

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND OCCUPATIONAL AFFAIRS

STATE BOARD OF ACCOUNTANCY [49 PA. CODE CH. 11] Biennial Renewal Fees

The State Board of Accountancy (Board) amends § 11.4 (relating to fees) to read as set forth at 39 Pa.B. 2208 (May 2, 2009).

Description of Rulemaking

Effective with the biennial renewal period that begins January 1, 2010, the final-form rulemaking raises the biennial renewal fee for certified public accountants, public accountants and public accounting firms from \$45 to \$100 and the biennial renewal fee for continuing education program sponsors from \$120 to \$150. The final-form rulemaking also makes an editorial change by deleting a now-unnecessary reference to the date that the current biennial renewal fee for program sponsors took effect.

Background and Need for Rulemaking

Section 6 of the CPA Law (63 P. S. § 9.6) provides that the Board's biennial revenues from fees, fines and civil penalties shall meet or exceed the Board's biennial expenditures. Because fines and civil penalties have historically accounted for a small percentage of the Board's total revenues, the Board must generate most of its revenues from fees.

The Board's principal sources of fee revenues are the fees charged to certified public accountants, public accountants and public accounting firms for biennial renewal of their licenses and to continuing education program sponsors for biennial renewal of their approvals. The Board's biennial renewal fees currently account for approximately 84% of the Board's fee revenues during each biennial renewal period.

The biennial renewal fee for the approximately 23,128 active certified public accountants, public accountants and public accounting firms was last raised in June 1990, going from \$30 to \$45. The biennial renewal fee for the approximately 746 active continuing education program sponsors was established in January 2001 and was first assessed for the biennial renewal period that began January 1, 2004.

According to an analysis prepared by the Department of State's Bureau of Finance and Operations (BFO), the Board's current biennial renewal fee structure is inadequate to meet the Board's revenue needs. Based on projections made by BFO in January 2008, unless the biennial renewal fees are increased, the Board will face a growing, cumulative deficit that will measure \$579,063 as of June 30, 2010, \$1,577,063 as of June 30, 2011, and \$1,635,063 as of June 30, 2012.

Using fiscal information provided by BFO, the Board determined in 2008 that it would need to increase its biennial renewal fee for certified public accountants, public accountants and public accounting firms by approximately 125% to have sufficient biennial revenues to

offset its biennial expenditures over the next 9 years. The Board opted to raise the biennial renewal fee by 122%—from \$45 to \$100—effective with the biennial renewal period that begins January 1, 2010. The revenues from the higher biennial renewal fee should defer the need for a further fee increase until the biennial renewal period that begins January 1, 2018.

The Board also opted to raise the biennial renewal fee for continuing education program sponsors by 25%—from \$120 to \$150—effective with the biennial renewal period that begins January 1, 2010. When establishing program sponsor fees in 2001 as part of a restructuring of its regulatory scheme for approving program sponsors, the Board estimated that there would be approximately 1,150 active Board-approved program sponsors as of the start of the first biennial renewal period on January 1, 2004. The Board's estimate proved too optimistic; at present there are 35% fewer active Board-approved program sponsors than originally estimated. The 25% increase in the biennial renewal fee for program sponsors will recapture a portion of the revenues that had been projected when the fee was initially established.

According to BFO, the higher biennial renewal fees will raise biennial renewal revenues from the current \$1,130,280 to \$2,424,700. BFO estimates that these additional biennial revenues will enable the Board to maintain positive biennial revenue balances through the end of Fiscal Year 2015-2016, when the revenue balance is projected to be \$512,937.

Summary of Comments and Responses to Proposed Rulemaking

The Board published a notice of proposed rulemaking at 39 Pa.B. 2208, with a 30-day public comment period. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA).

The Board received comments from the House Professional Licensure Committee (House Committee) and the Independent Regulatory Review Commission (IRRC) as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). IRRC's comments asked the Board to consider the comments from the House Committee and the PICPA but did not identify any additional issues for the Board to consider. The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (Senate Committee) as part of its review of the proposed rulemaking under the Regulatory Review Act.

Noting the large percentage increases in the biennial renewal fees being promulgated by the Board, the House Committee asked the Board to explain why more than 18 years have elapsed since the Board last sought a biennial renewal fee increase for individual practitioners and firms.

