever "*all* employment with, and financial interests in" (emphasis added) the corporation, and the corporation's failure to require compliance with this provision constitutes grounds for dissolution.³⁵ Thus, when a shareholder dies, or becomes legally disqualified, or when his creditors acquire his shares, the corporation may experience difficulty since the act does not provide for a time period during which the corporation can acquire the funds necessary to liquidate the shareholder's interest in the corporation.

In designing the terms under which stock will be issued, the draftsman probably need not be concerned with liquidation in the situation where the corporation is insolvent or such liquidation would render the corporation insolvent, since the provisions of the Business Corporation Act which forbid purchase of its shares by the corporation in these situations³⁶ would not appear to be abrogated by the Professional Service Corporation Act. Similarly, provisions forbidding redemption or purchase of redeemable shares when the corporation is insolvent or when such redemption would render it insolvent³⁷ appear to remain intact. There is simply no reason to believe that the shareholders (and their creditors) should be preferred over creditors of the corporation.

The draftsman must decide how to redeem the shareholder's interest in a solvent corporation, however, and avoiding unnecessary disruption certainly will be desirable. If difficulty in immediate redemption of shares is foreseeable, cancellation of the shares and replacement with a debt obligation would seem to be available when the shareholder

34. Ch. 122, § 11, [1969] Wash. Sess. Laws 370; WASH. REV. CODE § 18.100.110 (1969).

35. Ch. 122, § 10, [1969] Wash. Sess. Laws 370; WASH. REV. CODE § 18.100.100 (1969).

36. WASH. REV. CODE § 23A.08.030 (1965).

It should be noted that in Washington's Business Corporation Act "insolvency" is defined in the equitable sense, *viz.* ". . . inability of a corporation to pay its debts as they become due in the usual course of its business." WASH. REV. CODE § 23A.04.010(14) (1965).

37. WASH. REV. CODE § 23A.16.090 (1965).

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dies. The stock ownership restrictions do not preclude this technique, and the policies of the Act would not seem to be violated by it.³⁸

However, despite the terms of the statute allowing cancellation when shares are transferred involuntarily or by operation of law,³⁹ a corporation perhaps will not be able to simply cancel shares acquired by the personal creditors of the shareholder. In *Street v. Sugarman*,⁴⁰ the Florida court held that the stock of a professional corporation was subject to levy and sale, under execution, by a non-professional creditor of a shareholder, notwithstanding the Florida statute's prohibition of transfers of shares to non-qualified persons.⁴¹ To allow shareholders to shelter their assets from their creditors was found to be inconsistent with the act, and to give shareholders in a professional corporation a privilege not available to shareholders in an ordinary business corporation. More importantly, the *Street* court felt that transfer to a non-qualifying creditor should trigger the dissolution provisions of the act, even though the Florida Act, like the Washington Act, provides for dissolution only if a legally disqualified shareholder fails to sever his interest in the corporation.⁴² The conclusion, then, is that personal creditors of a shareholder not only have access to his shares, but also must be able to realize the shareholder's real interest in the corporation.

Therefore, when personal creditors of a shareholder acquire his shares, cancellation of the shares is probably not available. Also, in

38. The ownership restrictions do not prevent a person who is not professionally qualified from having a financial interest in the corporation as one of its creditors provided the person does not own any stock of the professional corporation. The ownership restrictions of the act rather seem designed to prevent a non-professional from having an influence in corporation decisions by exercising the voting rights of corporation stock. See note 29 *supra*.

39. See note 34 and accompanying text *supra*.

40. 202 So. 2d 749 (Fla. 1967).

41. The court based its holding partially on the reasoning that although the statute prevented the voluntary sale of the stock by a shareholder, it did not prevent the execution and sale by law for a judgment creditor. The Florida act only provides that "No shareholder . . . may sell or transfer his shares . . . except to another individual who is eligible to be a shareholder. . . ." FLA. STAT. ANN. § 621.01 (1969). However, under the terms of the Washington act the articles of incorporation must require the shareholders to provide for "redemption or cancellation of all shares which are transferred to any person or entity ineligible to be a shareholder, whether such transfer be voluntary, involuntary, or by operation of law." (Emphasis added.) Ch. 122, § 11, [1969] Wash. Sess. Laws 370; WASH. REV. CODE § 18.100.110 (1969).

