

Fax.

Sep 24 2010

9/24/2010 12:02 PM FROM: (850) 229-1050 Keith L. Jones, CPA TO: +1 (352) 333-2508 PAGES: 002 OF 002

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/24/2010
File #	

Keith L. Jones, CPA



America Counts on CPAs
September 23, 2010

RECEIVED
SEP 24 2010

BOARD OF ACCOUNTANCY

State of Florida
Department of Business and Professional Regulation
Division of Certified Public Accounting
Board of Accountancy
240 Northwest 76th Drive Suite A
Gainesville, FL 32607-6635

Petition for Declaratory Statement before the Florida Department of Business and Professional Regulation, Division of Certified Public Accounting, Board of Accountancy

Petitioner name: Keith L. Jones, CPA
Petitioner address: 202 Marina Drive, Suite 303, Port Saint Joe, FL 32456
Petitioner telephone number: (850) 229-1040
Petitioner facsimile number: (850) 229-1050

DS 2010-073

Dear Honorable Board Members,

The purpose of this letter is to respectfully seek a declaratory statement to obtain an answer to the following question. The question is whether or not contingency fees are permissible given the following particular facts and circumstances under Chapter 473 of the Florida Statutes and Chapter 61H1, Florida Administrative Code, which govern public accountancy in the State of Florida.

Section 473.319 F.S. states in part that "public accounting services as defined in s. 473.302(8)(a) and (c), and those that include tax filings with federal, state, or local government, shall not be offered or rendered for a fee contingent upon the findings or results of such service". It further states that "this section does not apply to services involving federal, state, or other taxes in which the findings are those of the tax authorities and not those of the certified public accountant or firm".

Furthermore, Section 61H1-21.005 (2) of the Florida Administrative Code states in part that "no certified public accountant or firm shall accept a contingent fee for tax filings with the federal, state, or local government unless the findings are those of the tax authorities and not those of the certified public accountant or firm. Unless the certified public accountant or firm has specific reason to know that the filing will be reviewed in detail by the taxing authorities, the findings will be presumed to be those of the certified public accountant or firm and a contingent fee is not permissible".

It is my contention that a contingent fee can be charged to assist in enabling clients to take advantage of a particular Florida State tax incentive. The

engagement consists of gaining approval for Florida Enterprise Zone jobs credits that can be taken against sales tax due upon approval by the State of Florida Department of Revenue.

For your information, a business located in an enterprise zone may take a credit against sales tax when it hires new employees who either reside in an enterprise zone or participate in a welfare transition program.

To qualify for the credit, the business must show an increase in the number of full-time jobs over the average of the previous 12 months. It must also have employed the eligible employees for at least 3 months or have leased the eligible leased employees for more than 6 months.

To claim the credit, the business must complete Form DR-15ZC (Application for Florida Enterprise Zone Jobs Credit for Sales Tax), a copy of which is enclosed, and attach all required documentation. The business must also obtain certification from the enterprise zone coordinator for the zone in which the business is located and submit Form DR-15ZC and the required documentation to the Department of Revenue. The credit may be claimed for up to 24 months after approval by the Florida Department of Revenue (DOR) as clearly noted at the bottom of page one on the Application for Florida Enterprise Zone Jobs Credit for Sales Tax.

Again, I contend that contingent fees are permissible under the particular facts and circumstances as described above. This is due to the fact that Form DR-15ZC (Application for Florida Enterprise Zone Jobs Credit for Sales Tax) is reviewed in detail by the taxing authorities prior to approval and before the credits are allowed to be taken on the Florida Sales and Use tax returns. In fact, if these credits are claimed prior to approval by the DOR, a notice of tax and interest due in the amount of the credit taken will be generated systematically by the DOR and mailed to the taxpayer stating that "you underpaid your DR-15 Sales and Use Tax". Therefore I believe that the findings are in deed those of the taxing authorities and not those of the CPA.

Thank you in advance for your consideration in this matter. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Keith L. Jones, CPA
Keith L Jones, CPA

Enclosures



Application for Florida Enterprise Zone Jobs Credit for Sales Tax

DR-132C
R. 10/99

Rule 12A-1.001
Florida Administrative Code
09-0000-0000

1. Business Name _____

2. Owner Name _____

3. Mailing Address _____
City _____ State _____ ZIP _____

4. Business Location _____
City _____ State _____ ZIP _____

5. Business Federal Employer I.D. # _____

6. Sales Tax Certificate # _____

7. Enterprise zone identification number assigned per section (s.) 200.0055, Florida Statutes (F.S.) in which above business is located _____

8. Is this zone designated as a rural enterprise zone, per s. 200.004(3) F.S.? YES NO
If yes, complete Schedule Two attached. If no, complete Schedule One attached.

