



**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

January 25, 2013

The meeting of the Tennessee State Board of Accountancy convened in the Andrew Johnson Tower, Nashville, TN on Friday, January 25, 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; and Don Royston.

Board member Stan Sawyer was absent.

Staff members present were: Mark Crocker, Executive Director; Don Mills, Investigator; Ray Butler, Investigator; Jesse Joseph, Assistant General Counsel; Chris Whittaker, Staff Attorney; Kathy Riggs; 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, January 14, 2013.

There will be no formal hearing at this meeting, as two of the three cases scheduled have been settled and the third has been continued until the May meeting. A rule-making hearing has also been deferred to the May meeting.

The Tennessee Society of Certified Public Accountants (TSCPA) is hosting a reception to honor the members of the 108th General Assembly on February 11th, 2013.

Board members were asked to review and sign a Conflict of Interest form.

Mr. Watkins then directed the Board to review the minutes from the meetings on October 18th and 19th. Mr. Stuart moved to accept the minutes as presented. Mr. Royston seconded and the motion passed unanimously.

The Board then heard the NASBA Committee reports.

Board Effectiveness and Legislative Support Committee

Ms. Brundige reported that the Committee held a meeting via conference call on December 19, 2012. The focus of the Committee has been changed to develop strategies to assist Boards in their efforts to improve their effectiveness. The Committee will also assist the NASBA Director of Legislative and Governmental Affairs to develop strategies to help with his work. The committee may be broken into sub-committees. Ms. Brundige will attend a Committee meeting in February to learn more about the sub-committees.

Uniform Accountancy Act Committee

Mr. Brewer reported that the Committee met on January 14th, 2013, to discuss the definition of attest functions and audit review statements, confidentiality agreements between CPAs and tax clients with respect to IRS involvement, and the activities allowed to inactive and retired licensees.

Mr. Watkins then invited Mr. Crocker to present the Executive Director's report. A copy of the report is included as Attachment A.

The Board then heard Committee Reports.

Law and Rules Committee

Mr. Brewer reported that the Committee discussed the inactive and retired statuses. The Committee recommended changing the Retired status to Inactive, adding language clarifying that those licensees over the age of 65 will be exempt from renewal fees. Mr. Whittaker drafted language for a proposed Rule change, which the Board members reviewed. A copy of the Proposed Rule Changes is included as Attachment B.

There followed discussion of the activities allowed to Inactive licensees and the language regarding the expiration of CPA exam scores. Mr. Brewer moved to hold a Rule-making hearing in May and to approve the language with these amendments:

- The section regarding the expiration of CPA exam scores will be changed from "last passing score" to "first passing score".
- The deletion of the word "Inactive" from section 2E.

Mr. Royston seconded and the motion passed unanimously.

The Committee had also discussed the new AICPA Financial Report Framework. Mr. Brewer reported that the Board will have more information from the AICPA later.

Mr. Brewer reported that some Boards have required CPA firms to post the firm permit number on the firm's website. The Committee determined that there was no need for the Tennessee Board to have such a requirement.

Mr. Floyd asked for clarification of the language in section 2E regarding which licensees are required to return wall certificates. Mr. Alexander moved to amend the previous motion to strike the language in that section which refers to keeping the wall certificate. With Mr. Blaufuss seconding, the motion passed unanimously.

Licensing Committee

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

- Review of State-Specific Ethics Course submitted by Bisk Education, Inc.
The Committee recommended approval with the deletion of a reference to the four-hour ethics course.
- Request from Stephen Huffman for an extension of the window to complete the CPA Exams.
The Committee recommended granting an extension until March 31, 2013.
- Request from Lindsay Green for an extension of the window to complete the CPA Exams.
The Committee recommended denial of the request.
- Request from Steven B. Swindall to be licensed as a CPA in Tennessee.
The Committee recommended approval of the candidate.

Following discussion of these items, Mr. Alexander moved to accept and approve the Committee's recommendations for all four items. Mr. Brewer seconded and the motion passed unanimously.

Ms. Brundige then thanked Kathy Riggs for her assistance to the Board.

Executive Committee

Mr. Watkins began with a review of the proposed Budget scenarios. There were three Budgets presented (A, B and C), with varying degrees of income and expenditures. Copies of the proposed budgets are included as Attachment C. The Committee recommended approval of Budget B, amended as follows:

Reduction of Third Party Professional and Administrative Services to \$50,000.00, re-allocating those funds to investigative costs; elimination of plans to attend the NASBA Annual meeting in Hawaii; and reduction of the cost of the NASBA Regional meeting in Chicago by \$2,000.00.

Mr. Blaufuss asked if approval of the budget meant approval of all travel detailed in the budget, or if the Board will have an opportunity to revisit each trip requested. Mr. Watkins clarified that approval of the entire budget does not necessarily mean approval of each trip listed in the supporting document.

Following discussion of budget surpluses and fee reductions, Mr. Royston moved to accept the Committee's recommendation. Mr. Stuart seconded and the motion passed unanimously.

Mr. Watkins then reported the results of the Committee's discussion about the State-Specific Ethics course offered by the Board. The Committee recommended training Mr. Butler to present the class in West Tennessee and increasing the minimum number of attendees required.

Mr. Watkins asked Mr. Crocker to look into the feasibility of online presentations to be offered as part of the license renewal process. Mr. Floyd will put together options for an

online presentation, and Mr. Crocker will discuss the Board's options with the State's IT staff.

Mr. Blaufuss moved to increase to twenty the minimum number of attendees required for the State-Specific Ethics course to be presented by Board staff. With Mr. Eldridge seconding, the motion passed unanimously.

The next topic concerned the Peer Review Oversight Committee (PROC). A nominating Committee which must be formed to name candidates to serve on the PROC must include two Board members. Mr. Blaufuss and Mr. Roberts volunteered to serve on the nominating Committee.

The Board has received three requests for endorsement from candidates for the position of NASBA Vice-Chair. The Committee's opinion was that the Board does not have enough information about the candidates to offer an endorsement.

The Committee also discussed the evaluation of the Executive Director. With input from Assistant Commissioner Bill Giannini, the Committee developed a plan in which the Department of Commerce and Insurance will conduct an evaluation which will then be submitted to the Board for review. The Board may either affirm or disagree with the evaluation, at which point it can be adjusted at the Board's direction. Mr. Giannini will communicate the results of the evaluation to Mr. Watkins, who will then call a Board meeting to be held via conference call.

Mr. Watkins brought to the Board's attention the evaluation tool that was emailed to the members. Mr. Blaufuss did not think it an appropriate tool, as it focuses on day-to-day operations to which Board is not privy. He suggested that the Board should tailor its evaluation tool around the one the Board will receive from Mr. Giannini.

Mr. Watkins reported that Mr. Giannini could foresee no problems with the Sunset Law.

After a short break, the Board reconvened to continue the Report of the Executive Committee.

Mr. Watkins asked the Board to review the Travel Budget. Mr. Blaufuss has suggested that the Board include travel as an item on the agenda for quarterly meetings for review and revision. Mr. Blaufuss moved to approve the Travel Budget with the provision that out-of-state-travel be reviewed by the Board at its Quarterly meetings. Mr. Roberts seconded, and the motion passed unanimously.

Probable Cause Committee

Mr. Joseph presented a Supplemental Legal Report concerning the cases of Robert J. Crews and Ernest E. Choat, Jr. In both matters, the Committee recommended approval of the signed Agreed Final Orders as outlined in the Report. A copy of the Supplemental Legal Report is included as Attachment D.

Mr. Royston moved to approve the Committee's recommendation in the matter of Robert J. Crews. Mr. Alexander seconded and the motion passed unanimously.

Mr. Royston moved to approve the Committee's recommendation in the matter of Ernest E. Choat, Jr. Mr. Roberts seconded and the motion passed unanimously.

Chris Whittaker then presented the Legal Report as evaluated and voted upon by the Probable Cause Committee. All recommended changes had been added to the amended report. A copy of the Legal Report is included as Attachment E.

Regarding items 24 and 25, Mr. Royston moved to accept the Committee's recommendation of approval of the Agreed Order as revised by the Committee. Mr. Roberts seconded and the motion passed unanimously.

Following discussion, Mr. Royston moved to accept the recommendations for all remaining items. Mr. Blaufuss seconded and the motion was passed unanimously, with Mr. Alexander recused from the vote on Item 5.

