

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR DECLARATORY STATEMENT BY
 KEITH L. JONES, CPA**

DS 2010-073

FINAL ORDER

THIS MATTER came before the Board of Accountancy (Board) pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting on December 3, 2010, in Tallahassee, Florida, for a hearing on the Petition for Declaratory Statement filed by Keith L. Jones, CPA (Petitioner) on September 24, 2010. The notice of the petition appeared in the Florida Administrative Weekly on October 15, 2010, in Volume 36, Number 41. No comments by interested persons were received. Petitioner was present at the hearing. The Board was represented by Mary Ellen Clark, Assistant Attorney General. Having considered the petition, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Petitioner is currently licensed as a CPA in Florida.
2. Rule 61H1-21.005(2), Florida Administrative Code (FAC), provides:

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. An original or amended federal tax return or a claim for refund cannot be prepared for a contingent fee since the findings are not considered to be those of the taxing authority. If the taxing authority has begun an audit, any findings will be considered those of the taxing authority and a contingent fee may be accepted. Fees to be fixed by courts or other public authorities, which are of an indeterminate amount at the time a public accounting service is undertaken, shall not be regarded as contingent fees for the purposes of this rule. However, a certified public accountant's or firm's fee may vary depending, for

example, on the complexity of the service rendered.

3. Petitioner seeks the Board's interpretation of Rule 61H1-21.005(2), FAC, and asks whether the completion of an application for the Florida Enterprise Zones jobs credit sales tax on a contingency fee basis in compliance with the rule.

CONCLUSIONS OF LAW

4 The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes.

5. The Board answers the question in the affirmative. Because the completed application is reviewed in detail by the taxing authority prior to approval, the determination of eligibility for the credit is made by the taxing authority and not by the Florida certified public accountant who completed the form. Thus, under these circumstances, Petitioner is able to complete an application for the Florida Enterprise Zones jobs credit sales tax on a contingency fee basis

DONE AND ORDERED this 26th day of January, 2011.

BOARD OF ACCOUNTANCY

Veloria A. Kelly
Veloria A. Kelly, Division Director

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Keith L. Jones, CPA, 202 Marina Drive, Suite 303, Port St. Joe, Florida 32456; and by interoffice mail to Mary Ellen Clark, Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this 7th day of February, 2011.

Brandon M. Nichols