



**State of Tennessee  
Department of Commerce and Insurance  
Tennessee State Board of Accountancy  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, TN 37243  
615-741-2550 or 888-453-6150**

**Board Minutes**

May 3, 2013

The meeting of the Tennessee State Board of Accountancy convened in Davy Crockett Tower, Nashville, TN on Friday, May 3, 2013 at 8:40 am.

Board members present were:, Trey Watkins, Chair; Casey Stuart, Vice-Chair; Bill Blaufuss, Secretary; Vic Alexander; Troy Brewer; Jennifer Brundige; Stephen Eldridge; Henry Hoss; Gabe Roberts; Don Royston; and Stan Sawyer.

Staff members present were: Mark Crocker, Executive Director; Don Mills, Investigator; Ray Butler, Investigator; Jesse Joseph, Assistant General Counsel; Chris Whittaker, Staff Attorney; and Karen Condon.

Also present were Wendy Garvin, TSCPA and Brad Floyd, TSCPA.

Mr. Watkins called the meeting to order and made the following announcements:

This meeting was properly noticed by placing information concerning the meeting on the Board's website on Monday, April 22, 2013.

The Board plans to hold elections for officers at the July meeting.

The scheduled formal hearing has been continued until the July meeting.

Board members were asked to sign a consent form authorizing Ms. Condon to sign documents on their behalf relating to travel authorizations and payroll.

Mr. Watkins recognized Mr. Sawyer for his service to the Board. Mr. Crocker presented Mr. Sawyer with a gift with thanks for his contributions to the profession.

Board members were asked to review the minutes from the January 2013 meeting. Mr. Blaufuss moved to approve the minutes. With Mr. Royston seconding, the motion passed.

Mr. Crocker was called upon to present the Executive Director's Report. A copy of the report is included as Attachment A.

The Board then heard the Board Committee reports.

#### Law and Rules Committee

Mr. Brewer reported that the Committee had no agenda items and therefore did not meet.

#### Licensing Committee

Ms. Brundige reported the following items discussed by the Committee.

Summer Buchanan has requested an extension of the exam window. Due to medical issues, Ms. Buchanan was not able to complete the exam in the time allowed. The Committee recommends extension of one exam window.

Connor Lowery has requested an extension of the time period allowed to complete the education requirement. As there appeared to be no extenuating circumstances involved, the Committee recommends denial of the request.

Brad Dickens has requested reinstatement of his revoked license. The Committee voted to defer the decision so that Mr. Dickens could address the Board.

Mr. Royston moved to approve the Committee's report. Mr. Sawyer seconded and the motion passed.

In the matter of Mr. Dickens, Mr. Crocker detailed the circumstances involving the revocation of Mr. Dickens' license. Mr. Dickens was then invited to address the Board and answer questions. Following discussion, Mr. Crocker recommended approval of the request with a two-year probation period.

Mr. Roberts suggested that a judgment and lien search would be appropriate to uncover any outstanding judgments against Mr. Dickens.

Mr. Royston moved to reinstate the license subject to the results of a judgment and lien search with a two-year probationary period. Mr. Eldridge seconded and the motion passed unanimously.

Mr. Watkins then requested the NASBA Committee reports.

#### Board Effectiveness and Legislative Support Committee

Ms. Brundige reported that the Committee met in Nashville on February 13. The Committee is analyzing data regarding effectiveness and independence in an effort to develop tools that will allow Boards to self-evaluate. They are looking at issues of public records and discussed the NASBA state legislative tracking system which details regulatory functions and legislation among State Boards.

#### Uniform Accountancy Act Committee

Mr. Brewer reported that the Committee held a conference call in March. The Committee has discussed redefining the word "attest" and is still discussing the nature of the "inactive" status for CPA licenses. The Committee will meet again in two weeks.

Mr. Watkins then returned to Board Committee Reports.

#### Executive Committee

Mr. Watkins reported that the Committee considered the issue of comfort letters. The Committee felt that no action is needed by the Board at this time.

The Committee also reviewed the Financial Report and met with Assistant Commissioner Bill Giannini regarding Board appointments. The Committee felt that the elections of officers should be deferred to the July meeting, after Board appointments have been made.

#### Probable Cause Committee

Mr. Royston invited Mr. Joseph to present the Supplemental Legal Report. A copy of the report is included as Attachment B. In the matter of Bhupinder Sood, the Committee recommended approval of the Agreed Order for a two-year revocation of Mr. Sood's license. Mr. Sood would be eligible to re-apply in May of 2015 and must go before the Board to do so. Mr. Sawyer moved to accept the Committee's recommendation and Mr. Stuart seconded. The motion passed unanimously.

Mr. Mills presented his report on the status of open complaints. A copy of the report is included as Attachment C.