Of the 26 complaints presented, the motions resulted in the following:

Civil Penalties Authorized: 3

Amount of Civil Penalties: \$ 17,700.00

Letters of Warning: 9

Letters of Instruction: 0

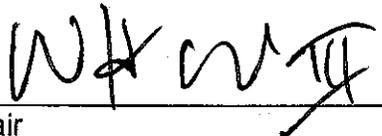
Dismissal: 12

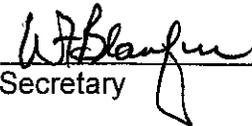
Consent Orders for License Suspension, Surrender, or Revocation: 0

Placement into Litigation Monitoring: 1

Mr. Watkins extended the Board's gratitude to Kathy Riggs upon her retirement for her service to the Board.

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


Chair


Secretary



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Tennessee State Board of Accountancy

Executive Director's Report

25 January 2013

1. NASBA Activities

Executive Director/Legal Conference

The 30th Annual Conference for Executive Directors will be held in Tucson March 3 – 6. The Executive Directors Committee will meet on March 2 prior to the beginning of the conference, so I will need to travel on Friday, March 1st in order to be present for that committee meeting. Mr. Mills and Mr. Butler will join me on March 3rd for the beginning of the Legal Conference which is held in conjunction with the ED Conference.

2. Investigation for Arkansas

Mr. Mills has completed his investigation and is planning on testifying for the Arkansas Board at their meeting on April 26th.

3. ALJ Day

We have an ALJ Day scheduled for Tuesday, January 29th. There are two cases scheduled for hearing that day.

4. Proposed Future Meeting Dates:

Friday, 03 May 2013

Friday, 19 July 2013

Friday, 18 October 2013

Friday, 17 January 2014

Ensuring Excellence

Friday, 02 May 2014

Friday, 18 July 2014

5. CPA Exam Issues:

Candidates sitting for the CPA Exam will no longer be issued scratch paper and pencils. Instead they are being issued "erase boards" which will be collected at the end of the testing period.

There has been a re-score of some exam candidates as the result of an error with two task-based simulations (TBS) and one multiple choice question (MCQ). The timeframe affected was the 1st Quarter of 2011 through the 3rd Quarter of 2012. All candidates exposed to either of the TBS items or the MCQ had their results re-processed. There were 99 candidates affected who had their scores changed as a result of the errors: Tennessee had one candidate who was affected. He tested in the 1st Quarter of 2012, but re-tested and passed that section in the 3rd Quarter. He has licensed, but will have his test fees reimbursed as a result of the re-score. AICPA has provided Re-Reporting FAQs which are attached for your review.

6. Meetings Priority

At the last meeting I was asked to prioritize NASBA and AICPA meetings and the necessity for Board attendance. This is the order of importance that I would assign.

- a. Executive Directors/Legal Conference
- b. AICPA Committee Meetings
- c. NASBA Committee Meetings
- d. NASBA Regional Conference
- e. NASBA Annual Conference

7. Kathy Riggs

Dr. Riggs is retiring after being with the Board for almost four years. Her last day with us is 31 January 2013. I want to thank Dr. Riggs for her hard work and her dedication to her craft. Please take the time to express your thanks to Kathy for her work with the Board.



**UNIFORM CPA EXAMINATION
RE-REPORTING FAQs
JANUARY 2013
LIMITED DISTRIBUTION TO STATE BOARDS**

Background

During the scoring review process, AICPA staff identified an error that affected the coding of two task-based simulations (TBS). An issue with the answer key of a single multiple choice question (MCQ) was also under investigation in response to a general inquiry. We evaluated the potential impact of all three items to candidates and are working with NASBA to notify those affected immediately. We are also working together with Prometric, the impacted state boards of accountancy and the Board of Examiners to resolve any concerns.

Which items were impacted?

Three items were impacted: an MCQ in the REG section and one TBS in each of the FAR and REG sections of the Examination.

Which candidates were impacted?

All candidates that were exposed to either the TBS items, the MCQ, or both the TBS and the MCQ items in the same REG section, had their results re-processed to see if the proper credit was granted for each of these items.

All of the candidates whose status changed from Fail to Pass following a re-processing of the above items and granting of the proper credit will be notified by their State Board or its designee.

These items appeared in various testing windows beginning in 11Q1.

How will I be reimbursed?

Any candidate who has retaken the same section of the Examination will be issued a refund for the subsequent windows. Additional items will be evaluated for possible reimbursement upon request. For more information, please contact Chris Mays at cmays@nasba.org or DJ Johns at djohns@nasba.org.

Were any other items affected?

When these TBSs were identified, all of the TBSs in the item bank were investigated, reviewed and analyzed, and it was verified that the issue was not present in any other TBSs. The issue impacting the MCQ was isolated to that MCQ only.

I had a problem with my computer at Prometric. Did Prometric cause this?

No. During the scoring review process, AICPA staff identified an error that affected the coding of two TBSs. An issue with the answer key of a single MCQ was also under investigation in response to a general inquiry. We evaluated the potential impact of all three items to candidates and are working with NASBA to notify those affected immediately. We are also working together with Prometric, the impacted state boards of accountancy and the Board of Examiners to resolve any concerns.



**UNIFORM CPA EXAMINATION
RE-REPORTING FAQs
JANUARY 2013
LIMITED DISTRIBUTION TO STATE BOARDS**

How often does re-reporting occur? Why can't this process be perfect?

Re-reporting is uncommon and can have multiple causes. The reason we are able to find the errors is because our levels of quality control and review are continuously evaluated and improved. According to Board of Examiners policy, each item is thoroughly reviewed by CPAs, test development professionals, and a volunteer subcommittee of CPAs. The psychometric statistics of each item are also reviewed quarterly to ensure quality.

How can I learn more about the specific items impacted?

Information regarding how specific items are scored, how often the items appear in the CPA Examination, and detailed information about the items in question has been shared with NASBA. However, this information is not shared with the candidates and must remain secure to ensure the confidentiality and security of the Examination for future candidates and future administrations of the Examination. For general information on the content and scoring of the Exam, you may visit www.aicpa.org.

Chapter 0020-01
Board of Accountancy, Licensing and Registration Requirements

Amendments

Rule 0020-01-.04(1) Fees is amended by amending subparagraph (c) to read as follows:

- (c) Renewal of certificate or registration One hundred ten dollars (\$110.00) biennially

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

Rule 0020-01-.05 Applications is amended by amending paragraph (3) to read as follows:

- (3) A candidate who fails to appear for the examination shall forfeit all fees charged for both the application and the examination. All applications for initial licensure shall expire one (1) year from the date of the application for initial licensure.

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Rule 0020-01-.06 Applications is amended by adding a new paragraph (11) to read as follows:

- (11) All CPA Exam scores shall expire ten (10) years after the first passing score is earned. However, upon written request by the applicant, the Board may, in its sole discretion, grant an extension of the score expiration date for good cause shown.

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Chapter 0020-04
Board of Accountancy, Disciplinary Action and Civil Penalties

Amendments

Rule 0020-04-.03 Grounds for Disciplinary Action Against Licensees is amended by adding a new paragraph (3) to read as follows:

- (3) The Board has no jurisdiction over fee disputes between a licensee and a client. The Board shall not seek to impose discipline against a licensee solely on the basis of a dispute between the licensee and the client regarding payment of fees by the client for professional services rendered by the licensee.

Authority: T.C.A. §§ 62-1-105, 62-1-111, 62-1-113, and 62-1-117.

Chapter 0020-05
Board of Accountancy, Continuing Education

Amendments

Rule 0020-05-.03(3) Basic Requirements is amended by amending subparagraphs (a) and (b) and by adding new subparagraphs (c), (d), (e), and (f) to read as follows:

- (a) For purposes of disciplinary action, the board shall retain jurisdiction over all certificate holders whose license is in inactive status.
- (b) Certificate holders who are granted inactive status by the board shall be required to place the word "inactive" adjacent to their CPA or PA designation when using such designation for any lawful purpose, including, but not limited to use of such designation on any business card, letterhead, resume, or biography.

- (c) A certificate holder who has been granted inactive status may not for compensation perform or offer to perform for the public, including the providing of accounting services from a licensed accounting firm, any of the following services: any accounting or auditing services which involves the issuance of reports on financial statements (including opinions, reviews, compilations, or attest engagements), any consulting engagement which would constitute the attest function, or furnishing advice on tax matters.
- (d) A certificate holder who has been granted inactive status may perform the services set forth in (c) above if: the services are provided without compensation to the certificate holder, if the services are performed solely for the certificate holder's employer and such employer is not a licensed accounting firm, or if the certificate holder does not use the CPA or PA designation in association with his or her name while providing such lawful services.
- (e) A certificate holder who is 65 years old or older and possesses a certificate in inactive status shall not be required to pay the biennial license renewal fee required for licensees as set forth in these rules.
- (f) Certificate holders who are granted inactive status must complete eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services during the twenty-four (24) month period preceding the date of their request for reactivation of their license. The CPE hours required to reactivate a license may also be used as credit toward the renewal requirement so long as those hours are completed within the two (2) year window prior to the licensee's next December 31 renewal date.

