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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 19, 2011

Katie True, Commissioner
Bureau of Professional and Occupational Affairs
2601 North Third Street
Harrisburg, PA 17110

Re: Regulation #16A-48 (IRRC #2904)
Bureau of Professional and Occupational Affairs
Schedule of Civil Penalties - Accountants

Dear Commissioner True:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Fiona Wilmarth
Acting Executive Director
sfh
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Harry A. Readshaw, Minority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Majority Chairman, House Professional Licensure Committee
Honorable Carol Aichele, Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Bureau of Professional and Occupational Affairs Regulation #16A-48 (IRRC #2904)

Schedule of Civil Penalties - Accountants

October 19, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the August 20, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Bureau of Professional and Occupational Affairs (Bureau) to respond to all comments received from us or any other source.

Section 43b.10a. Schedule of civil penalties—accountants. - Reasonableness; Need; Implementation procedures.

This regulation amends the schedule of civil penalties for accountants for failure to complete continuing education requirements for license renewal, as well as for various circumstances that would constitute unlawful representation of accounting credentials or membership in professional accounting organizations. The schedule details the fines that coincide with statutory violations. We raise three issues.

First, both the House Professional Licensure Committee (HPLC) and the Pennsylvania Institute of Certified Public Accountants (PICPA) recommend that the regulation more clearly distinguish between practicing on a lapsed license versus practicing without a license. PICPA recommends that Certified Public Accountant (CPA) licensees who inadvertently practice with a lapsed license be treated no more harshly than non-credentialed first-time offenders. Additionally, the HPLC recommends more severe penalties for parties who have never been licensed.

Under the existing regulation, it would be unlawful for individuals and firms to use certain credentials if they are “not currently licensed.” Under these circumstances, the regulation provides for Act 48 civil penalties to be imposed for these violations before formal action is taken. However, these provisions have been amended in the proposed regulation to apply only to individuals and entities that have never been credentialed by the State Board of Accountancy (Board) as CPAs, public accountants or public accounting firms. The Bureau explains in the Preamble that:

the Board prefers that certified public accountants, accountants and public accounting firms that use professional designations after their licenses have lapsed be charged with

the unlicensed practice of public accounting under section 12(q) of the act, which the Board has always enforced through formal action, fashioning each disciplinary sanction on a case-by-case basis by taking into account the length of time that a license has lapsed and the type of accounting activities performed.

In light of the circumstances raised by the HPLC and PICPA, we request that the Bureau explain why formal action is necessary in every instance related to a lapsed license.

Second, both PICPA and the HPLC recommend that various violations in the schedule require more stringent monetary penalties as well as fewer offenses before formal action, including violations of §§ 9.12 (a), (c), and (j), and for the violations listed in the regulation under 49 Pa. Code Chapter 11. PICPA also suggests that licensees who violate §9.8b (b) should not be afforded a second offense. How did the Bureau determine the penalty amounts and the number of offenses prior to formal action for the violations contained in this rulemaking?

Finally, the existing regulation states that a violation of Section 9.12 (a) occurs when a person never licensed or not currently licensed unlawfully uses the titles “certified public accountant” or “CPA.” The proposed regulation amends this subsection to provide that unlawful use occurs when these credentials are used by a person “not possessing a CPA certificate in good standing.” We request that the Bureau clarify the difference between a CPA license and a CPA certificate.

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: 10/19/11
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on Bureau of Professional and Occupational Affairs regulation #16A-48 - (IRRC #2904). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Barb Casley

Date:

10-19-11