Mr. Whittaker then presented the Legal Report. A copy of the report is included as Attachment D. The Board reviewed the report and discussed the items presented.

Regarding Item #6, Mr. Sawyer questioned the amount of the civil penalty in light of a previous civil penalty paid by the Respondent for the same offense. Mr. Mills explained that though both offenses fall under the same Rule, they were not the same violation. Mr. Alexander asked if the Board had reported the firm for criminal action since this is a repeat offense of practicing without a license. Mr. Sawyer suggested the penalty be changed from \$7,500.00 to \$10,000.00.

Regarding the complaints involving the delinquent payment of Professional Privilege Tax, Mr. Eldridge felt that, in many cases, an investigation could have been avoided if updated information had been available. He suggested it would be prudent to make an effort to improve communication with the Department of Revenue. The Committee had discussed a Rule-Making Hearing to address the issue of making Profession Privilege tax a matter for civil penalties.

Mr. Royston moved to refer this discussion to the Law and Rules Committee for formal Rule change. Mr. Sawyer seconded and the motion passed unanimously.

Mr. Whittaker, in answer to Mr. Alexander's question regarding criminal charges for unlicensed conduct, explained that the Board may make application to the appropriate county court for an injunction. Another option is criminal prosecution as a Class C misdemeanor.

Regarding Item # 6, Mr. Watkins suggested adding language regarding the possibility of criminal charges in the event of a third violation for unlicensed practice.

Mr. Sawyer moved to raise the penalty in Item #6 to \$10,000.00 and to include a warning regarding the possibility of criminal charges, with Mr. Royston seconding. Mr. Roberts suggested including more encompassing legal language. Mr. Whittaker proposed a statement that the Board reserves the right to pursue any and all civil and criminal penalties allowed by law. Mr. Watkins called for a vote and the motion passed.

Mr. Royston moved to approve the remainder of the Legal Report as amended by the Committee. Mr. Alexander seconded and the motion passed.

Mr. Royston asked Mr. Whittaker to provide a copy of the Legal Report to the Committee and Board prior to meetings in the future. Mr. Whittaker agreed to do so.

This concluded the Board Committee reports.

### Old Business

Mr. Roberts will be unable to serve on the Peer Review Oversight Committee Interview Panel. Mr. Alexander volunteered to serve on the Committee.

Mr. Whittaker updated the Board in the matter of Edwin Osborne appeal. Mr. Osborne was previously disciplined by the Board and has filed an appeal in Chancery Court. Mr. Osborne has filed an Appeal Brief and the Attorney General will soon file one as well. These cases are decided almost exclusively on the information contained in the Briefs.

### New Business

Mr. Crocker advised the Board that they must review and pass a Regulatory Flexibility Analysis in regard to the Rule-Making Hearing. This is an analysis that determines the impact of new Rules on small businesses and others. Mr. Whittaker read the analysis into the record. A copy of the analysis is included as Attachment E. Mr. Royston moved to accept the analysis. Mr. Eldridge seconded and the motion passed.

Mr. Watkins reminded Mr. Whittaker of the scheduled start time of Board meetings and asked him to be more timely in future.

With no further business before the Board. the meeting was adjourned.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY, 2nd floor
NASHVILLE, TENNESSEE 37243-1141
www.state.tn.us/commerce/tnsba
E-mail: tnsba@mail.state.tn.us
888-453-6150 or 615-741-2550
Fax: 615-532-8800

Tennessee State Board of Accountancy

Executive Director's Report

03 May 2013

1. NASBA Activities

2013 Regional Meeting

The 2013 Regional Meeting for the Eastern Region will take in Chicago June 26 - 28. If you would like to attend, please let me know as soon as possible so that I can get the Travel Authorizations submitted. I plan on attending and would like to have a good representation from the Board if possible.

Executive Directors Committee Meeting

I am planning on attending a meeting of the Executive Directors Committee on June 8, 2013 in New Orleans. I've received approval to attend that meeting from the administration.

Committee Assignments for NASBA

Everyone should have received the email from Anita Holt at NASBA inquiring about your availability and willingness to serve on a NASBA committee. If you have not already completed that form and would like the opportunity to serve, let me know and we'll get the form completed and submitted as quickly as possible.

2. State Board Committee

I'll be attending a meeting of the AICPA's State Board Committee on May 22, 2013 in Ewing, New Jersey.

3. Investigation for Arkansas

Mr. Mills has completed his investigation and is planning on testifying for the

Arkansas Board at their meeting on April 26<sup>th</sup>.

4. Legislation

Sunset Legislation has been passed to extend the Board of Accountancy until June 30, 2016. No other legislation affecting the Board was passed this session.