Under section 6 of the CPA Law, the Board is required to increase fees if its expenses exceed its revenues on a biennial basis. Over the past 18 years, the Board's expenses have not exceeded its revenues over each fiscal biennium. During this period, the Board did not consider it necessary to increase biennial renewal fees solely for the purpose of creating a larger revenue cushion. In January 2007, BFO advised the Board that its biennial expenses would soon exceed its biennial revenues and recommended that the Board increase its biennial

renewal fees effective with the biennial renewal period beginning January 1, 2008. The Board attempted to promulgate the renewal fee increases for that renewal period but later discontinued the effort after it became apparent that proposed and final rulemaking could not be completed before January 1, 2008.

It is the Board's understanding that the Commissioner of the Bureau of Professional and Occupational Affairs (BPOA) and BFO are committed to a new fiscal approach, endorsed by the House Committee, of encouraging BPOA licensing boards to avoid potential biennial revenue deficits by adopting smaller biennial renewal fee increases at more frequent intervals rather than adopting larger biennial renewal fee increases at less frequent intervals. The Board anticipates that, as part of this approach, BFO will begin providing it with fiscal options that include a graduated schedule of biennial renewal fee increases.

The House Committee asked the Board to explain why it did not propose increases in other fee categories instead of relying solely on large increases in its biennial renewal fees. In addition to biennial renewal fees, the Board's schedule of fees in § 11.4 includes fees for initial certification and licensure of a certified public accountant (\$65); initial licensure of a public accounting firm (\$45); initial approval of a continuing education program sponsor (\$145); issuance of a temporary practice permit (\$25); reinstatement of an inactive or expired license (\$35); certification of examination scores (\$25); and verification of certification, registration or licensure status (\$15). All of these nonbiennial renewal fees were either revised or initially established in December 2000 and January 2001.

Nonbiennial renewal fees serve a different fiscal purpose than biennial renewal fees. Nonbiennial renewal fees are intended to cover the actual cost of providing particular services (that is, average number of minutes to perform service multiplied by pay rate of staff member performing service) plus a small share of administrative overhead. In contrast, biennial renewal fees are intended to defray, in addition to the minimal actual cost of processing biennial renewal applications, those general operating expenses of the Board that are not susceptible to being apportioned to individual users. BFO has not advised the Board that any of its nonbiennial renewal fees is currently inadequate to defray the cost of the service provided.

The PICPA asked the Board to provide more detail about the nature of the expenditures that justify the imposition of substantially higher biennial renewal fees and to identify the programs and Board functions to which the additional fee revenues will be applied. The PICPA also commented that the Board should have realized significant cost savings as a result of its recent transition to electronic biennial renewals and electronic newsletters. The House Committee asked the Board to provide information about the Board's "major cost centers" where significant increases in expenditures have occurred.

The biennial renewal fees defray the Board's generalized costs, which comprise the following categories: Board Administration (that is, time sheet-based staff expenses relating to the Board's administrative staff and direct Board expenses such as printing and mailing costs); BPOA Commissioner's Office (that is, time sheet-based staff expenses relating to staff in the Commissioner's Office and Revenue Office); Departmental Services (that is, time sheet-based charges for support of offices within the Department of State, including Offices of the Secretary of the Commonwealth and the Deputy Secretaries,

Office of Policy, Office of Chief Counsel, Office of Legislative Affairs, Office of Communications and Press, Office of Human Resources, Bureau of Management Information Services, and BFO); Legal Office (that is, time sheet-based staff expenses relating to Board counsel, Board prosecutors and legal support staff); Hearing Expense (that is, time sheet-based staff expenses relating to hearing examiners and support staff and direct charges for court reporting services); Legislative and Regulatory Analysis (that is, time sheet-based staff expenses relating to legal review of policy and regulatory matters); Enforcement and Investigation (that is, time sheet-based staff expenses for investigative, paralegal and support staff in the Bureau of Enforcement and Investigation and the Professional Compliance Office); and Board Member Expenses (that is, Board member per diem, travel expenses, conference fees and membership dues in National professional organizations). During the 1987-1989 fiscal biennium, the Board's generalized costs totaled \$689,871; during the 2005-2007 fiscal biennium, the Board's generalized costs had risen to \$1,712,367.