Authority: T.C.A. §§ 62-1-105, 62-1-107, and 62-1-111.

Rule 0020-05-.03 Basic Requirements is amended by amending paragraph (6) to read as follows:

- (6) An applicant for renewal whose license has expired as set forth in Rule 0020-1-.08(7) shall complete no less than eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services during the six (6) month period preceding the date of reapplication. The CPE hours required to reinstate an expired license are considered penalty hours and may not be used to offset the CPE hours required for renewal of a license.

Authority: T.C.A. §§ 62-1-105, 62-1-107, and 62-1-111.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 5/23/2013

Signature: *Chris Whittaker*

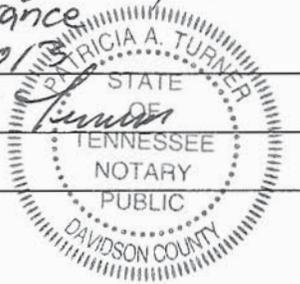
Name of Officer: Chris Whittaker, Esq.

Title of Officer: Asst. General Counsel, Regulatory Boards Division, TN Dept. of Commerce and Insurance

Subscribed and sworn to before me on: May 23, 2013

Notary Public Signature: *Patricia A. Turner*

My commission expires on: 5-15-15



Department of State Use Only

Filed with the Department of State on: 5/23/13

Tre Hargett

Tre Hargett
Secretary of State

REGULATORY
2013 MAY 23 AM 10:44
DEPARTMENT OF STATE

335.10 cc 1101 - Accountancy
Budget for Fiscal 2014

Budget FY 14

Revenues:

\$1,165,000.00

Salaries & Wages	70100	\$428,620.00
Longevity	70102	\$13,700.00
Employee Benefits	70200	<u>\$159,235.00</u>

Payroll Expenditures

\$601,555.00

Travel	7030	\$78,500.00
Printing, Duplicating and Film Processing	7040	\$6,000.00
Communications and Shipping Costs	7060	\$26,000.00
Third Party Professional and Administrative Services	7080	\$75,000.00
Supplies and Office Furniture	7090	\$12,000.00
Rentals and Insurance	7100	\$3,570.00
Awards	7120	\$500.00
Unclassified	7140	\$1,200.00
Training of State Employees	7212	\$15,000.00
Computer Related Items	7220	\$12,000.00
State Professional Services	7250	<u>\$90,000.00</u>

Other Expenditures

\$319,770.00

TOTAL REGULAR EXPENDITURES

\$921,325.00

Projected Year-End Cost Backs

\$212,000.00

Total Expenditures

\$1,133,325.00

Net Income to Reserve

\$31,675.00

Board of Accountancy

Fiscal 2014 Budget

Discussion of Line Items

Revenues: The increase in gross revenues over the FY13 budget amount is 2.64%. See Attachment A for details.

Regulatory License Fees: As you are aware, at the end of each fiscal year, the Board is charged \$5.00 for each active license. As of 31 December 2012 the Board of Accountancy had 12,077 active licenses which results in a charge of \$60,385.00 at the end of the year.

Salaries: The salaries line item includes a 3% increase as an estimate of the raise that all State employees may be given as of July 1, 2013.

Longevity Compensation: Each employee receives a longevity payment of \$100 per year of service on their anniversary date. This line item includes the additional \$100 for current employees.

Employee Benefits: This amount is computed as 36% of salaries and longevity.

Travel: Travel is detailed in the attached Travel Plan (Attachment B).

Printing, Duplicating: This line item covers the cost of printing the renewal postcard and the newsletter.

Communications and Shipping: This line item covers all postage charges which includes the renewal postcard and the annual newsletter. There is a decrease of \$19,000.00 in the budgeted amount of this item.

Third Party Professional and Administrative Services: This is composed of charges for the wall certificates and expenses incurred for formal hearings (judges, court reporters). This also includes the \$2.00 charge per credit card transaction that all licensees are charged when renewing online (a possible total of \$19,000). This is a flow-through item for the Board so it is included in Revenue and in expense. This line item has been increased significantly to include charges for the Peer Review Oversight Committee. The contracts have been written so that each individual on the committee "may" incur expenses of up to \$15,000 each year (they are 3 year contracts). With three members on the committee, then the Board may incur costs of up to \$45,000 each year for their activities.

Board of Accountancy
FY 2014
Budget Narrative
Page 2

Supplies and Furniture: We have not stockpiled supplies, so we are now down to ordering as needed.

Rentals and Insurance: This is the total for the rental of the copier.

Employee Training: This covers training provided by the Department for staff as well as paid CPE for the professional staff.

Computer Related Items: These are charges incurred for any computer related work done by the IT staff as well as any new equipment purchased.

State Professional Services: Rent for our office space is \$65,484.00 of this total. This also includes our telephone billing (approximately \$600 per month) and also the charges for the state vehicles driven by Mr. Mills and Mr. Butler.

**Budget FY 14
Attachment A
Revenue Reconciliation**

Revenue from RBS - FY12	\$1,157,345	(A-1)
Credit Card Fees	\$19,000	1
State Regulatory Fee	(\$60,385)	2
Increased Late Fees	\$24,650	3
New Individual Licensees	\$18,000	4
New Firm Licensees	<u>\$6,600</u>	5
	 \$1,165,210	

- 1 There are approximately 7,500 individual licensees renewing each year and approximately 2,000 firms. The credit card fee to renew online is \$2.00 per transaction. If each licensee renewed online, then there would be fees generated of \$19,000 $[(7,500 + 2,000) \times 2.00]$.
- 2 The State Regulatory Fee is \$5.00 per active license. As of December 31, 2012, we had 10,015 active individual licensees and 2,062 firm licensees. $10,015 + 2,062 = 12,077 \times \$5.00 = \$60,385$.
- 3 The late fees charged for delinquent renewal have been combined into one fee of \$100 that will be assessed on 31 January instead of two late fees of \$50 that were assessed on 31 January and then another on 31 March. Assuming that the same number of licensees renew late $(\$26,200 / \$50 = 524)$, then we should see an increase of \$19,750 $(524 \times \$100 = \$52,400 - \$26,200 - \$6,450 = \$19,750)$ in individual licensees and an increase of \$4,900 $(\$4,900 / \$50 = 98 \text{ firms} \times \$100 = \$9,800 - \$4,900 = \$4,900)$. $\$19,750 + \$4,900 = \$24,650$.
- 4 Renewals seem to be increasing at about 150 individual renewals each year. $150 \times \$120 = \$18,000$.
- 5 We had 2,062 active firm permits at the end of December, 2012. If all of those firms renew, then renewal revenue will be \$103,100 $(2,062 \times \$50)$. That is an increase of \$6,600 over renewals in FY 12 $(\$103,100 - \$96,500 = \$6,600)$.

Budget Information for FY 14

Individual CPA

Source	FY 10	FY 11	FY 12	FY 13 - To Date
Initial Applications	\$40,300	\$44,700	\$39,700	\$21,600
Reciprocal Applications	\$23,820	\$25,450	\$25,500	\$5,400
Reopened	\$840	\$720	\$960	\$960
Wall Certificates	\$475	\$550	\$475	\$125
Reinstatements	\$73,735	\$34,565	\$76,430	\$6,630
Miscellaneous	\$4,215	\$760	\$914	\$47
Address Changes	\$3,425	\$3,550	\$3,050	\$825
Fines	\$16,070	\$32,345	\$38,321	\$8,661
1st Late Fee	\$14,200	\$24,350	\$26,200	\$2,350
2nd Late Fee	\$8,700	\$7,200	\$6,450	\$2,350
Refunds	(\$4,945)	(\$555)	(\$500)	(\$75)
Renewals	\$792,590.00	\$805,030	\$823,000	\$315,000
	\$973,425.00	\$978,665	\$1,040,500	\$363,873

Firms

Source

Initial Applications	\$5,250	\$5,000	\$4,950	\$2,600
Reopen	\$0	\$0	\$400	\$250
Reinstatements	\$875	\$1,325	\$525	\$200
Miscellaneous	\$1,100	\$3,450	\$3,200	\$475
Fines	\$7,000	\$18,800	\$4,350	\$4,325
1st Late Fee	\$7,100	\$6,300	\$4,900	\$0
2nd Late Fee	\$5,250	\$950	\$0	\$0
Refunds	(\$445)	\$0	\$0	(\$50)
Renewals	\$97,950	\$96,350	\$96,500	\$36,300
	\$124,080	\$132,175	\$114,825	\$44,100
Revenue from PAs	\$2,160	\$1,560	\$2,020	\$480
Total Revenue	\$1,099,665	\$1,112,400	\$1,157,345	\$408,453
Percentage Increase		1.16%	4.04%	