5. Personnel Matters

Karen Condon has been promoted to the Administrative Services Assistant IV position previously held by Dr. Riggs. As a result, we now have an opening for an AARB (Administrative Assistant Regulatory Boards) II. That position has been properly advertised and has closed as of April 23, 2013. There were 176 applications submitted, but not all of those will qualify. I'll provide an update at the Board meeting.

6. Proposed Future Meeting Dates:

Friday, 19 July 2013

Friday, 18 October 2013

Friday, 17 January 2014

Friday, 02 May 2014

Friday, 18 July 2014

Friday, 17 October 2014

7. Office Move

All Board meetings will now be held in the Davy Crockett Tower. The office has been moved from the Andrew Johnson Tower back to the Davy Crockett Tower as of 03 May 2013. We are now located on the fifth floor of Davy Crockett with offices facing the front of the building.



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
OFFICE OF LEGAL COUNSEL  
500 JAMES ROBERTSON PARKWAY  
DAVY CROCKETT TOWER  
NASHVILLE, TENNESSEE 37243  
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

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**TO: Tennessee State Board of Accountancy**

**FROM: Jesse D. Joseph, Assistant General Counsel-Litigation**

**DATE: May 1, 2013**

**SUBJECT: Supplemental Legal Report on Formal Proceedings**

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- 1. L11-ACC-RBS-2011007421 Bhupinder S. Sood, CPA  
Docket No. 12.19-119206J  
Notice of Hearing and Charges Filed 12/6/12**
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The complaint in this matter was opened in April, 2011, after the Respondent forwarded information to the Board staff to the effect that he had been indicted in the U. S. District Court, Southern District of California, on bankruptcy fraud charges.

Upon investigation, it was determined that on January 7, 2011, Respondent was indicted by the July 2010 Grand Jury for the United States District Court, Southern District of California, Case No. 11CR0104 – JLS, for violation of the following:

- 18 U.S.C. § 157(3) – Bankruptcy Fraud;
- 18 U.S.C. § 152(1) – Concealment of Assets;
- 18 U.S.C. § 152(3) – False Statement Under Penalty of Perjury;
- 18 U.S.C. § 152(7) – Fraudulent Transfer or Concealment of Assets;
- 18 U.S.C. § 152(5) - Fraudulent Receipt of Bankruptcy Assets; and
- 18 U.S.C. § 2 – Aiding and Abetting.

We also determined that Respondent was detained under orders of the United States District Court for the Middle District of Tennessee and served approximately 9 months

before being returned to the United States District Court for the Southern District of California for sentencing.

Respondent specifically admitted that on or about October 13, 2005, when he filed his voluntary Bankruptcy Petition, Schedules and a Statement of Financial Affairs, that he knowingly and fraudulently concealed an asset of the Bankruptcy estate, namely, his offshore accounts in the Channel Islands and the \$156,000 contained within them, for the purpose of fraudulently concealing the offshore accounts and the money contained within them from a trustee or other officer of the court charges with control and custody of his bankruptcy estate. Respondent also admitted that his concealment of the offshore accounts and the approximately \$156,000 contained within them was material, and that he used sophisticated means during the commission of this offense.

The record reflects that on June 30, 2011, the United States Magistrate Judge for the Southern District of California in Case No. 11CR0104 – JLS entered Findings and a Recommendation, and a Plea Agreement in said court, wherein Respondent pleaded guilty to Count 2 of the Indictment filed against him, charging him with concealment of assets in violation of 18 U.S.C. § 152(1), a felony offense. On October 7, 2011, the United States District Court for the Southern District of California imposed sentence against Respondent in its Judgment in a Criminal Case filed in Case No. 11CR0104 – JLS, adjudging Respondent guilty of violating Count 2 of the Indictment, and sentencing Respondent to time served, a \$100 assessment and 3 years of supervised release by the United States Probation Office.

Respondent is currently living in Nashville under federal supervised release, and has complied with the terms of his release thus far. He has not taken client funds, and has been cooperative with Litigation Counsel. His federal supervised release is scheduled to expire in October 2014.

A prior consent offer was approved by the Board in the summer of 2012 offering the Respondent a revocation of his CPA license until the expiration of his federal supervised release period, with the ability to petition for reinstatement after that time, but the Respondent did not accept this consent order which was tendered to him by Board counsel late in the summer of 2012.

After the filing of the Notice of Hearing and Charges, however, Respondent has agreed and has signed an Agreed Final Order setting forth the following:

1. The Respondent's license as a Certified Public Accountant, and his CPA firm permit, as issued by this Board **are REVOKED**, based on the violations set forth above. The Respondent is ineligible to file any application for the reinstatement of his CPA license or for the reinstatement of his firm permit with this Board for at least a two (2) year period after the effective date of this Agreed Final Order. However, nothing within this Order shall be construed to require that the Board reinstate the Respondent's CPA license in the event Respondent seeks reinstatement.

