



THE OHIO SOCIETY  
OF CERTIFIED  
PUBLIC  
ACCOUNTANTS

# FUNDAMENTALS OF OHIO ACCOUNTANCY LAW

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Martin is a shareholder in the Worthington law firm of Blaugrund, Herbert & Martin, Incorporated. His practice is concentrated in the areas of business transactions and business, tax, succession and estate planning for individuals and small to medium-sized businesses, as well as advising trade associations, charitable and other nonprofit organizations. Martin is also an Associate Professor of Law, Taxation and Accounting at the Capital University School of Management. Martin is the President and Founder of MDS CPA Review. Previously, Martin was an auditor and tax accountant with Touche-Ross and a rates analyst with Colorado Interstate Gas. Martin's J.D. and M.B.A. degrees are from The Ohio State University and his B.S.B.A. is from the University of Colorado. Martin is a member of the Ohio and Columbus Bar Associations. Martin is also a member of the AICPA and The Ohio Society of CPAs and serves as its legal counsel. Martin is a past Chairman of the Federal Taxation Committee of the Ohio State Bar Association ("OBAR") and is an inaugural member and past Chairman of the OBAR's Federal Tax Specialty Board. Martin has been selected by his peers as one of the "Best Lawyers in America" in a survey conducted by Woodward/White publishers, one of the top 5% of the lawyers in Ohio by Cincinnati Magazine and has been identified as one of the best lawyers in Columbus by Columbus Monthly. Martin has written several articles on business organizations and tax issues. Martin is also a frequent CLE/CPE speaker on various legal, accounting and tax topics.



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## I. WHAT IS THE PRACTICE OF PUBLIC ACCOUNTING IN OHIO?

### A. Ohio Revised Code (“ORC”)

1. **Public Accounting:** ORC §4701.01(A) defines the “practice of public accounting” as

Performing or offering to perform any engagement that will result in the *issuance of an attest report* and,

*With respect to a person who holds a CPA certificate, PA registration, foreign certificate or firm registration, any other services involving the use of accounting or auditing skills as established by rules adopted by the accountancy board.* (emphasis added)

2. **Attest Report:** ORC 4701.01(S) defines an attest report as

“Attest report” means an *opinion report, review report, compilation report, examination report, agreed-upon-procedures report,* or any similar report prepared in accordance with standards established by the *American institute of certified public accountants* with respect to financial statement or other financial information.

B. **Ohio Administrative Code (“OAC”).** OAC Rule 4701-7-04 is the rule under which the Accountancy Board has interpreted ORC §4701.01(A)

(A) “Practice of public accounting” means any of the following:

(1) The performance of or offering to perform any engagement that will result in the issuance of any report that is in accordance with the professional standards defined in rule 4701-9-03 [pertaining to generally accepted auditing standards] 4701-9-04 [pertaining to generally accepted accounting principles], 4701-9-05 [pertaining to attestation engagement standards], or 4701-9-06 [pertaining to compilations and review services standards] of the Administrative Code.

(2) The performance of or offering to perform *services* other than those described in paragraph (A) of this rule, such as consulting services, personal financial planning services, or the preparation of tax returns or the furnishing of advice on tax matters *by a sole proprietorship, partnership, limited liability company, professional association, corporation, or other business organization,* that advertises to the public as a “certified public accountant,” “CPA” or “public accountant,” or “PA.”

(B) A certified public accountant or public accountant who performs any services described in paragraph (A) of this rule must obtain an Ohio permit and be affiliated with a registered firm.

(C) “Regulated services” means the performance of or offering to perform any of the following services by a certified public accountant or public accountant who uses the designation “certified public accountant,” “CPA” or “public accountant,” or “PA” in association with those services and who is not affiliated with a registered firm:

(1) Consulting services in accordance with professional standards defined in rule 4701-9-08 of the Administrative Code.

(2) Tax services in accordance with the professional standards defined in rule 4701-9-09 of the Administrative Code.

(3) Preparing financial reports, signing financial reports, preparing reports on internal controls, or signing reports on internal controls.

(D) A certified public accountant or public accountant who performs services described in paragraph (C) must hold an Ohio permit.

(E) *The mere use by the holder of an Ohio permit issued under division (A) of section 4701.10 of the Revised Code of the designation “certified public accountant,” “CPA” or “public accountant,” “PA” shall not imply that the Ohio permit holder is actively engaged in the practice of public accounting as defined in this rule, as long as the Ohio permit holder has fully complied with the applicable continuing education provisions outlined in Chapter 4701-15 of the Administrative Code and does not provide any services described in paragraph (A) of this rule.*

## C. The Cardinal Rule for CPAs

### **Integrity and Objectivity**

1. OAC 4701-9-01 provides as follows:

(A) An Ohio permit holder shall maintain integrity and objectivity, shall not knowingly misrepresent facts, shall be free of conflicts of interest and shall not subordinate to others any professional judgment.

(B) If an Ohio permit holder has a conflict of interest between the interest of a client or employer and another person, but the Ohio permit holder believes that professional services can be performed with objectivity, this rule shall not prohibit the performance of professional services by the Ohio permit holder if the conflict of interest is disclosed to, and consent is obtained from, such client or employer and the other person.

