

September 22, 2009

## **CPAs in New York to Feel the Impact of New Regulations**

In January 2009, Governor David Paterson signed legislation amending New York State's public accountancy law, most provisions of which were effective this past July 26. These were the first substantive revisions in over sixty years, and New York CPAs will need to be aware of how these changes may affect them. The following is a brief summary of the new rules:

### **Broader Definition of the Scope of Practice**

The definition of public accountancy under the prior law was generally interpreted as referring only to core attest and compilation services. The new law expands the definition and "scope of practice" of public accountancy to include:

- a) performing attest and/or compilation services ("attest" services), as defined;
- b) performing professional services for clients, incident to attest services, in any or all matters relating to accounting concepts and to the recording, presentation, or certification of financial information or data; and
- c) performing, for other persons, one or more types of the following services including, but not limited to, accounting, management-advisory, financial-advisory, and tax services (exclusive of services described above) involving the use of professional skills or competencies of the licensed accountant as described in the rules of the New York State Board of Regents, **including professional services rendered to an employer who is not required to register with the State Education Department (the "SED")**, in any and all matters related to accounting concepts and to the recording of financial data or information or the preparation or presentation of financial statements.

### **Some Big Changes Ahead**

In other words, ALL New York CPAs [and public accountants ("PAs")] who serve in such capacities as CFOs, controllers, assistant controllers, or financial consultants (in either public or private companies) and who are practicing in New York State within the expanded scope of services described above – including those employed at governmental, academic, or not-for-profit organizations – will now be required to register triennially with the SED, pay the applicable fee, and be subject to continuing professional education ("CPE") requirements. These professionals will have to complete 40 hours of qualifying CPE credits (or an acceptable 24-credit concentration) in one of several specified professional areas by each December 31, beginning in 2009.

IT IS IMPORTANT TO NOTE THAT, FROM NEW YORK STATE'S POINT-OF-VIEW, **"ONCE A CPA, ALWAYS A CPA."** YOU ARE LICENSED AS A CPA FOR THE DURATION OF YOUR LIFE, UNLESS YOUR CPA LICENSE IS SUSPENDED OR REVOKED IN A DISCIPLINARY PROCEEDING BY THE BOARD OF REGENTS, OR UNLESS THE REGENTS OTHERWISE CONSENT TO YOUR APPLICATION TO SURRENDER YOUR LICENSE IN SUCH DISCIPLINARY PROCEEDING. PERMITTING ONE'S CPA REGISTRATION TO LAPSE – PERHAPS EVEN FOR YEARS – DOES NOT EXCLUDE THE PROFESSIONAL FROM HAVING TO RE-ACTIVATE HIS OR HER REGISTRATION, AND TO OBTAIN ANNUAL CONTINUING PROFESSIONAL EDUCATION, IF HE OR SHE IS PERFORMING SERVICES WITHIN THE EXPANDED SCOPE OF PRACTICE.

AND THE EXPANDED SCOPE OF PRACTICE IS VERY ENCOMPASSING! FOR EXAMPLE, A "RETIRED" CPA WHO SERVES ON THE GOVERNING BOARD OF A BUSINESS OR NOT-FOR-PROFIT ENTERPRISE WOULD NOT GENERALLY BE CONSIDERED TO BE WORKING WITHIN THE EXPANDED SCOPE OF PRACTICE, UNLESS HE OR SHE SERVES ON THAT BOARD'S AUDIT, FINANCE, OR BUDGET COMMITTEES (OR THEIR EQUIVALENTS, I.E., SERVING AS A TREASURER). IN THAT CASE, THE RETIRED CPA WOULD HAVE TO MAINTAIN AN ACTIVE LICENSE AND OBTAIN THE NECESSARY ANNUAL CPE.

An exemption from CPE will still be available to those New York-licensed CPAs who wish to use their designations as "CPAs" in New York, but whose work remains outside the expanded scope of practice. However, although those professionals will not be required to meet the annual CPE requirement, they must submit a written declaration to the SED that they are not practicing within the expanded scope of practice, as well as continue to pay the triennial registration fee.

### **Provisions for Out-of-State-Licensed CPAs**

Those out-of-state-licensed CPAs who wish to practice within the expanded scope of practice in New York on more than a temporary basis must obtain a New York CPA license through the endorsement procedures specified by the SED Commissioner's regulation section 70.5.

