

STATE OF FLORIDA
BOARD OF ACCOUNTANCY

IN RE: PETITION FOR WAIVER AND VARIANCE BY
JIN H. CHAO

FILED	
<small>Department of Business and Professional Regulation</small>	
<small>Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	1/9/2015
File #	2015-00246

ORDER GRANTING PETITION

Petitioner, Jin H. Chao, filed a petition for a variance or waiver of Rules 61H1-33.006(2)(a) and 61H1-31.006, Florida Administrative Code (FAC) on October 22, 2014. The notice of the petition appeared in the Florida Administrative Weekly on November 5, 2014, in Volume 40 Number 216; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on December 5, 2014, in Tallahassee, Florida. At the hearing on this matter, Petitioner was neither present nor represented by counsel. The Board was represented by Mary Ellen Clark, Senior Assistant Attorney General.

STATEMENT OF RELEVANT FACTS

VW 2014-375

The facts relevant to the petition are as follows:

1. Petitioner's license reverted to delinquent status on January 1, 2012. Petitioner submitted an application for reactivation under the 2012 Amnesty Provision on June 29, 2014, which was found to be deficient demonstration of completion of 4 CPE hours in board approved ethics.

2. Rule 61H1-33.006(2)(a), FAC, provides in part that, "each Florida certified public accountant, who became delinquent and desires to return their license to active status shall apply for such reactivation and demonstrate successful completion of the required number of continuing professional education hours. Florida certified public accountants who have been inactive or delinquent for one reporting period following their most recent current/active license, shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours in the following manner: at least 20 hours in Accounting/Auditing, at least four hours in ethics, no more than 20 hours in behavioral, for a total of 120 hours."

3. Rule 61H1-31.006, FAC, "sets forth the application fee for reactivation of an inactive status license to active status as \$250.00."

4. Petitioner subsequently completed an additional 4 CPE hours in board approved ethics on September 7, 2014, after the deadline of June 30, 2014.

5. Petitioner is requesting a waiver or variance of Rule 61H1-33.006(2)(a), FAC, to the extent necessary for her license to be reactivated. Petitioner is also requesting a waiver of Rule 61H1-31.006, FAC, in order to waive any additional application fee of \$250.00.

GROUNDS FOR APPROVAL

The Board determined that the petition should be granted on the following grounds:

6. Petitioner established that the purpose of the accountancy continuing education statute, Section 473.312, Florida Statutes, would be met, in that she has completed the required hours.

7. Petitioner further established that the Board's full application of Rules 61H1-33.006(2)(a), FAC, and 61H1-31.006, FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

8. The Board reconsidered its August 15, 2014, denial of Petitioner's application for licensure for reactivation and granted the application.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 6th day of January,
2015, by the Florida Board of Accountancy.

Veloria A. Kelly
Veloria A. Kelly, Division Director ✓

NOTICE TO APPLICANT

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Division Director of the Board, 240 Northwest 76th Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Boards decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, a copy of which is enclosed, including a statement of the material facts which are in dispute. If you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code, a copy of which is enclosed. If you request a hearing, you have the right to be represented by an attorney or other qualified representative, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued, and to present written evidence or argument.

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation pursuant to that section is not available.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Jin H. Chao, 1406 Brooke View Drive, Odessa, Florida 33556; and to Jesslyn Krouskroup, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 9th day of January, 2015.

Brandon M. Nible

7006 0100 0004 5979 6341

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

291315

3

Sent To Chao, JWH
Street, Apt. No.,
or PO Box No.
City, State, ZIP+4

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/22/2014
File #	

Petition for Variance From Rule 61H1-33.006 F.A.C. and Waiver of Rule 61H1-31.006 F.A.C.

Petitioner Information:

Jin H. Chao
1406 Brooke View Drive
Odessa, FL 33556
813-362-8704

OCT 23 2014

VW 2014-375

Applicable Portion of the Rules:

61H1-33.006 Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.