2. The Board will not accept any application for the reinstatement of either Respondent's CPA license or his CPA firm permit unless Respondent provides counsel for the State documentary evidence from the United State Probation Office that Respondent's term of supervised release has concluded, and documentary evidence that he has paid to the State the assessed investigatory and hearing costs in this matter of \$200 (initial docketing fee).

3. Once this Order has become effective, Respondent must immediately cease and desist from using the CPA designation, holding himself out as a CPA firm, and/or providing attest and/or accounting services to the public until and unless he has obtained from this Board the appropriate licensure to do so. Respondent agrees that should he desire to apply for the reinstatement of his CPA license or firm permit, he must appear before the Board in person at a future Board meeting as condition of his reapplication.

If approved by the Board, the earliest Respondent would be eligible to apply for the reinstatement of his CPA and firm permits would be May of 2015.

**Prior Complaint / Disciplinary History:** 2002 - Practicing without a firm permit – Recommendation for Investigation.

**Recommendation:** Litigation Counsel for the Department recommends that the Agreed Final Order recently negotiated after the filing of the notice of charges and signed by Respondent, be approved.

**Vote:**

## STATUS OF OPEN COMPLAINTS

July 27, 2012 to May 02, 2013

<u>Status</u>	<u>2012</u>		<u>2013</u>	
	27-Jul	18-Oct	24-Jan	2-May
<u>Litigation Monitoring</u>	6	4	6	7
<u>Formal Charges Authorized</u>	24	22	17	4
<u>Formal Hearings Set</u>	6	4	4	3
<u>Consent Order Outstanding</u>	10	8	5	1
<u>Legal</u>	19	19	14	31
<u>Investigation</u>	16	9	8	15
<u>Open</u>	13	3	15	2
<b>Total- All Cases</b>	<b>94</b>	<b>69</b>	<b>69</b>	<b>63</b>



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DEPARTMENT OF COMMERCE AND INSURANCE  
OFFICE OF LEGAL COUNSEL  
Davy Crockett Tower  
500 James Robertson Parkway  
NASHVILLE, TENNESSEE 37243  
Phone: (615) 741-3072  
Fax: (615) 532-4750**

**MEMORANDUM**

**TO:** TENNESSEE BOARD OF ACCOUNTANCY  
**FROM:** CHRISTOPHER R. WHITTAKER, Assistant General Counsel  
**SUBJECT:** MAY 2013 LEGAL REPORT  
**DATE:** May 3, 2013

**Total # of Complaints Considered: 32**  
**Civil Penalties Authorized: 8**  
**Amount of Civil Penalties: \$ 11,000.00**  
**Letters of Warning: 15**  
**Letters of Instruction: 2**  
**Dismissal: 5**  
**Consent Orders for License Suspension, Surrender, or Revocation: 0**  
**Placement into Litigation Monitoring: 2**

**1. L11-ACC-RBS-2011015881**

The complaint alleges that the Respondent, the former President of a local utility district, allegedly converted over \$ 60,000 of client funds for his personal gain (primarily through use of a client issued credit card) over a three year period. The Respondent was indicted for theft over \$ 60,000 in December of 2011. An audit of the Respondent's alleged misconduct was conducted by the Comptroller of the Treasury's Division of Municipal Audit, and it appears that Respondent had repaid all of the misappropriated funds by the time he was indicted.

The criminal proceedings are still pending with no trial date set, due in part to the fact that for a number of months Respondent had no attorney (the public defender is now representing him in the criminal matter), and because the original trial judge recused himself, necessitating another delay awaiting the Supreme Court's appointment of a replacement Criminal Court Judge. We have contacted the District Attorney handling the prosecution twice

over the past 5 months, and the matter has yet to be disposed of by plea or trial. As such, the recommendation is that this case be placed into Litigation Monitoring status.

**Recommendation:** Place the complaint into Litigation Monitoring status until the Respondent's criminal case is resolved or until the criminal case proceeds to a point where it would be appropriate for the Board to pursue its complaint against the Respondent.

**2. L13-ACC-RBS-2013002261**

The complaint alleges that the Respondent CPA committed negligence and professional misconduct in the handling of the affairs of an estate. The preliminary investigation revealed that, while the estate was a client of the CPA firm in which the Respondent CPA is a named partner, the Respondent CPA appears to have had no involvement of any kind in the handling, preparation, and/or review of the estate's affairs, and the Respondent CPA has provided a sworn statement that the first time he learned of any problems with the handling of the estate in question was through the media and upon receipt of the complaint from the Board shortly thereafter. Moreover, there has already been a civil lawsuit filed by the estate against the Respondent's firm, and it is likely that this litigation will take quite some time to be resolved. As such, it is recommended that the Board substitute the Respondent's CPA firm as the named Respondent in this complaint in place of the Respondent CPA, and that this complaint be placed into Litigation Monitoring status.