Attachment B

Board of Accountancy
Travel Plan
FY 14

<u>Month</u>	<u>Attendee</u>	<u>Event</u>	<u>Location</u>	<u>Cost</u>	<u>Remarks</u>
July	ED or Designee	Miscellaneous Board Business		\$500	
August	ED or Designee	Miscellaneous Board Business		\$500	
September	ED or Designee	Miscellaneous Board Business		\$500	
October	ED or Designee ED and 3 Board Members	Miscellaneous Board Business NASBA Annual Meeting	Hawaii	\$500 \$12,000	
November	ED or Designee	Miscellaneous Board Business		\$1,000	
December	ED or Designee	Miscellaneous Board Business		\$1,000	
January	ED or Designee	Miscellaneous Board Business		\$500	
February	ED or Designee	Miscellaneous Board Business		\$500	
March	Executive Director Investigators/Staff Attorney ED or Designee	NASBA Executive Directors' conference NASBA Legal Counsel conference Miscellaneous Board Business	Tucson	\$2,500 \$6,000, \$500	
April	ED or Designee	Miscellaneous Board Business		\$500	
May	ED or Designee	Miscellaneous Board Business		\$500	
June	ED and 3 Board Members ED or Designee	NASBA Regional meeting Miscellaneous Board Business	Chicago	\$12,000 \$500	
Various	Investigator	Investigations	Tennessee	\$39,500	
Various	PROC	PROC Meetings		\$20,000	
Various	Various	NASBA Committee meetings		\$3,000	
Quarterly	Board members	TSBA meetings	Tennessee	\$8,000	
		Total estimated travel expenses	Subtotal	\$8,000	
				<u>\$78,500</u>	

**335.10 cc 1101 - Accountancy
Budget for Fiscal 2014
Fee Reduction of \$10**

Budget FY 14

Revenues:

\$1,090,000.00

Salaries & Wages	70100	\$428,620.00
Longevity	70102	\$13,700.00
Employee Benefits	70200	\$159,235.00

Payroll Expenditures

\$601,555.00

Travel	7030	\$64,500.00
Printing, Duplicating and Film Processing	7040	\$6,000.00
Communications and Shipping Costs	7060	\$25,000.00
Third Party Professional and Administrative Services	7080	\$60,000.00
Supplies and Office Furniture	7090	\$10,000.00
Rentals and Insurance	7100	\$3,570.00
Awards	7120	\$500.00
Unclassified	7140	\$1,200.00
Training of State Employees	7212	\$10,000.00
Computer Related Items	7220	\$10,000.00
State Professional Services	7250	\$85,000.00

Other Expenditures

\$275,770.00

TOTAL REGULAR EXPENDITURES

\$877,325.00

Projected Year-End Cost Backs

\$212,000.00

Total Expenditures

\$1,089,325.00

Net Income to Reserve

\$675.00

Board of Accountancy

Fiscal 2014 Budget

Discussion of Line Items

Revenues: The decrease in gross revenues from the FY13 budget amount is 3.96%. See Attachment A for details.

Regulatory License Fees: As you are aware, at the end of each fiscal year, the Board is charged \$5.00 for each active license. As of 31 December 2012 the Board of Accountancy had 12,077 active licenses which results in a charge of \$60,385.00 at the end of the year.

Salaries: The salaries line item includes a 3% increase as an estimate of the raise that all State employees may be given as of July 1, 2013.

Longevity Compensation: Each employee receives a longevity payment of \$100 per year of service on their anniversary date. This line item includes the additional \$100 for current employees.

Employee Benefits: This amount is computed as 36% of salaries and longevity.

Travel: Travel is detailed in the attached Travel Plan (Attachment B).

Printing, Duplicating: This line item covers the cost of printing the renewal postcard and the newsletter.

Communications and Shipping: This line item covers all postage charges which includes the renewal postcard and the annual newsletter. There is a decrease of \$20,000.00 in the budgeted amount of this item.

Third Party Professional and Administrative Services: This is composed of charges for the wall certificates and expenses incurred for formal hearings (judges, court reporters). This also includes the \$2.00 charge per credit card transaction that all licensees are charged when renewing online (a possible total of \$19,000). This is a flow-through item for the Board so it is included in Revenue and in expense. This line item has been increased significantly to include charges for the Peer Review Oversight Committee. The contracts have been written so that each individual on the committee "may" incur expenses of up to \$15,000 each year (they are 3 year contracts). With three members on the committee, then the Board may incur costs of up to \$45,000 each year for their activities. In this budget we have allowed \$30,000 or 2/3 of the possible cost.

Board of Accountancy
FY 2014
Budget Narrative
Page 2

Supplies and Furniture: We have not stockpiled supplies, so we are now down to ordering as needed.

Rentals and Insurance: This is the total for the rental of the copier.

Employee Training: This covers training provided by the Department for staff as well as paid CPE for the professional staff.

Computer Related Items: These are charges incurred for any computer related work done by the IT staff as well as any new equipment purchased.

State Professional Services: Rent for our office space is \$65,484.00 of this total. This also includes our telephone billing (approximately \$600 per month) and also the charges for the state vehicles driven by Mr. Mills and Mr. Butler.

**Budget FY 14
Attachment A
Revenue Reconciliation**

Revenue from RBS - FY12	\$1,157,345	(A-1)
Credit Card Fees	\$19,000	1
State Regulatory Fee	(\$60,385)	2
Increased Late Fees	\$24,650	3
New Individual Licensees	\$18,000	4
New Firm Licensees	\$6,600	5
Reduction in Renewal Fee	<u>(\$75,000)</u>	6
	 \$1,090,210	

- 1 There are approximately 7,500 individual licensees renewing each year and approximately 2,000 firms. The credit card fee to renew online is \$2.00 per transaction. If each licensee renewed online, then there would be fees generated of \$19,000 $[(7,500 + 2,000) \times 2.00]$.

- 2 The State Regulatory Fee is \$5.00 per active license. As of December 31, 2012, we had 10,015 active individual licensees and 2,062 firm licensees. $10,015 + 2,062 = 12,077 \times \$5.00 = \$60,385$.

- 3 The late fees charged for delinquent renewal have been combined into one fee of \$100 that will be assessed on 31 January instead of two late fees of \$50 that were assessed on 31 January and then another on 31 March. Assuming that the same number of licensees renew late $(\$26,200 / \$50 = 524)$, then we should see an increase of \$19,750 $(524 \times \$100 = \$52,400 - \$26,200 - \$6,450 = \$19,750)$ in individual licensees and an increase of \$4,900 $(\$4,900 / \$50 = 98 \text{ firms} \times \$100 = \$9,800 - \$4,900 = \$4,900)$. $\$19,750 + \$4,900 = \$24,650$.

- 4 Renewals seem to be increasing at about 150 individual renewals each year. $150 \times \$120 = \$18,000$.

- 5 We had 2,062 active firm permits at the end of December, 2012. If all of those firms renew, then renewal revenue will be \$103,100 $(2,062 \times \$50)$. That is an increase of \$6,600 over renewals in FY 12 $(\$103,100 - \$96,500 = \$6,600)$.

- 6 This amount represents a \$10.00 decrease in the individual licensing renewal fees for approximately 7,500 licensees renewing each year.

