

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

<b>FILED</b>	
<small>Department of Business and Professional Regulation</small>	
<small>Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	10/9/2012
File #	2012-06453

**IN RE: PETITION FOR VARIANCE OR WAIVER BY  
ROSEMARY LYONS LARRY**

**ORDER GRANTING PETITION IN PART**

**VW 2012-182**

Petitioner, Rosemary Lyons Larry, filed a petition for a permanent variance from Rule 61H1-27.0041(2), and a permanent waiver of Rule 61H1-28.0052(2), Florida Administrative Code (FAC), on June 4, 2012. The notice of the petition appeared in the Florida Administrative Weekly on July 13, 2012, in Volume 38 Number 28; no comments by interested persons were received. The petition was heard at duly-noticed meetings of the Board of Accountancy held August 3, 2012, in Miami, Florida, and September 28, 2012, in Tampa, Florida. Documentation Petitioner submitted regarding education she has completed since the certification of her examination scores was inadvertently omitted from the materials reviewed by the Board on August 3, 2012, and included in the materials reviewed by the Board on September 28, 2012. At the hearings on this matter, Petitioner was present on August 3, 2012, and not present on September 28, 2012; the Board was represented by Mary Ellen Clark, Assistant Attorney General, on both dates.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA), having submitted her application in February, 2012.
2. Petitioner received credit for the fourth section of the CPA examination in November, 1983, based upon which she was deemed to have passed the CPA

examination and her examination scores were certified by the Board in January, 1984.

3. Section 473.308(4), Florida Statutes (FS), provides that an applicant for licensure after December 31, 2008, must show one year of work experience. Rule 61H1-27.0041, FAC, specifies the manner in which the one year of work experience must be documented.

4. Rule 61H1-28.0052(2), FAC, provides that "[a] candidate shall be deemed to have passed the CPA Examination when the candidate has been granted credit for all sections of the CPA Examination. Upon certification by the Board to the Department shall issue a license to practice public accounting to such individual. However, in no event shall an initial license be issued if the initial licensure fees and all required documents are not received within 36 months of the date of certification of examination scores by the Board; in such case, the certification expires and the applicant may reapply for licensure by endorsement, pursuant to Section 473.308(7)(a), Florida Statutes."

5. Petitioner seeks a permanent variance from Rule 61H1-27.0041(2), FAC, and the requirement to have one year of work experience.

6. Petitioner seeks a permanent waiver of Rule 61H1-28.0052(2), FAC, and the requirement that all initial licensure fees and all required documents be received within 36 months of the date of certification of examination scores by the Board.

#### **GROUND FOR PARTIAL DENIAL**

The Board determined that the petition for variance from Rule 61H1-27.0041(2), FAC, should be denied on the following grounds:

7. The requirement that Petitioner show one year of work experience is found in Section 473.308(4), FS. Section 120.542, FS, only provides the Board authority to

grant variances from its requirements established in its rules, not those provided by the legislature in statute.

**GROUND FOR PARTIAL APPROVAL**

The Board determined that the petition for waiver of Rule 61H1-28.0052(2), FAC, should be granted on the following grounds:

8. Petitioner established that the purpose of the underlying statute, Section 473.306, FS, would be met were she to be granted a waiver of the rule in that she has demonstrated she has completed all educational requirements for licensure.

9. Petitioner further established that the Board's application of Rule 61H1-28.0052(2), FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

It is therefore **ORDERED** that the petition be partially **DENIED** and partially **GRANTED**.

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

**DONE AND ORDERED** this 8<sup>th</sup> day of October, 2012,  
by the Florida Board of Accountancy.

Victoria A. Kelly  
Victoria 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 76<sup>th</sup> Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a

hearing before an administrative law judge pursuant to Section 120.57(1), FS; your petition must contain the information required by Rule 28-106.201, FAC, 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), FS; your petition must include the information required by Rule 28-106.301, FAC, 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, FS, 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 Rosemary Lyons Larry, P.O. Box 518, Arlington, VA 22216, 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, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 9<sup>th</sup> day of October, 2012.