**Recommendation:** After substituting the Respondent's CPA firm as the Respondent in this matter, place the complaint into Litigation Monitoring status until the pending civil lawsuit is resolved or until the civil lawsuit proceeds to a point where it would be appropriate for the Board to pursue its complaint against the Respondent CPA firm.

**3. L13-ACC-RBS-2012025331**

The complaint alleges that the Respondent CPA practiced accounting in the State of Tennessee without a valid CPA license in his resident state (Michigan). The investigation revealed that the Respondent has now renewed his Michigan CPA license.

**Recommendation:** Formal hearing with authority to settle by Consent Order upon the Respondent's payment of a \$ 500.00 civil penalty.

**4. L13-ACC-RBS-2012025341**

The complaint alleges that the Respondent CPA firm practiced accounting in the State of Tennessee without a valid CPA firm permit in its resident state (Michigan). The investigation revealed that the Respondent has now renewed its Michigan CPA firm permit.

**Recommendation:** Formal hearing with authority to settle by Consent Order upon the Respondent's payment of a \$ 500.00 civil penalty.

**5. L13-ACC-RBS-2012026401**

The complaint alleges that the Respondent company, a non-licensee, held itself out as an accounting firm on its website by stating that two unlicensed individuals were “accountants” and by stating that the company prepares financial statements for internal and external (third party) use. The investigation revealed that, despite a meeting between a company representative and a Board investigator wherein the company representative promised to remove the unlawful language from the company’s website, the Respondent failed to remove the unlawful language from its website.

**Recommendation:** Formal hearing with authority to settle by Consent Order upon the Respondent’s payment of a \$ 500.00 civil penalty.

**6. L13-ACC-RBS-2012026441**

The complaint alleges that the Respondent company, a non-licensee, engaged in the unlicensed practice of accounting by issuing a review letter without possessing a Tennessee CPA firm permit, and that the Respondent used the word “accounting” on its letterhead and other company documents. The Respondent has previously been issued a Cease and Desist notice for the same offense, and the Respondent signed a Consent Order and paid a \$ 5,000.00 civil penalty for the same offense in 2010.

**Recommendation:** Formal hearing with authority to settle by Consent Order (including a provision advising that the Board is likely to exercise all civil and criminal options available to it in the event of a future violation) upon the Respondent’s payment of a \$ 10,000.00 civil penalty.

**7. L13-ACC-RBS-2013000091**

The complaint alleges that the Respondent failed to timely pay her professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent has now paid all professional privilege tax due, including interest and penalties. However, because the Respondent recently signed a Consent Order and paid a \$ 1,000.00 civil penalty for CPE non-compliance, a small civil penalty is recommended.

**Recommendation:** Formal hearing for the revocation of the Respondent’s license with authority to settle by Consent Order upon the Respondent’s payment of a \$ 500.00 civil penalty.

**8. L13-ACC-RBS-2013000081**

The complaint alleges that the Respondent failed to timely pay her professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent failed to respond in any manner to all attempts by the Board and the Board’s investigator to resolve her privilege tax liability and/or to resolve this complaint.

**Recommendation:** Formal hearing for disciplinary action against the Respondent’s CPA license, with sanctions to be determined by the Board.

**9. L13-ACC-RBS-2013002501**

The complaint alleges that the Respondent CPA solicited clients for his CPA firm prior to reactivating his CPA firm permit. The investigation revealed that the Respondent admitted to this violation, and that the Respondent has had at least one prior complaint related to practice and license management which resulted in the signing of a Consent Order and the payment of a civil penalty. The recommended civil penalty would almost certainly be higher if the file contained clear evidence of more than one violation of the law and rules that could be conclusively proven.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle by Consent Order upon the Respondent's payment of a \$ 1,000.00 civil penalty.

**10. L12-ACC-RBS-2012024181**

The complaint alleges that the Respondent CPA failed to notify the Board that his Texas CPA license had been revoked, and that he failed to maintain his Tennessee CPA license in good standing. The investigation revealed that the Respondent has not practiced public accounting in many years. As such, he notified Texas that he no longer wished to maintain his Texas CPA license. However, because Texas does not have an "inactive" status into which his license could be placed, the Respondent's Texas license was administratively revoked for failure to pay fees. Additionally, the Respondent advised the Board's investigator that he believed he had closed out his Tennessee CPA license back in the 1990s, but a search of Board records could find no evidence that the Respondent surrendered his Tennessee license. The Respondent did agree to complete a license surrender affidavit to close his Tennessee license as soon as possible. As such, once the Respondent's license surrender affidavit is received, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**11. L13-ACC-RBS-2013000051**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. By the time the Board's investigator contacted the Respondent, the Respondent had already entered into a payment plan with the Tennessee Department of Revenue regarding his delinquent professional privilege tax. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**12. L13-ACC-RBS-2013000071**