Budget Information for FY 14

Individual CPA

Source	FY 10	FY 11	FY 12	FY 13 - To Date
Initial Applications	\$40,300	\$44,700	\$39,700	\$21,600
Reciprocal Applications	\$23,820	\$25,450	\$25,500	\$5,400
Reopened	\$840	\$720	\$960	\$960
Wall Certificates	\$475	\$550	\$475	\$125
Reinstatements	\$73,735	\$34,565	\$76,430	\$6,630
Miscellaneous	\$4,215	\$760	\$914	\$47
Address Changes	\$3,425	\$3,550	\$3,050	\$825
Fines	\$16,070	\$32,345	\$38,321	\$8,661
1st Late Fee	\$14,200	\$24,350	\$26,200	\$2,350
2nd Late Fee	\$8,700	\$7,200	\$6,450	\$2,350
Refunds	(\$4,945)	(\$555)	(\$500)	(\$75)
Renewals	<u>\$792,590.00</u>	<u>\$805,030</u>	<u>\$823,000</u>	<u>\$315,000</u>
	\$973,425.00	\$978,665	\$1,040,500	\$363,873

Firms

Source

Initial Applications	\$5,250	\$5,000	\$4,950	\$2,600
Reopen	\$0	\$0	\$400	\$250
Reinstatements	\$875	\$1,325	\$525	\$200
Miscellaneous	\$1,100	\$3,450	\$3,200	\$475
Fines	\$7,000	\$18,800	\$4,350	\$4,325
1st Late Fee	\$7,100	\$6,300	\$4,900	\$0
2nd Late Fee	\$5,250	\$950	\$0	\$0
Refunds	(\$445)	\$0	\$0	(\$50)
Renewals	<u>\$97,950</u>	<u>\$96,350</u>	<u>\$96,500</u>	<u>\$36,300</u>
	\$124,080	\$132,175	\$114,825	\$44,100
Revenue from PAs	\$2,160	\$1,560	\$2,020	\$480
Total Revenue	\$1,099,665	\$1,112,400	\$1,157,345	\$408,453
Percentage Increase		1.16%	4.04%	

Attachment B

Board of Accountancy
Travel Plan
FY 14

<u>Month</u>	<u>Attendee</u>	<u>Event</u>	<u>Location</u>	<u>Cost</u>	<u>Remarks</u>
July	ED or Designee	Miscellaneous Board Business		\$500	
August	ED or Designee	Miscellaneous Board Business		\$500	
September	ED or Designee	Miscellaneous Board Business		\$500	
October	ED or Designee ED and 2 Board Members	Miscellaneous Board Business NASBA Annual Meeting	Hawaii	\$500 \$9,000	
November	ED or Designee	Miscellaneous Board Business		\$1,000	
December	ED or Designee	Miscellaneous Board Business		\$1,000	
January	ED or Designee	Miscellaneous Board Business		\$500	
February	ED or Designee	Miscellaneous Board Business		\$500	
March	Executive Director Investigators/Staff Attorney ED or Designee	NASBA Executive Directors' conference NASBA Legal Counsel conference Miscellaneous Board Business	Tucson	\$2,500 \$6,000 \$500	
April	ED or Designee	Miscellaneous Board Business		\$500	
May	ED or Designee	Miscellaneous Board Business		\$500	
June	ED and 2 Board Members ED or Designee	NASBA Regional meeting Miscellaneous Board Business	Chicago	\$9,000 \$500	
Various	Investigator	Investigations	Subtotal	\$33,500	
Various	PROC	PROC Meetings	Tennessee	\$12,000	
Various	Various	NASBA Committee meetings		\$3,000	
Quarterly	Board members	TSBA meetings	Tennessee	\$8,000	
		Total estimated travel expenses	Subtotal	\$64,500	

**335.10 cc 1101 - Accountancy
Budget for Fiscal 2014
Fee Reduction of \$20**

Revenues:

Budget FY 14
\$1,015,000.00

Salaries & Wages	70100	\$428,620.00
Longevity	70102	\$13,700.00
Employee Benefits	70200	<u>\$159,235.00</u>

Payroll Expenditures \$601,555.00

Travel	7030	\$53,400.00
Printing, Duplicating and Film Processing	7040	\$6,000.00
Communications and Shipping Costs	7060	\$15,000.00
Third Party Professional and Administrative Services	7080	\$45,000.00
Supplies and Office Furniture	7090	\$6,000.00
Rentals and Insurance	7100	\$3,570.00
Awards	7120	\$500.00
Unclassified	7140	\$1,200.00
Training of State Employees	7212	\$6,000.00
Computer Related Items	7220	\$6,000.00
State Professional Services	7250	<u>\$85,000.00</u>

Other Expenditures \$227,670.00

TOTAL REGULAR EXPENDITURES \$829,225.00

Projected Year-End Cost Backs \$212,000.00

Total Expenditures \$1,041,225.00

Net Income to Reserve (\$26,225.00)

Board of Accountancy

Fiscal 2014 Budget

Discussion of Line Items

Revenues: The decrease in gross revenues from the FY13 budget amount is 10.57%. See Attachment A for details.

Regulatory License Fees: As you are aware, at the end of each fiscal year, the Board is charged \$5.00 for each active license. As of 31 December 2012 the Board of Accountancy had 12,077 active licenses which results in a charge of \$60,385.00 at the end of the year.

Salaries: The salaries line item includes a 3% increase as an estimate of the raise that all State employees may be given as of July 1, 2013.

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State Professional Services: Rent for our office space is \$65,484.00 of this total. This also includes our telephone billing (approximately \$600 per month) and also the charges for the state vehicles driven by Mr. Mills and Mr. Butler.

**Budget FY 14
Attachment A
Revenue Reconciliation**

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Reduction in Renewal Fee	<u>(\$150,000)</u>	6
	 \$1,015,210	

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Budget Information for FY 14

Individual CPA

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Address Changes	\$3,425	\$3,550	\$3,050	\$825
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Refunds	(\$4,945)	(\$555)	(\$500)	(\$75)
Renewals	<u>\$792,590.00</u>	<u>\$805,030</u>	<u>\$823,000</u>	<u>\$315,000</u>
	\$973,425.00	\$978,665	\$1,040,500	\$363,873

Firms

Source

Initial Applications	\$5,250	\$5,000	\$4,950	\$2,600
Reopen	\$0	\$0	\$400	\$250
Reinstatements	\$875	\$1,325	\$525	\$200
Miscellaneous	\$1,100	\$3,450	\$3,200	\$475
Fines	\$7,000	\$18,800	\$4,350	\$4,325
1st Late Fee	\$7,100	\$6,300	\$4,900	\$0
2nd Late Fee	\$5,250	\$950	\$0	\$0
Refunds	(\$445)	\$0	\$0	(\$50)
Renewals	<u>\$97,950</u>	<u>\$96,350</u>	<u>\$96,500</u>	<u>\$36,300</u>
	\$124,080	\$132,175	\$114,825	\$44,100
Revenue from PAs	\$2,160	\$1,560	\$2,020	\$480
Total Revenue	\$1,099,665	\$1,112,400	\$1,157,345	\$408,453
Percentage Increase		1.16%	4.04%	

Board of Accountancy
Travel Plan
FY 14

<u>Month</u>	<u>Attendee</u>	<u>Event</u>	<u>Location</u>	<u>Cost</u>	<u>Remarks</u>
July	ED or Designee	Miscellaneous Board Business		\$200	
August	ED or Designee	Miscellaneous Board Business		\$200	
September	ED or Designee	Miscellaneous Board Business		\$200	
October	ED or Designee ED and 1 Board Member	Miscellaneous Board Business NASBA Annual Meeting	Hawaii	\$200 \$6,000	
November	ED or Designee	Miscellaneous Board Business		\$500	
December	ED or Designee	Miscellaneous Board Business		\$500	
January	ED or Designee	Miscellaneous Board Business		\$200	
February	ED or Designee	Miscellaneous Board Business		\$200	
March	Executive Director Investigators/Staff Attorney ED or Designee	NASBA Executive Directors' conference NASBA Legal Counsel conference Miscellaneous Board Business	Tucson	\$2,500 \$6,000 \$200	
April	ED or Designee	Miscellaneous Board Business		\$500	
May	ED or Designee	Miscellaneous Board Business		\$500	
June	ED and 1 Board Member ED or Designee	NASBA Regional meeting Miscellaneous Board Business	Chicago	\$6,000 \$500	
Various	Investigator	Investigations	Tennessee	\$12,000	
Various	PROC	PROC Meetings		\$3,000	
Various	Various	NASBA Committee meetings		\$6,000	
Quarterly	Board members	TSBA meetings	Tennessee	\$8,000	
		Total estimated travel expenses	Subtotal	\$53,400	



**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**

TO: Tennessee State Board of Accountancy

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

DATE: January 24, 2013

SUBJECT: Supplemental Legal Report on Formal Proceedings

- 1. L11-ACC-RBS-2011023421 Robert J. Crews, CPA
Docket No. 12.19-119208J
Notice of Hearing and Charges filed 12/7/12**

The complaint in this matter was opened in August 2011, after the staff had received a copy of an Alabama Board of Accountancy Order entered March 25, 2005 revoking the Respondent's Alabama CPA license and firm permit for failing to complete the requirements of the Alabama Peer Review Program (Respondent failed to notify the Alabama Board that a peer review was completed not less than each third fiscal year). Respondent was fined \$250 and was required to return his revoked CPA permit and firm permit to the Alabama Board, within this March 25, 2005 Order.