*Brandon M. Nichols*

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<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/4/2012
File #	

**PETITION FOR PERMANENT VARIANCE FROM OR WAIVER OF RULES  
61H1-28.0052(2) and 61H1-27.0041**

**Petitioner Information:**

Rosemary Lyons Larry  
P. O. Box 518  
Arlington, VA 22216  
Fax : 626-739-7153  
rosilarry@aol.com

**RECEIVED**  
JUN 4 2012  
BOARD OF ACCOUNTANCY

**Attorney information :**

Pro se

Applicable portion of the rule :  
61H1-28.0052(2); 61H1-27.0041

**VW 2012-182**

**Statutes:**

Fla. Stat. §§ 473.306, 473.308  
Fla Stat. § 473.307 (repealed)

**ACTION REQUESTED:**

Permanent waiver of exam score expiration and variance from work experience for petitioner.

**STATEMENT OF ISSUES:**

**Issue 1:**

Current rules provide for expiration of exam scores after 36 months. Rules under which petitioner applied in 1982 did not have a provision for exam scores to expire.

**Issue 2:**

Current rules provide for one year of work experience under a licensed Certified Public Accountant (CPA) in public accounting, industry, academia, or government. Rules under which petitioner applied in 1982 provided for either a fifth year of education or one year of work experience under a licensed CPA in the practice of Public Accounting or Government.

**FACTS:**

Petitioner successfully passed the uniform CPA exam in November 1983, after an initial application made on July 20, 1982. Petitioner wrote to Board of Accountancy both before sitting for CPA exam in May 1981 and before starting Fifth Year coursework for licensure in October 1989. Petitioner worked in accounting and finance-related field for one employer for 25 years in the telecommunications industry. Petitioner completed Fifth Year coursework in May 2011. Petitioner contacted Board June 2011 to complete licensure requirements. Board advised petitioner that exam scores had expired and a petition is necessary for waiver. Petitioner is currently self-employed in first year of business.

**DISCUSSION****I. Expiration of Exam Scores**

The Board has authority, in 1982 and now, to determine the content of applications for becoming a CPA which includes supplemental information between initial filing of the application and the final grant or denial of licensure. Fla. Stat. § 455.213. Notwithstanding the Board's authority, there are certain statutory prohibitions against enacting retroactive laws. "An agency may not adopt retroactive rules . . . generally speaking, an administrative rule or regulation is operative and binding on those coming within its terms only from its effective date, and will not be applied retroactively." Fla. Stat. 120.54(1)(f); Hulmes v. Div. of Retirement, Dept. of Admin., 418 So. 2d 269 (Fla. Dist. Ct. App. 1<sup>st</sup> Dist. 1982); Gulf Stream Park Racing Ass'n Inc. v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation, 407 So. 2d 263 (Fla. Dist. Ct. App. 3d Dist. 1981); 2 Fla. Jur. 2d 113.

There is some ambiguity as to the applicability of the new rule about exam grades expiring as it is applied to applicant. The repeal of the provision providing applicant with the option of becoming licensed by fulfilling one of two requirements was effective in 2000. The legislative notations simply indicated that it repealed obsolete experience requirements. In 1982 when applicant applied, the rules had one application process for licensure; today there are two applications -- one to take the licensure exam, and two to

become licensed. Section 473.306(1) was amended to reflect this bifurcated approach. The rules also added the Licensure by Endorsement option for the Board to certify an applicant for licensure.

The laws requiring a fifth year of education plus one year of work experience before the issuance of a CPA license were passed after petitioner (a) applied under the one-application process, and (b) fulfilled the requirement to become licensed by passing the examination within the time allotment, and therefore do not apply to petitioner. By virtue of petitioner applying for examination prior to 8/2/1983, the steps to become licensed as a CPA for petitioner are the same as they were when petitioner applied for examination. The old rules allowed for sitting for the CPA exam after obtaining a 4-year degree, and obtaining certification (licensure) by either a fifth year of course work or one year of work experience under a licensed CPA. These options for a 1982 applicant continued to be recognized in Fla. Stat. § 473.307 as late as 1999.

Alternatively, if this Board finds that the 1982 rules do not protect applicant for exam scores and give applicant the option of satisfying work experience by a fifth year of accounting coursework, petitioner requests a waiver from expiring exam scores and/or licensure by endorsement from the Board because the underlying purpose of the statute has been served by a combination of passing the CPA exam, work experience, and recent coursework demonstrating competence. The purpose of the CPA exam is to determine an applicant's understanding of the body of knowledge in the profession. Petitioner proposes that her knowledge of accounting has been demonstrated by the following: 1) passing the uniform CPA exam in three sittings from November 1982 to November 1983, 2) twenty-five years of experience in the accounting field in which continuing education was necessary in order to ensure compliance with laws and regulations, and 3) current academic proficiency of accounting with grades of A+ and B for two courses taken less than two months ago at University of South Florida (USF) graduate Accounting and Masters of Accountancy programs.