The complaint alleges that the Respondent CPA failed to timely pay her professional privilege tax as required by law for at least two (2) years. By the time the Board's investigator contacted the Respondent, the Respondent had already paid all of her delinquent professional privilege tax in full. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**13. L13-ACC-RBS-2013000101**

The complaint alleges that the Respondent CPA failed to timely pay her professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent is only delinquent for one tax period. Accordingly, neither the privilege tax statute nor the accounting law and rules appear to authorize disciplinary action against the Respondent's license. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**14. L13-ACC-RBS-2013000111**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent is only delinquent for one tax period. Accordingly, neither the privilege tax statute nor the accounting law and rules appear to authorize disciplinary action against the Respondent's license. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**15. L13-ACC-RBS-2013000361**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent is only delinquent for one tax period. Accordingly, neither the privilege tax statute nor the accounting law and rules appear to authorize disciplinary action against the Respondent's license. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**16. L13-ACC-RBS-2013000391**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. By the time the Board's investigator contacted the Respondent, the Respondent had already paid all of his delinquent professional privilege tax in full. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**17. L13-ACC-RBS-2013000431**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent is only delinquent for one tax period. Accordingly, neither the privilege tax statute nor the accounting law and rules appear to authorize disciplinary action against the Respondent's license. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**18. L13-ACC-RBS-2013002601**

The complaint alleges that the Respondent CPA held herself and her firm out as an accounting firm prior to the reactivation of her CPA license and firm permit. The investigation revealed that the Respondent was not actually practicing public accounting, but that she had ordered new signage for her firm. After the new signage had been ordered but before the Respondent's firm permit had been reinstated, one of the Respondent's children attempted to commit suicide. While the Respondent was caring for her child, the new signage was installed prior to the reinstatement of the Respondent's firm permit. Given the Respondent's lack of prior complaint history and the mitigating factor set forth above, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**19. L13-ACC-RBS-2013003541**

The complaint alleges that the Respondent CPA failed to notify the Board that his Texas CPA license had been revoked. The investigation revealed that the Respondent no longer practices in Texas and has not done so for many years. As such, he notified Texas that he no longer wished to maintain his Texas CPA license. However, because Texas does not have an "inactive" status into which his license could be placed, the Respondent's Texas license was administratively revoked for failure to pay fees. Additionally, the Respondent does maintain active licenses in Ohio and Tennessee, and both of those licenses are in good standing. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**20. L13-ACC-RBS-2013004541**

The complaint alleges that the Respondent CPA failed to notify the Board that his Alabama CPA license was revoked for failure to timely renew said license. The investigation revealed that the Respondent no longer wishes to maintain his Tennessee license. Accordingly, the Respondent completed a license surrender affidavit and returned it to the Board's investigator. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**21. L13-ACC-RBS-2013004551**

The complaint alleges that the Respondent CPA failed to notify the Board that his Alabama CPA license was revoked for failure to timely renew said license. The investigation revealed that the Respondent practices exclusively in Tennessee and does not need an Alabama license. The Respondent advised the Board investigator that, at some point several years ago, he spoke with someone at the Alabama State Board of Public Accountancy by phone, and that he was advised that he did not need to maintain his Alabama license, so he did not renew his Alabama license. The Respondent states that he was unaware of the revocation of his Alabama license, and that he would have certainly advised this Board of such a disciplinary action if he

had known about it. Given the Respondent's lack of prior complaint history, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**22. L13-ACC-RBS-2013005921**

The complaint alleges that the Respondent CPA failed to notify the Board that his Texas CPA license had been revoked. The investigation revealed that the Respondent no longer practices in Texas and has not done so for many years. As such, he notified Texas that he no longer wished to maintain his Texas CPA license. However, because Texas does not have an "inactive" status into which his license could be placed, the Respondent's Texas license was administratively revoked for failure to pay fees. Additionally, the Respondent completed a license surrender affidavit to close his Tennessee license. As such, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**23. L13-ACC-RBS-2013006081**

The complaint alleges that the Respondent CPA failed to notify the Board that his Alabama CPA license was revoked for failure to timely renew said license. The investigation revealed that the Respondent did not know about the revocation of his Alabama license. The formal hearing to revoke his Alabama license was a default proceeding, the notice of the formal hearing was sent to a former employer who accepted service on the Respondent's behalf even though he no longer worked at that firm, and the firm did not forward notice of the hearing to the Respondent. Immediately upon learning of this complaint, the Respondent took all steps necessary to reinstate his Alabama license and provided proof to this Board of same. Given the Respondent's lack of prior complaint history, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**24. L13-ACC-RBS-2013006101**

The complaint alleges that the Respondent CPA failed to notify the Board that his Alabama CPA license was revoked for failure to timely renew said license. The investigation revealed that the Respondent did not know about the revocation of his Alabama license. The Respondent advised the Board's investigator that he thought that when he moved out of state and did not renew his Alabama license that it would simply be allowed to expire. Given the Respondent's lack of prior complaint history, this complaint should be closed with a Letter of Warning.

