

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE OR WAIVER BY  
BRYAN ANTHONY ZINK**

**VW 2019-018**

**NOTICE OF INTENT TO DENY PETITION**

Petitioner, Bryan Anthony Zink, filed a petition for a permanent variance from the requirements of **Rules 61H1-31.004 and 61H1-31.006, Florida Administrative Code (F.A.C.)**, January 23, 2019. The notice of the petition appeared in the Florida Administrative Register on February 1, 2019, in Volume 45 Number 22. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on March 22, 2019, in Gainesville, Florida. At the hearing on this matter, Petitioner was not present, and the Board was represented by Rachelle Munson, Assistant Attorney General. The petition is attached hereto and incorporated by reference.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. Petitioner is a licensee requesting a waiver of the reactivation fee and the delinquency fee required to reactivate his license. Petitioner asserts that he was under the impression that a check in the amount of \$90.00 was mailed in November 2018 for his renewal fee due December 31, 2018. Petitioner, who asserts he noticed in January 2019 that the check had not cleared, discovered that his staff inadvertently filed the check with the invoice instead of mailing it.

2. Petitioner requests a refund in the amount of \$275.00 for the delinquency and

reactivation fees that he paid upon the discovery that his renewal fee had not been paid.

3. **Rule 61H1-31.004, F.A.C. (2018)**, provides that

A delinquent status licensee shall pay a delinquency fee of \$25.00 when the licensee applies for active or inactive status.

**Rule 61H1-31.006, F.A.C. (2018)**, provides that

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.

4. Petitioner seeks a permanent variance from the requirements of Rules 61H1-31.004 and 31.006, F.A.C., to the extent necessary for the Board to determine he should not have been required to pay delinquent and reactivation fees.

#### **GROUND FOR DENIAL**

The Board determined that based on the requirements of Rules 61H1-31.004 and 31.006, F.A.C., the petition should be denied on the following grounds:

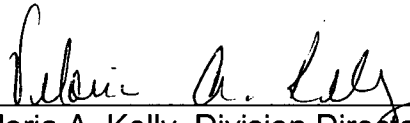
5. Petitioner failed to establish that the purpose of the underlying statute, Section 473.305, F.S., would be met were he to be granted a variance from Rules 61H1-31.004 and 31.006, FAC.

6. Petitioner further failed to establish that the Board's application of Rules 61H1-31.004 and 31.006, F.A.C., resulting from the licensee's error in timely remitting payment for the renewal of his CPA license, would violate principles of fairness and impose a substantial hardship on him. It is therefore **ORDERED** that the petition be **DENIED**.

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

**DONE AND ORDERED** this 16<sup>th</sup> day of April, 2019,

by the Florida Board of Accountancy.

  
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Veloria A. Kelly, Division Director ✓

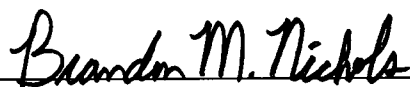
**NOTICE OF RIGHT TO HEARING**

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 **Bryan Zink**, 4121 Empedrado Street, Tampa, Florida 33629; and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at [Rachelle.Munson@myfloridalegal.com](mailto:Rachelle.Munson@myfloridalegal.com) this 19<sup>th</sup> day of April, 2019.

  
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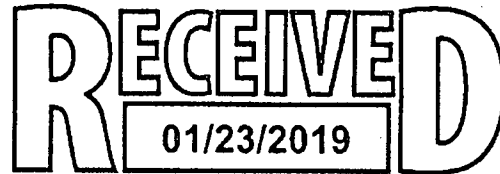
<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/23/2019
File #	

**PETITION FOR WAIVER of BOARD OF ACCOUNTANCY RULES 61H1-3  
61H1-31.004, FAC**

**Petitioner Information:**

Bryan Anthony Zink, CPA  
 4121 Empedrado Street  
 Tampa, FL 33629  
 Phone: 813-837-3380  
 Fax: 813-831-3380

**VW 2019-018**



**Attorney Information:**

Not applicable

**Applicable Portions of the Rule(s):**

61H1-31.006 Reactivation Fee, FAC, which states: "The application fee for reactivation of an inactive status license to active, \$250. In all cases completion of the requirements of Rule 61H1-33.006, FAC, shall be required for reactivation."

61H1-31.004 Delinquency Fee, FAC, which states: "A delinquent status licensee shall pay a delinquency fee of \$25 when the licensee applies for active or inactive status."

Rule 28-104.002, granting waivers in certain circumstances.

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

Section 120.542, granting waivers in certain circumstances.

**Type of Action Requested:**

The petitioner requests that the Board of Accountancy please waive reactivation and delinquency fees of \$275 and refund the petitioner due to the following circumstances.

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

There was an oversight of the petitioner's payment to renew his CPA license by December 31, 2018. His office staff prepared a payment for the renewal amount of \$90, check #4054 on November 16, 2019, which he signed and returned to his office staff for mailing. At that point to his knowledge his license renewal was paid and taken care of. It wasn't until January 9, 2019, when his office staff was performing the bank reconciliation, noticed the check had not cleared. Unfortunately, it appears his staff instead of mailing the payment inadvertently filed it with the invoice. The failure to renew timely was inadvertent due to clerical error on his staff's part. The petitioner has always renewed timely and has always been in good standing with his license.

Since then, the petitioner has sent in a payment of \$365, check #4107 on January 16, 2019, which included the original renewal fee of \$90, plus the reactivation fee of \$250, and the delinquency fee of \$25. The petitioner seeks to have the Board of Accountancy refund \$275.

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

The statute allows some flexibility from uniformity when results of strict application lead to unreasonable, unfair, or unintended results. The petitioner believes the \$275 penalty would be unfair in this circumstance.

**Petitioner Statement:**

The petitioner seeks a permanent waiver from Rule 61H1-31.006 and 61H1-31.004, FAC, to allow the reactivation and delinquency fees he paid at the time of licensure renewal to be refunded to him.

Thank you in advance for your consideration.

**Petitioner Signature:**



Bryan Zink

1/23/19