The cost centers for Board Administration, Enforcement and Investigation, and Legal Office account for over 80% of the Board's generalized costs. During the 1987-1989 fiscal biennium, which presaged the last increase in the biennial renewal fee for individual practitioners and firms, the Board's costs related to Board Administration, Enforcement and Investigation, and Legal Office were \$219,822, \$56,540 and \$100,149, respectively, during the 2005-2007 fiscal biennium, those costs were \$518,226, \$474,170 and \$439,342, respectively.

The greatly expanded scope of the Board's operations over the past 2 decades is reflected in areas such as the numbers of complaints processed and disciplinary sanctions imposed. During the 1987-1989 fiscal biennium, 145 complaint files were opened and 28 disciplinary sanctions were imposed. During the 2005-2007 fiscal biennium, 509 complaint files were opened and 141 disciplinary sanctions were imposed. Over an 8-year period ending June 30, 2008, a total of 2,719 complaint files were opened, 2,823 complaint files were closed, and 1,278 disciplinary sanctions were imposed.

The Board's recent transition to electronic biennial renewals and electronic newsletters is more of a benefit to licensees than a significant cost savings to the Board. The cost savings realized from no longer having to manually process most biennial renewal applications is offset in part by the charges the Department of State pays to credit card companies that allow biennial renewal fees to be paid online. As for the electronic newsletter, the annual savings in printing and mailing costs over a paper newsletter is expected to be approximately \$13,100, which currently represents only slightly more than 1% of the Board's annual expenditures.

The House Committee asked the Board to explain how it expects to maintain its projected revenue stream from the higher biennial renewal fees over the next several biennial renewal periods given the declining population of active public accountants.

The number of active public accountants has declined since 1985, when the Board's authority to credential new public accountants under the CPA Law (63 P. S. §§ 9.1—9.16b) was eliminated. The current number of active public accountants is approximately 264. As reflected in the chart as follows, owing to their small population, public accountants are expected to contribute only \$14,520, or 1.12%, of the \$1,294,420 in additional revenues that will be realized biennially from the higher

biennial renewal fees. Any lost fee revenues caused by the retirement of the remaining active public accountants in the coming biennial renewal periods will be offset by expected modest net increases in the ranks of active certified public accountants and public accounting firms.

Fiscal Impact

The final-form rulemaking will generate approximately \$1,294,420 in additional biennial renewal revenues, broken down as follows:

<i>Regulated Class</i>	<i>Number of Renewing Credential-holders</i>		<i>Fee Increase</i>	<i>Additional Revenues</i>
Certified Public Accountant	21,581	×	\$55	\$1,186,955
Public Accountant	264	×	\$55	\$14,520
Public Accounting Firm	1,283	×	\$55	\$70,565
Continuing Education Program Sponsor	746	×	\$30	22,380

Paperwork Requirements

The final-form rulemaking will require the Board to change its biennial renewal forms to reflect the new fees. The final-form rulemaking will not create additional paperwork for the regulated community.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The new biennial renewal fees will apply to those that renew their licenses or approvals for the biennial renewal period that begins January 1, 2010.

Statutory Authority

Section 6 of the CPA Law requires the Board to establish fees by regulation and to ensure that revenues derived from fees, fines and civil penalties are adequate to cover the Board's expenditures over a biennial period.

The Board considers the final-form rulemaking to be both required by law and the least restrictive means of covering the cost of activities that the Board is required to perform.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 22, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 2208, to IRRC and the the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board provided IRRC and the House and Senate Committees with copies of comments received during the public

comment period. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was approved by the House Committee on October 7, 2009, and deemed approved by the Senate Committee on October 21, 2009. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 22, 2009, and approved the final-form rulemaking.

Additional Information

Persons who desire additional information about the final-form rulemaking may submit inquiries to Sara L. Fox, Administrator, State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649. The Board's telephone number is (717) 783-1404 and its e-mail address is st-accountancy@state.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the CPA Law.

Order

The Board, acting under authority of the CPA Law, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 11, are amended by amending § 11.4 to read as set forth at 39 Pa.B. 2208.

(b) The Board shall submit this order and 39 Pa.B. 2208 to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 39 Pa.B. 2208 and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6524 (November 7, 2009).)

Fiscal Note: Fiscal Note 16A-5512 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 09-2145. Filed for public inspection November 20, 2009, 9:00 a.m.]