**Recommendation:** Close with a Letter of Warning.

**25. L13-ACC-RBS-2012026431**

The complaint alleges that the Respondent company, a non-licensee, used the word "accounting" in its business name and on its website. The investigation revealed that, immediately upon receipt of this complaint, the Respondent made all necessary changes to its website and business name to become compliant with the law, and that the Respondent provided proof of such changes to the Board's investigator.

**Recommendation:** Close with a binding Letter of Instruction for the Respondent to correct the unlawful signage, and the letter shall include cease and desist language ordering the Respondent not to use the word "accounting" or to engage in any other conduct which constitutes holding out as a CPA and/or as a CPA firm without proper licensure.

**26. L13-ACC-RBS-2013000031**

The complaint alleges that the Respondent, a non-licensee, held herself out as a CPA online, that she advertised online as a CPA, and that she used the word "accounting" on exterior signage for the company she owns. There was insufficient evidence to substantiate the online advertising allegations, but the Board investigator confirmed that the Respondent used the word "accounting" on exterior signage at her company. The Respondent stated that she was unaware of the prohibition of the use of the word "accounting" by non-licensees, and she provided an affidavit to the Board investigator stating that she would change the word "accounting" to "bookkeeping" as soon as possible.

**Recommendation:** Close with a binding Letter of Instruction for the Respondent to correct the unlawful signage, and the letter shall include cease and desist language ordering the Respondent not to use the word "accounting" or to engage in any other conduct which constitutes holding out as a CPA and/or as a CPA firm without proper licensure.

**27. L13-ACC-RBS-2013003501**

The complaint alleges that the Respondent CPA failed to return client records in a timely manner. There was insufficient evidence to substantiate this allegation, but the Board investigator discovered that the firm has a policy of disposing of former client records one year after former clients are no longer current clients. The Respondent stated that he was unaware of the rule requiring that working papers be kept on file for five (5) years before being destroyed. The Respondent advised the Board's investigator that he would immediately begin complying with this rule regarding records retention.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle by Consent Order upon the Respondent's payment of a \$ 500.00 civil penalty, and the Respondent shall provide proof of a firm policy which complies with the 5 year records retention requirement as set forth by law as part of the settlement.

**28. L12-ACC-RBS-2012022821**

The complaint alleges that the Respondent CPA failed to exercise due professional care in the performance of professional services, and that he did not provide competent professional services. The investigation revealed that the Respondent obtained engagement letters for several

prior years, and that he attempted to obtain an engagement letter for the last tax year in which he represented the Complainant, but he never received a signed engagement letter for that year from the Complainant. Additionally, the Respondent provided a lengthy series of e-mails in which the Complainant asked the Respondent many questions regarding his tax returns, and these e-mails demonstrate that the Respondent answered the Complainant's question in a prompt and timely manner. Finally, despite the complexity of the Complainant's tax returns, the investigation revealed no evidence that the Respondent was incompetent or that he failed to exercise due professional care in the performance of services.

**Recommendation:** Dismiss the complaint.

**29. L13-ACC-RBS-2013000041**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent closed his Tennessee CPA license in good standing, and that the Department of Revenue has been notified of the Respondent's license closure so that the Respondent will not incur any additional privilege tax liability until and unless he reinstates his license.

**Recommendation:** Dismiss the complaint.

**30. L13-ACC-RBS-2013000371**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent has dementia, is being cared for by his sister, and that he is no longer able to work. The Respondent's former partner has agreed to assist the Board's investigator in getting the Respondent to close his license.

**Recommendation:** Dismiss the complaint upon receipt of a signed license surrender affidavit from the Respondent.

**31. L13-ACC-RBS-2013000411**

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) years. The investigation revealed that the Respondent closed his Tennessee CPA license in good standing, and that the Department of Revenue has been notified of the Respondent's license closure so that the Respondent will not incur any additional privilege tax liability until and unless he reinstates his license.

**Recommendation:** Dismiss the complaint.

**32. L12-ACC-RBS-2012013171**

The complaint alleges that the Respondent CPA failed to notify the Board that his Alabama CPA license had been revoked, and that he failed to maintain his Tennessee CPA license in good standing. The investigation revealed that the Respondent is deceased.