Respondent's Tennessee CPA License (he has no Tennessee firm permit) expired on December 31, 2004, and Respondent's last-known and listed address (office) according to the records of this Board was in Muscle Shoals, AL. The Respondent did not notify this Board of the revocation of his Alabama CPA certificate, as required, and, he did not notify the Board staff of his intention to not renew his CPA License beyond its expiration date of December 31, 2004, nor did he surrender said license to the Board upon its expiration.

Respondent did not notify the Board of any change of mailing address from his previous listed address in Muscle Shoals, AL, to his updated and current address until January 2, 2013. Further, he has not responded to any correspondence sent by the

Board administrative staff requesting his answer to the underlying complaint in this matter, nor to any correspondence or the prior consent order from the Department's Office of Legal Counsel sent to the Muscle Shoals, AL address prior to the filing of this formal proceeding on December 7, 2012. All such correspondence sent to the Alabama address has been returned to sender unclaimed - marked undeliverable and unable to forward. The Respondent's previous listed phone number in Alabama is disconnected, and he just provided the Department with an updated phone number and email address on January 3, 2013.

Respondent has indicated that he underwent a difficult divorce several years ago and that he shut down his prior Alabama office. In early January of this year, Respondent appeared apologetic to this Board for his past failures and seemingly committed himself to complying with what the Board asked him to do within the prior consent order.

The prior consent order sent to Respondent in February, 2012 offered Respondent a \$1,000 civil penalty, a requirement that he complete 80 penalty hours of CPE within 180 days after the effective date of the order, and to take all necessary steps to complete the reinstatement of his Tennessee CPA license within said 180 day period. This proposed consent order was returned by the postal service unclaimed.

Due to the continued failure of Respondent to communicate with this Board, and due in part to the additional time and effort expended in preparing and filing a Notice of Hearing and Charges in this matter, and in locating and serving Respondent the settlement offer extended to Respondent in January of this year included a slightly increased civil penalty and an assessment of the \$200 initial docketing fee we are charged by the Secretary of State's Office in filing the Notice of Hearing and Charges.

For purposes of this Agreed Final Order, the Respondent specifically agrees, amongst other things, to the following:

1. The Respondent is **ASSESSED and shall pay a civil penalty** to the State of Tennessee in the amount of one thousand three hundred dollars (\$1,300), **and shall pay assessed investigatory and hearing costs** in this matter of \$200 (initial docketing fee), for a total civil penalty and assessed costs of \$1,500.
2. The Respondent must take all steps necessary to reinstate his Tennessee CPA license, and such reinstatement must be completed within one hundred eighty (180) days after the effective date of this Agreed Final Order. Specifically, he shall complete eighty (80) penalty hours of CPE, and shall deliver to the Board's Executive Director written documentation of having completed said hours within this 180 day period, and he shall be the subject of a CPE audit for the 2012-2013 reporting period. Respondent is also required to pay the \$1,500 assessed civil penalty and costs in full by the end of this 180 day period.
3. Respondent's failure to comply with any and all provisions of this Agreed Final Order shall result in the immediate revocation of his Tennessee CPA license

without need of further procedural steps, and the referral for collection of the \$1,500 civil penalty and costs assessment.

4. After the effective date of this Order, should Respondent change his mailing address, or contact information such as his phone number and email address, without first notifying the Executive Director and undersigned counsel for the State of such change(s) in writing, Respondent's Tennessee CPA license shall similarly be immediately revoked without need of further procedural steps, and collection of the above civil penalty and costs assessment will be pursued.

5. Respondent shall comply with all statutes and rules governing the practice of accounting in this State, and shall physically surrender his said license to the Board Executive Director immediately after the aforementioned 180 day period if he is not reinstated.

Prior Complaint / Disciplinary History: 2004-20772-079 – 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:

**2. L12-ACC-RBS-2012010991 Ernest E. Choat, Jr., CPA
Docket No. 12.19-119207J
Notice of Hearing and Charges filed 12/6/12**

The Respondent was hired to act as a trustee for three family accounts, and set up the accounts with a stockbroker. In August, 2010, he was indicted by the Grand Jury for the US District Court, Eastern District of Tennessee, for allegedly engaging in a scheme to defraud his clients and was charged with securities fraud, wire fraud, and money laundering, in violation of 18 U.S.C. §§ 1343, 1348, and 1957.

On January 27, 2011, Respondent entered a guilty plea to wire fraud, a federal felony, and admitted that he fraudulently transferred by wire or check \$678,000 from the clients' accounts to his own use in 2006. On January 3, 2012, Respondent was sentenced to 37 months' incarceration, was ordered to pay \$553,617.74 in restitution, and was ordered to serve 3 years of supervised release (probation) after his release from imprisonment.

By the time the complaint in this matter was opened in May of 2012, and by the time the proposed consent order in this matter was mailed in September, 2012 to Respondent's

residential address in Knoxville, the Respondent was already serving his federal sentence in a federal correctional facility and may not have received the proposed consent order.

In early December, 2012, litigation counsel located Respondent within the Bureau of Prisons, served Respondent with the Notice of Hearing and Charges, and forwarded a proposed Agreed Final Order to Respondent's Unit Manager at the Federal Correctional Institute – who promptly obtained Respondent's signature.

Respondent's CPA license was last renewed in inactive status through December 31, 2011, and his firm permit was active and current through December 31, 2005 (he is the sole owner and is in complete control of this firm). Respondent did not notify the Board staff of his intention not to renew either his license or the firm permit and he did not surrender them to the Board upon their expiration dates.

For purposes of this Agreed Final Order, the Respondent specifically agrees, amongst other things, to 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 substantial 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 five (5) year period after the effective date of this Final Order.
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 documentary evidence from the United State Probation Office that Respondent has paid the \$553,617.74 in restitution in full, and that he has paid to the State the assessed investigatory and hearing costs in this matter of \$200 (initial docketing fee).
3. 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.

Prior Complaint / Disciplinary History: 2006-00634 & 2008-01437 – Recommended 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:



STATE OF TENNESSEE
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: JANUARY 2013 LEGAL REPORT

DATE: January 25, 2013

Total # of Complaints Considered: 26
Civil Penalties Authorized: 3
Amount of Civil Penalties: \$ 17,700.00
Letters of Warning: 9
Letters of Instruction: 0
Dismissal: 12
Consent Orders for License Suspension, Surrender, or Revocation: 0
Placement into Litigation Monitoring: 1

1. L12-ACC-RBS-2012018681

The complaint alleges that the Respondent CPA firm breached its fiduciary duty to a client and that it failed to exercise competence and due professional care in the performance of professional services to a client. The Complainant in this matter has also filed a civil lawsuit.

Recommendation: Place the complaint into Litigation Monitoring status until the 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.

2. L10-ACC-RBS-2010024041

The complaint alleges that the Respondent CPA committed discreditable acts by being charged with and convicted of criminal offenses related to non-payment of child support.

Although the Board does have legal authority to sanction a licensee convicted of one or more felony offenses, the investigation revealed that the charges on which the Respondent was convicted were all misdemeanors. As such, a Letter of Warning is recommended to caution the Respondent that any criminal felony conviction could result in disciplinary action against his license.

Recommendation: Close with a Letter of Warning.

3. L11-ACC-RBS-2011005061

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) reporting periods. The investigation revealed that, by the time the Respondent received notice of the complaint, he had already paid all past due professional privilege tax, including interest and penalties. In light of the fact that the Respondent has no prior complaints against his license, a Letter of Warning is recommended to impress upon the Respondent the importance of paying his professional privilege tax in a timely manner.

Recommendation: Close with a Letter of Warning.

4. L11-ACC-RBS-2011019311

The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for at least two (2) reporting periods. The investigation revealed that, by the time the Respondent received notice of the complaint, he had already paid all past due professional privilege tax, including interest and penalties. In light of the fact that the Respondent has no prior complaints against his license, a Letter of Warning is recommended to impress upon the Respondent the importance of paying his professional privilege tax in a timely manner.

Recommendation: Close with a Letter of Warning.

5. L11-ACC-RBS-2011019351

The complaint alleges that the Respondent failed to maintain independence and objectivity with regard to work performed for an audit client whose CFO later became her partner in a new CPA firm. The investigation revealed some questionable journal entries by the Respondent on client paperwork, but there was insufficient evidence to substantiate the Complainant's claim that the Respondent intentionally subordinated the best interests of her client to the best interests of her future partner. However, the investigation did reveal a journal entry reflecting that an after tax season celebration meal for the Respondent's new firm was charged to the corporate credit card of her former client by the Respondent's partner in her new CPA firm, and there appears to be no evidence that the Respondent's new CPA firm reimbursed her former client for this credit card charge or that the Complainant authorized this charge. Because this one charge does not appear to be enough to substantiate the Complainant's allegations at a formal hearing, a Letter of Warning is recommended to caution the Respondent to avoid the appearance of impropriety in any dealings with former clients.

