

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
ERIC JACOB WAITS**

**VW 2019-011**

**NOTICE OF INTENT TO GRANT PETITION**

Petitioner, Eric Jacob Waits, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on January 17, 2019. The Notice of the petition appeared in the Florida Administrative Register on January 28, 2019, in Volume 45 Number 18. 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. Petitioner was present for the proceedings. The Board was represented by Rachelle Munson, Assistant Attorney General. The Petition is incorporated by reference herein and attached to this notice.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. **Rule 61H1-28.0052(1)(b), F.A.C.**, provides in pertinent part:

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed.

2. Petitioner passed the BEC portion of the CPA examination on March 20, 2017, and credit for that portion of the examination expired September 20, 2018. Petitioner passed the FAR portion of the examination on December 18, 2017, and credit for that portion of the examination will expire on June 18, 2019. Petitioner passed the REG portion of the examination on December 10, 2018, and credit for that portion of the examination

will expire on June 10, 2020. Petitioner passed the AUD portion of the CPA examination on December 10, 2018, and credit for that portion of the examination will expire on June 10, 2020.

3. During the 18-month window, Petitioner states that he began employment In January 2018 and, due to the demands of audits that spanned a period of January 2018 and June 2018, he did not foresee the difficulty of balancing examination preparation with the management of work load and work hours. Petitioner states that he successfully passed the REG and AUD portions of the examinations after the conclusion of the audits. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of two (2) months and twenty-eight (28) days beyond the eighteen months provided for in the rule.

#### **GROUND FOR APPROVAL**

The Board determined the petition should be granted on the following grounds:

4. Petitioner established that the Board's full application of Rule 61H1-28.0052(1)(b), F.A.C., to his circumstances would violate principles of fairness and would impose a substantial hardship on his.

5. Petitioner established that, if he were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, F.S.

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

**DONE AND ORDERED** this 10<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), 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 **Eric Waits**, 408 S. Tampania Avenue, Unit 6, Tampa, FL 33609, 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.

*Brandon M. Nichols*

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<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/17/2019
File #	

**PETITION FOR WAIVER OR VARIANCE OF BOARD OF ACCOUNTANCY RULES**

**Petitioner Information:**

Name: Eric Jacob Waits

Address: 408 S Tampania Avenue Unit 6, Tampa, FL 33609

E-mail Address: [e.jacobwaits@gmail.com](mailto:e.jacobwaits@gmail.com)

Telephone number: (904) 304-2653

**RECEIVED**  
JAN 17 2019

DIVISION OF CERTIFIED  
PUBLIC ACCOUNTING

**VW 2019-011**

**Applicable Portion of the Rules:**

The applicable portion of the rules for which a permanent variance is requested is Rule 61H1-28.0052(1)(b), Florida Administrative Code, which states, "(1) With respect to the CPA Examination: (b) Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed. In the event all four test sections of the CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken."

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

Statute 120.542: Variances and waivers

**Type of Action Requested:**

Petitioner requests the Board to grant a permanent variance from Rule 61H1-28.0052(1)(b).

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

Petitioner passed the BEC portion of the CPA examination on March 9, 2017 with a score of 91, and credit for that portion of the examination expired on September 20, 2018.

Petitioner passed the FAR portion of the CPA examination on November 16, 2017 with a score of 86, and credit for that portion of the examination will expire on June 18, 2019.

Petitioner passed the REG portion of the CPA examination on October 8, 2018 with a score of 90, and credit for that portion of the examination will expire on June 10, 2020.

Petitioner passed the AUD portion of the CPA examination on November 8, 2018 with a score of 92, and credit for that portion of the examination will expire on June 10, 2020.

In the process of gaining the required work experience for licensure during his employment with EY beginning in January of 2018, Petitioner was assigned to two consecutive year-end "busy season" audits that spanned the period from January 2018 to the end of June 2018. During this period, Petitioner worked a minimum of 50 chargeable hours per week, and often charged 60 to 70 hours of work per week during this period.

Petitioner had planned to study to take the final two CPA examinations beginning in April of 2018 following the conclusion of the first of these audits, but did not foresee the continuation of the "busy season" workload through June 2018 as a result of being assigned to another year-end audit. At the conclusion of the second of these audits, Petitioner began his studies for the REG and AUD portions of the CPA examination beginning in July of 2018 while continuing to work at EY. Petitioner successfully passed these two sections of the exam on October 8, 2018, and November 8, 2018, respectively.

As of November 8, 2018, Petitioner's credit for the BEC section of the CPA examination had been expired for 49 days, as the credit expired on September 20, 2018.

In 2019, Petitioner is assigned to the same two year-end audits that he was assigned to in 2018, and the second client is scheduled to file its annual report on May 30, 2018. As such, Petitioner will be required by EY to work "busy season" caliber weeks from January through May of 2018.

If this petition were not to be granted, this would demonstrate a violation of the principles of fairness, as the significantly increased workload during year-end audits does not allow for adequate time to study for the CPA examination. Petitioner did not foresee being scheduled on two consecutive busy seasons from January 2018 to June 2018, and as such, experienced a significant delay in his studies for the final two sections of the examination. Additionally, Petitioner's FAR examination credit will expire on June 18, 2019, only 18 days after his "busy season" for 2019 is scheduled to end.

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

The permanent variance to Rule 61H1-28.0052(1)(b) requested would serve the purpose of statute 120.542 based on section two of this statute, which states, "For the purpose of this section, 'principles of fairness' are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." As Petitioner will have worked 11 "busy season" months through his first 18 months of employment with EY (through the period of January 2018 to June of 2019), the literal application of Rule 61H1-28.0052(1)(b) would significantly inhibit Petitioner's ability to acquire his CPA license, as the requirement to work two consecutive busy seasons is very unusual for newly hired employees in public accounting and was not foreseen by Petitioner in his study planning. Additionally, the Petitioner's extended "busy season" in 2019 will not allow adequate

time for Petitioner to retake the BEC portion of the CPA examination should this petition not be granted, and would likely result in the expiration of the FAR section of the CPA examination as well.

**Petitioner Statement:**

I, Eric Jacob Waits, am seeking a permanent variance from Rule 61H1-28.0052(1)(b) for the BEC section of the CPA examination, which had been expired for 49 days as of the day that I passed the final section of the CPA examination.