



**S.A.L.T.**  
ADVISORY SERVICES

1342 Ke  
Trinity, F

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/3/2020
File #	

Amended

January 29, 2020

**RECEIVED**  
FEB 03 2020

Department of Business and Professional Regulation  
Board of Accountancy  
240 NW 76<sup>th</sup> Drive  
Gainesville, FL 32607-6656

**DS 2020-008**

**Petition for Declaratory Statement before the Board of Accountancy**

I am a licensed Certified Public Accountant in Florida (License Number AC52210); I am in the process of creating an accounting firm in Florida that complies with 473.309 F.S. and 473.3101 F.S. In my new firm, I would like to offer employees a chance to have a profit share exceeding 49%, say 60% of the profits. The profit share would not be an equity interest in the firm and would not include voting rights, nor would the employees have any rights to losses from the firm. Each participant's profit share would solely be based on three factors: 1) tenure with the firm, 2) contribution to profitability, and 3) contribution to client retention. I would be the only owner, and I will have one certified public accountant and two enrolled agents on staff. The firm will not be offering any services under 473.302(8)(a) F.S.

I have two questions that I would like a declaratory statement regarding-

1. Under 473.309(1)(b) F.S., a partner must own at least 51% of the financial interest and voting rights of a partnership. If I offer all of my employees a profit interest that exceeds 49% of the company's profits, without any equity right, would this violate the financial interest limitation for purposes of 473.309(1)(b) F.S.?
2. Alternatively, if my firm issued a salary bonus at the end of the year that exceeded 49% of the profits, would that be considered a violation of 473.309(1)(b) F.S.'s financial interest restriction?

I am not requesting a hearing on this matter, and I do not want to give my employees a bonus or profit interest that could violate state law regarding the requirements of 473.309(1)(b) F.S. and could imperil the legality of my company.

Sincerely,

Jonathan D Marseglia, C.P.A.

Jonathan@ustatetaxes.com 813.586.4275

JONATHAN D. MARSEGLIA



**ASHLEY MOODY  
ATTORNEY GENERAL  
STATE OF FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL  
Administrative Law**

Rachelle Munson, Assistant Attorney General

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<http://www.myfloridalegal.com>  
[Rachelle.Munson@myfloridalegal.com](mailto:Rachelle.Munson@myfloridalegal.com)

January 22, 2020

Johnathan D. Marseglia, C.P.A.  
1342 Ketzal Drive  
Trinity, FL 34655

RE: Letter Referencing a Request for Declaratory Statement

Dear Mr. Marseglia:

Your letter dated January 15, 2020, to the Department of Business and Professional Regulation has been received. It requests that the Board of Accountancy (Board) issue a Declaratory Statement regarding Section 473.309(1)(b), Florida Statutes (F.S.). Please be advised that the petition, as submitted, is legally insufficient.

A Petition for Declaratory Statement is governed by section 120.565, F.S., which states:

**Section 120.565 Declaratory Statement by agencies**

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.
- (3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

A Petition for Declaratory Statement is also governed by chapter 28-105, F.A.C. Rule 28-105.002, F.A.C., defines what must be included in the petition, which is as follows:

**28-105.002 The Petition.**

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

(1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).

(2) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner.

(3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.

(4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.

(5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

(6) The signature of the petitioner or of the petitioner's attorney or qualified representative.

(7) The date.

Your petition, as written, presents inquiries for legal interpretation regarding the statute referenced; however, it does not meet the legal requirements necessary as outlined above. Your document, as required, is being filed with the agency clerk and will be scheduled for review at the meeting of the Board in March 2020.

If you wish to proceed, please review the relevant statute and rule sections and submit a new petition in the proper format by **February 7, 2020**. Should you decide that you no longer desire to petition for a declaratory statement, please provide notice in writing that you would like to withdraw your petition. If you do not submit a revised petition or withdraw the petition, the Board will issue its ruling based on the information as presented.

Please be advised that neither I nor the Board can provide you with any legal advice, and you are encouraged to seek private counsel for such advice. Should you have any additional questions or concerns, please feel free to contact the Board office.

Sincerely,

*Rachelle Munson*

Rachelle Munson

Assistant Attorney General

Counsel to the Board of Accountancy

cc: Roger Scarborough  
Director, Division of Certified Public Accounting



**S.A.L.T.**  
ADVISORY SERVICES

1342 Ketz  
Trinity, FL

**FILED**

Department of Business and Professional Regulation

Senior Deputy Agency Clerk

CLERK Brandon Nichols

Date 1/21/2020

File #

**RECEIVED**

JAN 21 2020

DIVISION OF CERTIFIED  
PUBLIC ACCOUNTANTS

January 15, 2020

Department of Business and Professional Regulation  
Board of Accountancy  
240 NW 76<sup>th</sup> Drive  
Gainesville, FL 32607-6656

**DS 2020-008**

To Whom It May Concern:

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2. Alternatively, if my firm issued a salary bonus at the end of the year that exceeded 49% of the profits, would that be considered a violation of 473.309(1)(b) F.S.'s financial interest restriction?

I am not requesting a hearing on this matter.

Sincerely,

Jonathan D Marseglia, C.P.A.

813.586.4275

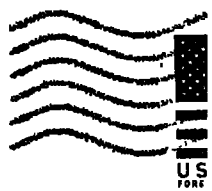
jonathan@usstatax.com

JONATHAN D. MARSEGLIA

Mareogla  
1342 Ketzal Drive  
Trinity, FL 34655

DEC 16  
JAN 21 2020

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Department of Business + Professional Regul  
Board of Accountancy  
240 NW 76<sup>th</sup> Dr.  
Gainesville, FL 32607-6656

32607-665673