Recommendation: Close with a Letter of Warning.

6. L12-ACC-RBS-2011032261

This complaint was previously considered by the Board at its January 2012 meeting. The complaint alleges that the Respondent CPA failed to complete a sufficient number of CPE hours for the 2009-2010 reporting period. The investigation revealed that the Respondent did timely complete a sufficient number of CPE hours for the reporting period in question. However, the Respondent did not timely respond to the Board's attempts at communication regarding his CPE audit. In light of the fact that the Respondent has no prior complaints against his license, a Letter of Warning is recommended to impress upon the Respondent the requirement of timely response to all communications from the Board.

Recommendation: Close with a Letter of Warning.

7. L12-ACC-RBS-2012005221

The complaint alleges that the Respondent, a non-licensee, is using the word "accounting" in the name of its business, in its signage, and on its website. The investigation revealed that the Respondent had changed its company name many years ago, and that the Respondent was willing to change its signage and website as soon as possible. The Respondent did change its website immediately upon learning of the complaint, but it was unable to change the outdoor signage until a new lease was signed with the company's landlord. As soon as it was able to do so, the Respondent changed its signage to come into compliance with the law. Accordingly, a Letter of Warning is recommended to caution the Respondent not to use the word "accounting" in its business until and unless it obtains proper licensure to do so.

Recommendation: Close with a Letter of Warning.

8. L12-ACC-RBS-2012015441

The complaint alleges that the Respondent CPA failed to notify the Board that her Texas CPA license had been revoked and that the Respondent failed to renew her Tennessee CPA license in a timely manner. The investigation revealed that the Respondent's Texas license was administratively revoked for failure to pay fees, and that the Respondent's Tennessee license was not timely renewed due to personal financial hardship. The Respondent has closed her Tennessee license and will not be practicing accountancy until she is able to renew her Tennessee CPA license. As such, this complaint should be closed with a Letter of Warning.

Recommendation: Close with a Letter of Warning.

9. L12-ACC-RBS-2012021971

The complaint alleges that the Respondent, a non-licensee, used the word "accounting" in a newspaper advertisement without possessing the proper license to do so. The investigation revealed that the newspaper inadvertently used the company's old name (which violated the law but was corrected some time ago) instead of the company's current name (which does not violate the law). A Letter of Warning is recommended to admonish the Respondent to make sure that its advertisements do not violate the law in the future.

Recommendation: Close with a Letter of Warning.

10. L12-ACC-RBS-2012022001

The complaint alleges that the Respondent CPA failed to notify the Board that her Texas CPA license had been revoked. The investigation revealed that the Respondent's Texas license was administratively revoked for failure to pay fees, and that the Respondent has no other outstanding allegations of any violation of Tennessee law(s) or rule(s) by the Respondent. As such, this complaint should be closed with a Letter of Warning.

Recommendation: Close with a Letter of Warning.

11. L09-ACC-RBS-2009012691

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. Despite the best efforts of Board staff and Board investigators, the Respondent could not be located or contacted in any way. As such, the Board is currently unable to communicate with the Respondent regarding a potential resolution of this complaint or to serve process upon the Respondent for a formal hearing.

Recommendation: Dismiss the complaint without prejudice, close and flag the Respondent's license file, and in the event that the Respondent is located and wishes to reinstate his license in the future, require that the Respondent address the allegations in this complaint prior to license reinstatement.

12. L11-ACC-RBS-2010036191

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 was unable to pay his professional privilege tax or to renew his license in a timely manner because he was wrongfully arrested in another state and incarcerated for several months before being cleared of all charges against him. Because of his arrest and incarceration, the Respondent has experienced severe personal hardship and is unable to pay his privilege tax and renew his CPA license at this time. As such, the Respondent has closed and surrendered his license and will not be practicing as a CPA until he is able to pay his past due privilege tax and reinstate his license.

Recommendation: Dismiss the complaint.

13. L11-ACC-RBS-2010036931

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. Despite the best efforts of Board staff and Board investigators, the Respondent could not be located or contacted in any way. As such, the Board is currently unable to communicate with the Respondent regarding a potential resolution of this complaint or to serve process upon the Respondent for a formal hearing.

Recommendation: Dismiss the complaint without prejudice, close and flag the Respondent's license file, and in the event that the Respondent is located and wishes to reinstate his license in the future, require that the Respondent address the allegations in this complaint prior to license reinstatement.

14. L11-ACC-RBS-2010037041

15. L11-ACC-RBS-2011027601

These two (2) complaints allege that the Respondent, a non-licensee, engaged in unlicensed conduct by holding out and attempting to practice as a CPA despite not having a license to do so. These complaints represent the 4th and 5th instances of such allegations against the Respondent. The investigation revealed that the Tennessee Department of Revenue and the Davidson County District Attorney's Office conducted a criminal investigation of the Respondent, and that their joint investigation resulted in a 40 count indictment against the Respondent for felony theft, felony tax fraud, and felony impersonation of a licensed professional. Because the Respondent does not possess a CPA license against which disciplinary action may be taken, because he has already paid a substantial civil penalty for his prior offenses, and because the felony charge of criminal impersonation of a professional carries a more severe penalty than anything the Board could impose, it is recommended that these complaints be dismissed in favor of the criminal indictment against the Respondent.

Recommendation: Dismiss the complaints in favor of the criminal indictment against the Respondent.

16. L11-ACC-RBS-2011019281

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. Despite the best efforts of Board staff and Board investigators, the Respondent could not be located or contacted in any way. As such, the Board is currently unable to communicate with the Respondent regarding a potential resolution of this complaint or to serve process upon the Respondent for a formal hearing.

Recommendation: Dismiss the complaint without prejudice, close and flag the Respondent's license file, and in the event that the Respondent is located and wishes to reinstate his license in the future, require that the Respondent address the allegations in this complaint prior to license reinstatement.

17. L12-ACC-RBS-2012005291

The complaint alleges that the Respondent CPA failed to exercise due professional care in the preparation of a client's tax return. The investigation revealed that the Respondent prepared the Complainant's tax return appropriately and in a manner that such returns are often prepared. When the Complainant's tax returns were audited by the taxing authority, changes were recommended to the return and a small amount of interest was assessed. The Complainant elected to have the changes to the tax return in question done by another CPA, and the Respondent sent a check to the Complainant to cover the interest expense incurred. As such, dismissal of this complaint is recommended.

Recommendation: Dismiss the complaint.

18. L12-ACC-RBS-2012009721

The complaint alleges that the Respondent CPA failed to report the revocation of her Kansas CPA license to the Board and that she failed to renew her Tennessee CPA license in a timely manner. Despite the best efforts of Board staff and Board investigators, the Respondent could not be located or contacted in any way. As such, the Board is currently unable to communicate with the Respondent regarding a potential resolution of this complaint or to serve process upon the Respondent for a formal hearing.

Recommendation: Dismiss the complaint without prejudice, close and flag the Respondent's license file, and in the event that the Respondent is located and wishes to reinstate her license in the future, require that the Respondent address the allegations in this complaint prior to license reinstatement.

19. L12-ACC-RBS-2012009891

The complaint alleges that the Respondent CPA failed to act with due professional care in the performance of services as the trustee of an estate. The investigation revealed that the Respondent did not act as a CPA with regard to the estate, and that the decedent named the Respondent as trustee of the estate primarily because the decedent was romantically involved with the Respondent's mother and thought of the Respondent as his own child. It further appears that the assets left behind by the decedent had little or no value and could not be sold to add value to the estate, that the decedent was deeply in debt at the time of his death, and that the Respondent spent her own money and contributed many hours of uncompensated time to reduce or eliminate debts of the estate. As such, dismissal of this complaint is recommended.

Recommendation: Dismiss the complaint.

20. L12-ACC-RBS-2012009911

The complaint alleges that the Respondent CPA failed to report the revocation of his Arkansas license to the Board and that he failed to renew his Tennessee CPA license in a timely manner. Despite the best efforts of Board staff and Board investigators, the Respondent could not be located or contacted in any way. As such, the Board is currently unable to communicate with the Respondent regarding a potential resolution of this complaint or to serve process upon the Respondent for a formal hearing.

Recommendation: Dismiss the complaint without prejudice, close and flag the Respondent's license file, and in the event that the Respondent is located and wishes to reinstate his license in the future, require that the Respondent address the allegations in this complaint prior to license reinstatement.