9a. Is each employee (person) listed on Schedule One or Two a permanent full-time employee hired to perform duties in connection with the operations of the business for an average of at least 36 hours per week? YES NO

9b. Is each employee (person) listed on Schedule One or Two a permanent full-time employee listed from an employee leasing company licensed under Chapter 488, F.S. and have they been continuously listed to the employer for an average of at least 36 hours per week for more than six months to perform duties in connection with the operations of the business for an average of at least 36 hours per week each month throughout the year? YES NO

10. Is this a "small business" as defined in s. 200.700(7), F.S.? YES NO

11. Are the new employees, for which the credit is claimed, participants in the Welfare Transition Program (WTF)? If yes, complete Schedule Three attached. YES NO

12. Computation of the increase in permanent full-time jobs over the 12 months prior to the date of application:

a. Enter the number of permanent full-time jobs on the date of application: _____

b. Enter the number of permanent full-time jobs on the date 12 months prior to the date of the application: _____

c. Subtract the amount on line 12b from the amount on line 12a and enter the result: _____

This application is due to the Department of Revenue within six months of the date of hire for the new employee(s) or within seven months of the date of hire for leased employee(s). Your application will be denied if not filed on time. Any person who fraudulently claims the credit is liable for repayment of the credit plus a mandatory penalty of 100 percent plus interest. After certification of this application by the appropriate enterprise zone coordinator, mail the completed application to:

RETURN RECONCILIATION, FLORIDA DEPARTMENT OF REVENUE, 5050 WEST TENNESSEE ST, TALLAHASSEE FL 32304-6120.

NOTE: Your job credit(s) will expire 24 months after approval, provided the employee(s) remains employed for 24 months.

I hereby affirm under penalty of perjury that all statements on this document are true and correct to the best of my knowledge and belief.

Signature of owner, officer or partner _____ Printed name _____ Date _____

Enterprise Zone Coordinator Certification Section

Signature of Enterprise Zone Coordinator _____ Printed name _____ Date _____

Enterprise Zone Coordinator: Mail a copy of the completed application to the address above.

Exhibit A



**Instructions for Completing the Sales and Use Tax Return,
Form DR-15, when taking the Enterprise Zone Jobs Tax Credit**

DR-15ZCR
FL 05/08

File 904-LTR
Florida Department of Revenue
March 2008

To be eligible for the enterprise zone jobs credit against sales and use tax, employees are required to work an average of at least 50 hours per week each month. The credit is available to businesses that have increased the number of full-time jobs from the date 12 months prior to the date of application.

The credit is computed as 20 percent of the actual monthly wages paid to eligible employees after a new full-time job is created, or 30 percent of the monthly wages paid if the business is located in a rural enterprise zone. If at least 20 percent of the full-time permanent employees of the business are residents of an enterprise zone, the credit is 30 percent of the actual monthly wages paid, or 45 percent of the actual monthly wages paid if the business is located in a rural enterprise zone.

The phrase "new job has been created" means that the total number of full-time jobs in an enterprise zone has increased from the date 12 months prior to the date of application, as demonstrated to the Department by a business located in the enterprise zone.

The enterprise zone jobs credit against sales and use tax is allowed for up to 24 consecutive months beginning with the first tax return due after approval. Please refer to Taxpayer Information Publication (TIP) #01A01-06, #02A01-07, and #06ADM-02, which can be found on our Internet site at www.myflorida.com/dor.

Certain enterprise zone jobs tax credits, refunds and distributions are considered state financial assistance. State financial assistance is subject to the auditing and reporting requirements of:

- The Florida Single Audit Act, section 215.97, Florida Statutes (F.S.)
- Applicable rules of the Executive Office of the Governor, Chapters 27D-1 and 3A-5.
- Rules of the Auditor General, Chapter 10.550 (local government entities) and Chapter 10.650 (nonprofit and for-profit organizations).

For more information refer to TIP #02ADM-02, which can be found on our Internet site at www.myflorida.com/dor.

All approved enterprise zone jobs tax credits must be taken on Line 16 of your Sales and Use Tax Return (Form DR-15). If you have been using Form DR-15EZ, contact the Department.

To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-5571.

Reference: Section 212.096, F.S.

Exhibit A

Keith L. Jones, CPA



America Counts on CPAs

Any Date

Sample Engagement Letter

Any Client
Any Address
Any City, State, Zip

Dear Client:

This letter is a follow up to our recent conversation. I would like to thank you for allowing me to submit this proposal to assist in enabling you to take advantage of a Florida state tax incentive relative to your business venture.

In the proposed engagement, I will work with you to gain approval for Florida Enterprise Zone jobs credits to be taken against sales tax due. In order for me to proceed with this engagement, please acknowledge your acceptance by signing the copy of this letter along with the attached Power of Attorney and returning them to me.

My fee for gaining approval of the job credits will be "x" percent of the sales tax credits obtained and taken on your sales tax return each and every month the credit is taken.

If you have any questions, please contact me as I will be pleased to discuss them with you.

Very truly yours,

Keith L. Jones, CPA

APPROVED:

By _____

Date _____

Exhibit B.