42. The provisions for dissolution of the corporation in the Florida statute are basically the same as the provisions in the Washington act. The Florida provisions are in FLA. STAT. ANN. § 621.10 (1969). The Washington provisions are in ch. 122, § 10 [1969] Wash. Sess. Laws 370; WASH. REV. CODE § 18.100.100 (1969).

the event a shareholder becomes legally disqualified to render professional services, cancellation of shares probably is not desirable, and replacement of the shares with a debt obligation does not appear to be available because the act requires the shareholder to immediately sever *all* financial interest in the corporation.⁴³ Thus, a corporation without sufficient funds on hand to liquidate the interest of these shareholders may be subject to dissolution, a result that both creditors and shareholders may find objectionable. This result can be avoided in either of two ways.

When faced with the task of severing a shareholder's interest in a solvent professional corporation, a court could consider the shares cancelled or redeemed presently, while interpreting the provisions requiring severance of financial interests to require payment for the shares within a reasonable time.⁴⁴ This interpretation would allow the corporation a reasonable time to acquire funds to liquidate the shareholder's interest, and yet assure that no non-qualified persons could exercise shareholder rights.

43. Ch. 122, § 11 [1969] Wash. Sess. Laws 370; WASH. REV. CODE § 18.100.110 (1969).

44. The situation in which the corporation is solvent but does not have the funds necessary to redeem the shares is analogous to the situation in which the corporation is insolvent. When the corporation is insolvent, it cannot legally use funds to redeem the shares. See notes 36 & 37 and accompanying text *supra*. It is not unreasonable to suggest that the shares of an insolvent corporation could be considered redeemed, while the right to payment remains subordinate to the claims of the corporation's creditors. If there is likelihood that the corporation will become solvent, all the creditors would probably find this preferable to dissolution. The effect then would be to require payment for the shareholder's interest if and when the corporation legally could pay. "Where the company . . . cannot raise immediately the money needed to retire the stock without jeopardizing creditors, the court will decree that it take proper means to accomplish the redemption of the stock." *Mueller v. Kraeuter & Co.*, 131 N.J. Eq. 475, 25 A.2d 874, 874-75 (1942) (Syllabus by the court). *Accord*, *Westerfield-Bonte Co. v. Burnett*, 176 Ky. 188, 195 S.W. 477 (1917).

Similarly, were the professional corporation unable to muster the funds required to redeem the shareholder's equity, the shares could be considered redeemed, thus avoiding the ownership restrictions imposed in the act, and precluding detriment to the corporation's creditors. The public's interest is reflected in the provision disallowing disqualified professionals from maintaining a financial interest in the corporation. The provision appears to be an attempt to assure that the disqualified professional will not participate in any of the affairs of the corporation, and recognizes that participation would be likely as a result of the disqualified professional's familiarity with the corporation and its officials were a financial interest to continue. However, the court would be able to protect the public's interest with a decree forbidding such conduct, and through its approval of the transactions take steps to accomplish redemption of the stock.

For a discussion of when shareholders who exercise their rights of redemption become creditors of the corporation see Note, *Stock Redemption at the Option of the Shareholder in the Close Corporation*, 48 IOWA L. REV. 986, 992 (1963).

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The second solution is more certain. Under the terms of the California Professional Corporation Act, the corporation has a ninety day period to redeem the stock of a shareholder who becomes disqualified from rendering professional services, and a six month period to redeem the stock of a shareholder who dies.⁴⁵ Such a provision is beneficial to the corporation and its shareholders, and to the creditors of the corporation as well, since the corporation is able to continue functioning within the ownership restrictions with a minimum disruption of its affairs. The Washington legislature should consider an amendment to incorporate a similar provision in the Washington Professional Service Corporation Act.

* * *

Although the tax considerations of the new state professional corporation acts have received the predominant attention, there are non-tax considerations, as the preceding discussion has shown, which are of equal perplexity and importance and which will require the attention of professional persons desiring to incorporate.*

45. CAL. CORP. CODE § 13407 (West Supp. 1969).

* The Board of Editors acknowledge with appreciation the assistance received in the final editorial revision of this Note from Mr. Richard Dodd, 3rd year student, University of Washington School of Law.