21. L12-ACC-RBS-2012020551

The complaint alleges that the Respondent CPA failed to act with due professional care in the performance of services for a client by causing the late filing of an estate tax return which resulted in the assessment of penalties by the IRS. The investigation revealed that the Complainant did not have sufficient funds to pay the taxes due at the estate tax return deadline. It further appears that the Respondent provided clear, specific instructions to the client regarding

the method and time by which the estate tax return had to be filed in order to not be considered late, but that the client did not file the return on time as instructed. As such, dismissal of this complaint is recommended.

Recommendation: Dismiss the complaint.

22. L12-ACC-RBS-2012022451

The complaint alleges that the Respondent CPA failed to act with due professional care, failed to exercise independence and objectivity, and committed discreditable acts in the performance of services for a client by failing to timely pay county property taxes as they came due. The investigation revealed that the Respondent did not act as a CPA with regard to the shopping center in which he is a general partner and President, and that an independent CPA firm was retained to handle the accounting work for the partnership. It further appears that the decision to not pay the property taxes on time was a business decision made due to a cash flow shortage related to the property in question (a shopping center), and that sufficient tax payments have been made to avoid the property being sold at a tax sale. As such, dismissal of this complaint is recommended.

Recommendation: Dismiss the complaint.

23. L11-ACC-RBS-2011019291

This complaint was previously considered by the Board. The complaint alleges that the Respondent CPA failed to timely pay his professional privilege tax as required by law for four (4) years (2009-2012). The investigation revealed that the Respondent did not pay his professional privilege tax in a timely manner for the time period in question. After the Respondent failed to accept the Consent Order proposed by the Board in a timely manner, this complaint was set for a formal hearing. Prior to the formal hearing, the Respondent paid three (3) years' worth of past due professional privilege tax (including interest and penalties) in full, and he provided proof of same to the Board. As such, dismissal of this complaint is recommended.

Recommendation: Authority to settle by Agreed Order upon the Respondent's payment of a \$ 500.00 civil penalty, \$ 200.00 in formal hearing filing costs, and payment of the remaining year of past due professional privilege tax (including interest and penalties) no later than ninety (90) days from the date the date the Agreed Order is signed by the Board. In consideration of the Respondent's acceptance of the Agreed Order, the pending formal hearing against the Respondent shall be dismissed with prejudice. Additionally, failure to complete all requirements of the Consent Order in a timely manner shall result in the automatic revocation of the Respondent's CPA license without the necessity of a formal hearing based on the violations admitted in the Consent Order.

24. L11-ACC-RBS-2011010931

25. L11-ACC-RBS-2011010921

This complaint was previously considered by the Board, and the recommendation set forth below is a counteroffer of settlement proposed by counsel for the Respondent. These two related complaints were filed against a CPA and the firm in which he is a named partner, and

they were previously considered by the Board. The complaints allege that the CPA and his firm breached their respective fiduciary duties to a client by failing to detect several acts of malfeasance by an employee (who was directly supervised by the Respondent CPA), which resulted in harm to the client. Specifically, a non-CPA employee of the firm took client money from one client account and deposited it into another client account on one occasion, failed to file quarterly tax returns for three quarters for one client, and failed to properly account for cash deposits for one client for the same three quarters. The Board's previous consideration of this matter took place before the civil litigation in this matter went to trial. Because the trial has now been completed, the Board must now reconsider these complaints.

At the time of the Board's initial consideration of these complaints, the civil lawsuit against the Respondents was still pending, and there were very serious allegations in the lawsuit. Among the allegations included in the lawsuit were claims of fraud, theft, and violations of the Tennessee Consumer Protection Act. However, all of the most serious claims against the Respondents were dismissed, and the jury awarded no punitive damages to the Complainants (in the Board complaints)/Plaintiffs (in the civil lawsuit), the latter of which tends to indicate that there was no finding of intentional wrongdoing by the Respondents. The jury did award damages to the Complainants/Plaintiffs, but they did so based solely on the malfeasance of the rogue employee, not as a result of any affirmative misconduct by either Respondent. The jury awarded the Complainants/Plaintiffs all sums incurred as a result of tax penalties and interest from the IRS, a refund of the fee paid by the Complainants/Plaintiffs to the Respondent firm for services rendered during the time period in question, and a small amount for emotional/mental distress suffered by the Complainants/Plaintiffs. After speaking with counsel for the Respondents, there are additional mitigating factors to be considered. First, it was the Respondent CPA and his firm which initially discovered the misdeeds of the rogue employee and reported it to the Complainants. Second, the Respondents immediately took corrective action by filing the necessary client tax returns and performing an accounting of the client's cash payables and receivables for the time in question. Third, the Respondents advised the Complainants that they were likely to incur some tax penalties as a result of their employee's failure to timely file the client's quarterly returns, and they offered to work with the IRS to fix the problem and agreed to pay any interest and penalties incurred by the client even before the related civil lawsuit was filed. Fourth, even at trial in the civil litigation (and at all times leading up to the trial), the Respondents admitted some level of negligence and attempted to work out a mutually agreeable resolution of these issues. Fifth, and finally, the rogue employee in question took extraordinary measures to cover up and hide the malfeasance from her supervisor and employer (including the shredding of certain documents, making up false tax deposit forms, etc.), and the malfeasance was immediately discovered by the Respondents when the rogue employee took a leave of absence to care for her dying husband and the employee's replacement noticed discrepancies in the work of her predecessor.

In discussions with the Respondents' counsel, concern was expressed for the impact that any reportable disciplinary action would have on the firm and on innocent employees and CPAs who had no responsibility or involvement with the issues described herein. The Respondents' counsel advised that, if the firm had to report a disciplinary sanction (especially this kind of sanction) when applying for government contract work, it would cost the firm approximately 40% of its business, resulting in widespread layoffs of innocent employees and CPAs. As a name partner in the firm and as the direct supervisor of the rogue employee, the Respondent CPA feels most directly responsible for the issues that have befallen his firm. Therefore, for the purposes of settlement only, the Respondent CPA is amenable to the possibility of taking the

entire disciplinary sanction for these complaints upon himself. In closing, it is noteworthy that the Respondent CPA has practiced for over 30 years without a single complaint being filed against him, and that the Respondent CPA firm has a similarly clean (lack of) complaint history.

Recommendation: Formal hearing for the revocation of the license of the Respondent CPA and the firm permit of the Respondent CPA firm with authority to settle by Consent Order as follows: 1.) The Respondent CPA shall complete 40 penalty hours of CPE relative to practice management, and he shall provide proof of completion of same to the Board within one hundred and eighty (180) days of the date the Consent Order is executed; 2.) The Respondent CPA shall be publicly reprimanded, and notice of this disciplinary action shall be sent to public and private professional persons and/or organizations with a disciplinary interest in the licensee; 3.) The Respondent CPA shall pay a civil penalty of twelve thousand dollars (\$ 12,000.00); in light of the amount of the civil penalty sought, the Respondent may request a payment plan in order to pay the civil penalty; 4.) As part of the settlement, and in light of the Respondent CPA taking full responsibility for the violations at issue in these complaints, the complaint against the Respondent CPA firm is to be dismissed. If the Board does not approve this settlement offer and if the Respondent CPA fails to agree to the Board's prior settlement offer, both complaints will be set for formal hearing before the Board, and disciplinary action shall be sought against both the Respondent CPA and his firm. Additionally, if the Respondent CPA does accept the above-referenced settlement offer, failure to complete all requirements of the Consent Order in a timely manner shall result in the automatic revocation of the Respondent's CPA license without the necessity of a formal hearing based on the violations admitted in the Consent Order.

26. L12-ACC-RBS-2012013171

The complaint alleges that the Respondent CPA was negligent, that he breached his fiduciary duty, and that he failed to exercise due professional care in the performance of services as executor for an estate. The investigation revealed that the beneficiaries of the estate sued the Respondent in civil court, that the Respondent failed to respond to the lawsuit, and that a default judgment was granted in favor of the estate against the Respondent. The judgment specifically found that the Respondent was negligent in his handling of the estate, and that, as a result of said negligence, that the estate was entitled to a significant financial recovery from the Respondent as a result of his negligence.

Recommendation: Formal hearing for the revocation of the Respondent's CPA license with authority to settle by Consent Order upon the Respondent's payment of a \$ 5,000.00 civil penalty and upon the Respondent's agreement that his CPA license shall be placed on probation for two (2) years from the date the Consent Order is executed by the Board. Failure to complete all requirements of the Consent Order in a timely manner shall result in the automatic revocation of the Respondent's CPA license without the necessity of a formal hearing based on the violations admitted in the Consent Order.