**Recommendation:** Dismiss the complaint.



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
OFFICE OF LEGAL COUNSEL  
500 JAMES ROBERTSON PARKWAY  
DAVY CROCKETT TOWER  
NASHVILLE, TENNESSEE 37243  
PHONE: (615) 741-3072  
FAX: (615) 532-4750

**MEMORANDUM**

**TO:** File

**FROM:** Christopher R. Whittaker, Esq.  
Assistant General Counsel, Tennessee State Board of Accountancy

**DATE:** February 11, 2013

**SUBJECT:** Regulatory Flexibility Act, Tenn. Code Ann. §§ 4-5-401 et seq.  
Regulatory Flexibility Analysis

**0020-01-.04 (Fees); 0020-01-.05 (Applications); 0020-01-.06 (Examinations);  
0020-04-.03 (Grounds for Discipline Against Licensees); 0020-05-.03  
(Continuing Education);**

**Tennessee State Board of Accountancy**

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The Regulatory Flexibility Act, Tenn. Code Ann. §§ 4-5-401 et seq. requires that prior to initiating the rulemaking process pursuant to Tenn. Code Ann. §§4-5-202(a)(3) and 4-5-203(a), all agencies shall review all proposed rules and the effect that the proposed rule has on small businesses. The Act requires that “each agency shall employ a regulatory flexibility analysis utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing any adverse impact on small business.”

The Act further provides that the agency shall consider, without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; the clarity, conciseness, and lack of ambiguity in the rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation of simplification of compliance or reporting requirements

for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

### **Description of Proposed Rules:**

The Department intends to convene a rulemaking hearing on July 19, 2013, in order to adopt amendments to the rules governing the Tennessee State Board of Accountancy (“Board”) in the following areas: a proposed reduction in the biennial license renewal fee for CPAs licensed in Tennessee, clarification of the time periods for which initial applications for licensure as a CPA and CPA exam scores are valid, setting forth what services may lawfully be performed by a licensee whose license is in “inactive” status.

The proposed amendment to Rule 0020-01-.04 would reduce the biennial renewal fee for individual CPAs by \$5.00 per year (\$10.00 per two year renewal period), resulting in biennial renewal fee of \$ 110.00 (reduced from the current \$120.00 fee) for individual CPAs.

The proposed amendment to Rule 0020-01-.05 would allow initial applications for licensure as a CPA to remain valid for one (1) year from the date of application for initial licensure as a CPA.

The proposed amendment to Rule 0020-01-.06 would allow CPA exam scores to be valid for ten (10) years from the date the first passing score on any section of the CPA exam is attained by an applicant. The amendment would authorize the Board to waive this requirement for good cause shown by the applicant.

The proposed amendment to Rule 0020-04-.03 would clarify that the Board has no jurisdiction over fee disputes between a client and a licensee. However, the Board may move forward with a complaint which mentions a fee dispute if other violation(s) of the law and rules are alleged.

The proposed amendment to Rule 0020-05-.03(3) would set forth the scope of services that may be performed by a licensee whose CPA license is in “inactive” status. The current rules regarding “inactive” license status provide insufficient guidance and clarity to inactive licensees and to the public, and the proposed amendment would rectify these shortcomings. Additionally, the proposed amendment would provide that a licensee who is 65 years old or older whose license is in inactive status shall not be required to pay the biennial renewal fee required of active licensees.

The proposed amendment to Rule 0020-5-.03(6) replaces all instances of the word “lapsed” with the word “expired”. This change is required to ensure uniformity and consistency in the rules because the Board previously voted to add a definition for “expired license” to the rules (Rule 0020-1-.01(h)). All instances of the word “lapsed” were replaced with the word

“expired” in Rule 0020-1-.08(7), and as such, all instances of the word “lapsed” in Rule 0020-5-.03(6) must also be replaced with the word “expired”.

**Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:**

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rule:

The rules are clear in purpose and intended execution. The implementation of the proposed rule change will increase clarity and conciseness and decrease ambiguity in the rules as a whole.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rule change has no impact on small businesses, so there are no issues regarding compliance and reporting requirements.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

The proposed rule change has no impact on small businesses, so there are no issues regarding compliance and reporting requirements.

5. Consolidation or simplification of compliance or reporting requirements:

There are no new compliance and reporting requirements as a result of this amendment.

6. Performances standards for small businesses:

There are no performance standards for small businesses as a result of this amendment.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The Board has determined that these amendments do not place an undue burden on individuals. If anything, the proposed reduction in the licensing fee for individual CPAs should make it easier for CPAs to practice in Tennessee.