(1) Each Florida certified public accountant who has requested inactive status or became delinquent, as distinguished from a Florida certified public accountant whose certificate or license has been suspended, who desires to become an active Florida certified public accountant, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation by completing and submitting to the Department Form DBPR CPA 5011-1 – Request for Change of Status, hereby incorporated by reference and effective 7-23-06; copies of the form may be obtained from the Board office. However, if a license is delinquent on January 1 for failure to comply with Rule 61H1-33.003, F.A.C., through failure to report compliance with continuing professional education requirements by the immediately prior December 31st, a Florida certified public accountant may reactivate, pursuant to Section 473.311, F.S., by certifying the required hours have been completed, paying the fees required by Rules 61H1-31.003, 31.004 and 31.006, F.A.C., by March 15 of the same year of the delinquency.

(2) Each such application shall demonstrate successful completion of the required number of continuing professional education hours.

(a) Florida certified public accountants who have been inactive or delinquent for one reporting period following their most recent current/active license, shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours in the following manner:

Accounting/Auditing	Ethics	Behavioral	Total Hours
At least 20 hours	At least 4 hours	No more than 20 hours	120 Hours

(b) Florida certified public accountants who have been inactive for no more than two reporting periods since maintaining a current/active license, shall satisfy the requirements of their most recent biennium plus 120 additional CPE hours in the following manner:

Accounting/Auditing	Ethics	Behavioral	Total Hours
At least 30 hours	At least 4 hours	No more than 20 hours	200 Hours

(c) Florida certified public accountants who have been inactive for three or more reporting periods since maintaining a current/active license, shall satisfy the requirements of their most recent biennium plus 200 additional CPE hours in the following manner:

Accounting/Auditing	Ethics	Behavioral	Total Hours
At least 40 hours	At least 4 hours	No more than 20 hours	280 Hours

(3) Florida certified public accountants who have been inactive for two or more reporting periods since maintaining a current/active license must complete at least sixty percent (60%) of the necessary hours in the twenty-four (24) months immediately preceding the date of the application for reactivation and the remaining forty percent (40%) may have been completed no more than forty-eight (48) months immediately preceding the date of the application for reactivation.

(4) The first establishment period after reactivation shall commence on the following June 1st and the initial designated reestablishment date shall be the third June 30th following reactivation.

Rulemaking Authority 455.271, 473.304, 473.311, 473.312, 473.313 FS. Law Implemented 455.271, 473.311, 473.312, 473.313, 473.323(1)(i) FS. History—New 12-4-79, Amended 2-3-81, 11-6-83, 3-29-84, 8-20-85, Formerly 21A-33.06, Amended 4-8-86, 12-28-89, 10-16-90, Formerly 21A-33.006, Amended 12-14-93, 5-26-96, 7-23-06, 12-10-09, 7-7-10, 12-3-13.

61H1-31.006 Reactivation Fee.

The application fee for reactivation of an inactive status license to active status shall be \$250.00; for reactivation of a delinquent status license to active, \$250.00. In all cases completion of the requirements of Rule 61H1-33.006, F.A.C., shall be required for reactivation.

Rulemaking Authority 473.305, 473.313 FS. Law Implemented 473.305, 473.313 FS. History—New 1-7-13.

Citation to the Statute the Rule is Implementing:

473.312 Continuing education.

(1)(a) As part of the license renewal procedure, the board shall by rule require Florida certified public accountants to submit proof satisfactory to the board that during the 2 years prior to application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board. The board may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.

Type of Action Requested:

The petitioner requests that the Board of Accountancy please grant a temporary variance for Rule 61H1-33.006 F.A.C. and Waiver of Rule 61H1-31.006 F.A.C stated above and extend the time allowed to complete continuing education without penalty due to the following circumstances.

Specific fact that demonstrate a violation of the principles of fairness that would justify a variance for the petitioner:

The petitioner completed 120 hours of continuing education courses by the June 30, 2014 deadline for license reinstatement under the amnesty program. However, one of the four hour ethics courses completed was not acceptable. The petitioner believes that she made a good-faith effort to satisfy the requirements (116 of the 120 hours submitted were accepted).

The reason why the variance requested would serve the purpose of the underlying statute:

The petitioner has taken and completed an approved ethics course on September 7, 2014 that is on the "Florida Board of Accountancy - Continuing Education Ethics Provider and Course Approval Status" list.

Petitioner Statement:

The petitioner seeks a one time variance from Rule 61H1-33.006 F.A.C. and one time waiver of Rule 61H1-31.006 F.A.C.



10-20-14