However, for those out-of-state-licensed CPAs who wish to perform attest services in New York on only a temporary basis, the new law provides for temporary practice permits. These permits are valid for up to 180 days during a twelve-month period and may be renewed up to three times in a five-year period. Of course, such out-of-state CPAs and their firms must consent to the disciplinary authority of the New York State Board of Regents when they obtain such temporary practice permits.

Some good news: The new law does not require those CPAs who are licensed and in good standing in another state that is his or her principal place of business to acquire either a New York CPA license or a temporary practice permit, as long as they are going to provide only non-attest services in New York. Such out-of-state CPAs must also consent to the Board of Regents' disciplinary authority.

**Non-licensed Individuals**

The new law provides an exemption to non-licensed individuals and business corporations who perform only accounting, management-advisory, financial-advisory, or tax services. Non-licensed individuals may also be permitted to prepare financial statements, using safe-harbor reporting language defined in the law. However, the new law is very explicit in stating that these individuals and businesses may not identify themselves in any manner as CPAs, PAs or associated designations.

**Requirement for All Firm Types to Maintain a Current Registration**

The new law requires that all CPA firms, regardless of type of legal organization, that operate with the expanded scope of practice, maintain a current registration with the SED, if those organizations perform attest services or use such designations as “CPA” or “CPA firm” or “PA” or “PA firm.” Previously, only CPA partnerships were required to register triennially with the SED.

**Peer Review**

All New York CPA firms will be required to undergo a peer review of their attest services every three years, effective January 1, 2012, except for sole proprietorship firms and firms with two or fewer accounting professionals. There were no mandatory peer requirements under the old law, although many firms had participated in the peer review process as part of their AICPA membership obligations. Regulations to implement the new mandatory quality review under the new law are required to be completed by the SED Commissioner by January 1, 2011.

**CPE Reporting Periods**

Under the old law, the CPE reporting year ended on each August 31. The new law changes that reporting period to a calendar year, effective January 1, 2009. For the transition, the new law provides a 16-month period (September 1, 2008 to December 31, 2009) to complete the 40-hour CPE requirement or the optional 24-hour CPE concentration.

However, the reporting period for CPE and for registration renewal will continue to be different. Each CPA’s three-year registration period to practice will continue to expire and be subject to renewal on the last day of the month preceding his or her birth month. (One unusual date provision to note: the requirement for obtaining four CPE credit hours of ethics training every three years will fall within each CPA’s three-year registration period, rather than in a three-year CPE period that ends on December 31.)

**Expanded Areas of Study for Concentration of CPE Credits**

Individuals required to maintain their New York CPA license must complete 40 hours of qualifying CPE credits or a 24-credit concentration in one of several specified areas in each calendar year (or, as mentioned above, for the 16 months ended December 31, 2009). The new law expands the areas of study that qualify for a 24-credit concentration to include, but not be limited to, accounting, attest, auditing, taxation, advisory services, specialized knowledge and applications related to specialized industries, and such other areas appropriately related to the practice of accounting “as may be acceptable.” As in the past, to fulfill the mandatory CPE requirements, programs must be taken from sponsors approved by the SED.

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There are some big changes ahead! If you have questions about how the new law may affect you, please contact Robert Levine ([rlevine@eisnerllp.com](mailto:rlevine@eisnerllp.com) or 212.891.4034) or Edward Martin ([emartin@eisnerllp.com](mailto:emartin@eisnerllp.com) or 212.891.4020) at Eisner LLP. For specific information about CPA licensing in New York, please see the New York State Board of Accountancy’s website at <http://www.op.nysed.gov/cpa.htm>.

**Executive CPE Opportunity**

Eisner LLP is pleased to provide a monthly Executive CPE Program to its clients and other friends. These morning sessions (for three credit-hours of continuing professional education) are presented without charge in our offices and are designed to keep professionals up-to-date on the wide variety of accounting, auditing, and financial-reporting matters of interest in today’s business marketplace. To receive a monthly invitation by mail or email, please contact Ms. Laura Mongiove at [lmongiove@eisnerllp.com](mailto:lmongiove@eisnerllp.com) or 212.891.8019.