

STATE OF FLORIDA  
BOARD OF ACCOUNTANCY

IN RE: PETITION FOR WAIVER AND VARIANCE BY  
MARLA GOTTSCHALK

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/31/2014
File #	2014-08434

**VW 2014-344**

ORDER GRANTING PETITION

Petitioner, Marla Gottschalk, filed a petition for a variance or waiver of Rules 61H1-33.006(2)(a) and 61H1-31.006, Florida Administrative Code (FAC) on September 18, 2014. The notice of the petition appeared in the Florida Administrative Weekly on September 24, 2014, in Volume 40 Number 186; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on October 10, 2014, in Miramar, 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

The facts relevant to the petition are as follows:

1. Petitioner's active license as a CPA in Florida expired on December 31, 2009. She previously placed her license on inactive status on May 28, 2009. Petitioner notified the Board on December 14, 2012, of her intent to reactivate under the 2012 Amnesty Provision. Petitioner submitted an application for reactivation under the 2012 Amnesty Provision on June 25, 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 submitted a new application for reactivation on September 9, 2014. Petitioner completed an additional 4 CPE hours in board approved ethics on July 14, 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 reactivation application fee of \$250.00.

#### **GROUND 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.

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

**DONE AND ORDERED** this 29<sup>th</sup> day of October,  
2014, by the Florida Board of Accountancy.

  
\_\_\_\_\_  
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 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), 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.

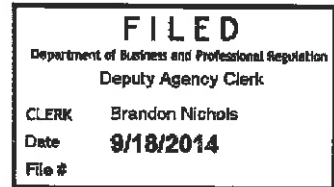
**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Marla Gottschalk, 1043 Whispering Cove, Casselberry, Florida 32707; 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 31<sup>st</sup> day of October, 2014.

*Brendon M. Nicks*

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PS Form 3800, August 2006	



**PETITION FOR VARIANCE FROM RULE 61H1-31.006 and 61H1-33.006 F.A.C.**

**Petitioner Information:**

Marla Gottschalk  
1043 Whispering Cove  
Casselberry, FL 32707  
407-949-1821

**VW 2014-344**

**Attorney Information:**

Not Applicable

**Applicable Portions of the rules: 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 and **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

**The citation to the statute the rule is implementing:**

**Section 473.313(2)** A license that has become inactive under subsection (1) or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The minimum continuing education requirements for reactivating a license are those prescribed by board rule and those of the most recent biennium plus one-half of the requirements in s. 473.312. Notwithstanding any other provision of this section, the continuing education requirements are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent on June 30, 2014, if the Florida certified public accountant notifies the Board of Accountancy by December 31, 2014, of an intention to reactivate such a license and completes such reactivation by June 30, 2016.

**Type of Action Requested:**

The petitioner requests that the Board of Accountancy please grant a variance for Rules 61H1-31.006 and 61H1-33.006, FAC stated above due to the following circumstances:

I applied for reactivation under the 2012 amnesty provision as provided for in section 473.313(2) Florida Statutes. The 2012 amnesty provision required completion, by June 30, 2014, of 120 hours of continuing professional education to include at least 30 hours of accounting/auditing subjects, not more than 30 hours of behavioral subjects, and at least 8 hours of board approved ethics. As a result of not completing four hours of board approved ethics by June 30, 2014 my application was deemed deficient and could not be approved.

Under the regular reactivation provision, rule 61H1-33.006 F.A.C., the licensee would be required to complete a total of 200 hours to include at least 4 hours in board approved ethics, and at least 30 hours in accounting and auditing subjects. I am petitioning the board for a one-time variance of this rule, which implements the provisions of section 473.313, F.S., to allow the reactivation of my license having completed 124 hours, because: I applied for reactivation of my license and was placed in the amnesty program for reactivation. I proceeded to take all the required courses as set forth and was reviewing my application when I became confused over the required ethics hours. The letter for reactivation stated eight hours of ethics. My understanding of the new ethics requirement was that there is one Florida Board approved ethics class. This class is offered by different vendors but still covers the same material. I was unsure how to complete the eight hours without duplicating the class. I contacted the Department of Professional Regulations for clarification. The representative I spoke to (Case 765931) reviewed the reactivation requirements and referred me to the myfloridalicense.com reactivation website and advised me to follow the required four ethics hours. The representative did not know of or understand the amnesty program and the additional four ethics hours. The Board advised me of the deficient four ethics hours and explained in detail the amnesty program and the Board's intent to have the ethics class completed using two different vendors. I completed the additional four ethics hours but the class could not be completed prior to the June 30 deadline. I have demonstrated that I've met the purpose of the underlying statute even were I to be granted a variance from this rule because I attempted to complete the required education for reactivation and was deficient only due to a misunderstanding of the requirement. If I would have been explained of the amnesty program, I would have taken the additional ethics course prior to the June 30 deadline.

I would also like to request a permanent waiver of the \$250.00 reactivation application fee required by rule 61H1-31.006 F.A.C., which implements the provisions of section 473.305, because I previously paid the fee when I originally filed my application for reactivation on June 16, 2014.

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

I chose to reactivate my license so I could have the ability to practice public accountant again. I chose to go inactive following the birth of my children. I was not able to maintain an active license due to all of the family requirements at the time. It was my full intent to complete any required education to activate my license. It is only through confusion of the ethics hours did I fail to complete the requirements set forth in the amnesty program.

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

I completed the additional four ethics hours as required in the amnesty program. I currently have all the required hours necessary to activate my license.

**Petitioner Statement:**

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