It would be a substantial hardship in time, missed business development opportunities, and foregone earnings for petitioner, who is self employed, to have to sit for the CPA exam again. It is also violate the principles of fairness after petitioner communicated directly with the Board about her status and receiving no indication that

her status was unlawful or could be retroactively abolished. Petitioner relied on the 1982 rules in setting her professional goals. Had petitioner been notified or known that the rules specifically pertaining to her would change, she had sufficient time to 1) complete the one course she still needed after completing her MBA to satisfy the fifth year under the 1982 rules, 2) apply and fulfill the 150 semester hour education prior to December 31, 2008 as prescribed in 61H1-27.0041, or the one year work experience under the supervision of a CPA in government, industry, academia, or public practice prescribed in Fla. Stat. § 473.308(4)(a), or 3) apply for licensure by endorsement. The accounting hours required to sit for the exam have changed from 18 semester hours under the 1982 rules to 24 hours under the current rules.

The expiration of exam scores was initially added to rule 61H1-28.0052(1) in August 20, 2009. The rules were modified substantially in 2004 when the use of computer testing began. The purpose of this section appears to provide transition rules for applicants who had already conditioned the exam but had not passed all parts, and provide expiration dates for the new rolling 18-month computerized testing. It did not address those who had already successfully passed the CPA exam. To now apply these rules to those who successfully passed the CPA exam before the 2004 computer testing where an applicant could take one part at a time is unfair.

As a way of preserving the issue in case of an appeal, petitioner raises the issue of due process here should the Board decide that the expiring exam scores rule applies to petitioner.

## II. Work Experience

Current work experience required under section 473.308 could be satisfied with my 25 years of accounting experience encompassing financial statement reporting, financial analysis, merger & acquisition work, lease accounting, regulatory accounting under telecommunications FCC and State Public Commission reporting rules, Sarbanes Oxley reporting and attestation, cost accounting, tax accounting including sales, payroll, excise, and corporate income taxes, property accounting, as well as working under at least one CPA for 2 ½ years, should qualify as adequate work experience demonstrating my ability to carry on the work of a CPA. Acceptable work experience at the time

petitioner passed the CPA exam was either in a Public Accounting firm or in government. Another way based on 1982 rules was to obtain a fifth year of accounting courses. This is the method petitioner chose to become a licensed CPA. This provision was repealed in 2000. If the Board grants a waiver for the expiring exam scores but not the work experience, petitioner will need a copy of the Certification of Work Experience form (DBPR Form CPA32/Revised 10/09).

### III. Good Moral Character

To petitioner's knowledge, she is of good moral character. In addition, petitioner has undergone an extensive background check, with fingerprinting, to become a licensed attorney in Florida effective October 1, 2010.

### IV. Licensure by Endorsement

Notwithstanding the above, the petitioner believes she qualifies under the licensure by endorsement because the continuing education requirements for 2 years is 80 hours and petitioner has completed a total of 92 CPE hours, consisting of 6 semester hours or the equivalent of 78 accounting hours at USF plus 14 CPE hours offered by AAA-CPA, including 1 hour of ethics, during the November 2010 group meeting in Chicago. Petitioner is short 3 ethics hours.

### CONCLUSION

In summary, petitioner requests both a waiver for the expired exam scores and a variance accepting the Fifth Year of Additional Coursework in lieu of work experience based on inapplicability of current rules to those taking and passing the CPA exam under pre-1983 rules. Alternatively, petitioner requests a waiver for the expired exam scores and permission for petitioner to file the Certification of Work Experience form, or as a final alternative, petitioner requests licensure by endorsement.

Petitioner can provide copies of the following upon notification: initial application dated 7/20/1982, correspondence with the Board including the rules in effect at the time, her resume, certificate of good standing from Florida Supreme Court, verification of work experience from employer CPA verifying work performed from July 1985 to March 1988, school transcripts, and CPE documents. I have attached the rules in effect in 1982 because they are not available online under the archives.

If the Board approves the petition for waiver and variance, please identify the procedure and documents needed for petitioner to become licensed as a CPA.