(C) Disagreements over the application of acceptable alternatives permitted by the professional standards defined in Chapter 4701-9 of the

Administrative Code do not result in any subordination of professional judgment.

## II. USE OF THE CPA AND SIMILAR DESIGNATIONS BY FIRMS AND INDIVIDUALS.

### A. CPA Designation v. Permit to Practice

1. **The Designation.** ORC §§4701.06, .061, .07 and .09 define the criteria under which a person may be granted a “certificate in public accounting” or may be registered as a “public accountant” in the state of Ohio provided that, among other things, that the person is a *resident* of the State of Ohio.
2. **Permit to Practice v. Inactive Registration.** A person may not practice public accounting in Ohio, however, unless they possess a permit to practice public accounting from the Ohio Accountancy Board (an “Ohio permit”).

(a) **Unlawful use of titles and designations:** ORC §4701.14 provides in pertinent part as follows:

- (A) Except as permitted by rules adopted by the accountancy board, *no individual shall assume or use the title or designation “certified public accountant, “certified accountant,” “chartered accountant,” “enrolled accountant,” “licensed accountant.” or “registered accountant” or any other title or designation likely to be confused with “certified public accountant,” or any of the abbreviations “CPA,” “PA,” “CA,” “EA,” “LA,” or “RA,” or similar abbreviations likely to be confused with “CPA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant, unless the individual holds a CPA certificate and holds an Ohio permit.* However, an individual who possesses a foreign certificate, has registered under section 4701.09 of the Revised Code, and holds an Ohio permit may use the title permitted under the laws of the individual’s other licensing jurisdiction, followed by the name of the jurisdiction. (emphasis added)
- (B) [Omitted – parallel to (A) except that it pertains to PAs]
- (C) [Omitted – covered later under “Firm registration”]
- (D) No *individual shall sign, affix, or associate the individual’s or any trade or assumed name* used by the individual in the individual’s profession or business *to any attest* report with any wording indicating that the individual is an accountant or auditor, or with any wording accompanying or contained in the attest report that indicates that the individual has expert knowledge in accounting or auditing or expert knowledge regarding compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations, ordinances, *unless the individual holds an Ohio permit.*

However, this section does not prohibit any officer, employee, partner or principal of any organization from affixing the officer's, employee's, partner's or principal's signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the individual holds in that organization. This division also does not prohibit any act of a public official or public employee in the performance of the public official's or public employee's duties.

[(E) omitted – covered under “Firm Registration”]

(F) *No individual who does not hold an Ohio permit shall hold self out to the public as an “accountant” or “auditor” by use of either or both of those words on any sign, card, or letterhead, in any advertisement or directory, or otherwise without indicating on the sign, card, or letterhead, in the advertisement or directory, or in the other (sic) manner of holding out that the person does not hold an Ohio permit. An individual who holds a CPA certificate and an Ohio permit may hold self out to the public as an “accountant” or “auditor.”* However, this division does not prohibit any officer, employee, partner, or principal of any organization from describing self by the position, title or office the person holds in that organization. This division also does not prohibit any act of a public official or public employee in the performance of the public official's or public employee's duties.

(b) **Triennial renewal of permit:** ORC §4701.10 provides in pertinent part as follows:

(A) The accountancy board, upon application, shall issue *Ohio permits to practice public accounting* to holders of the CPA certificate or the PA registration. Subject to division (H)(1) of this section, there shall be a triennial Ohio permit fee in an amount to be determined by the board not to exceed one hundred fifty dollars. All Ohio permits shall expire on the last day of December of the year assigned by the board and, subject to division (H)(1) of this section, shall be renewed triennially for a period of three years by certificate holders and registrants in good standing upon payment of a triennial renewal fee not to exceed one hundred fifty dollars.

(B) The accountancy board may issue Ohio registrations to holders of the CPA certificate and the PA registration who are not engaged in the practice of public accounting. Such persons shall not convey to the general public that they are actively engaged in the practice of public accounting in this state. Subject to division (H)(1) of this section, there shall be a triennial Ohio registration fee in an amount to be determined by the board but not exceeding fifty-five dollars. All Ohio registrations shall expire on the last day of December of the year assigned by the

board and, subject to division (H)(1) of this section, shall be renewed triennially for a period of three years upon payment by certificate holders and registrants in good standing of a renewal fee not to exceed fifty-five dollars.

- (C) Any person who receives a CPA certificate and who applies for an initial Ohio permit or Ohio registration more than sixty days after issuance of the CPA certificate may, at the board's discretion, be subject to a late filing fee not exceeding one hundred dollars.
- (D) Any person to whom the board has issued an Ohio permit who is engaged in the practice of public accounting and who fails to renew the permit by the expiration date shall be subject to a late filing fee not exceeding one hundred dollars for each full month or part of a month after the expiration date in which such person did not possess a permit, up to a maximum of one thousand two hundred dollars. The board may waive or reduce the late filing fee for just cause upon receipt of a written request from such person.
- (E) Any person to whom the board has issued an Ohio permit or Ohio registration who is not engaged in the practice of public accounting and who fails to renew the permit or registration by the expiration date shall be subject to a late filing fee not exceeding fifty dollars for each full month or part of a month after the expiration date in which such person did not possess a permit or registration, up to a maximum of three hundred dollars. The board may waive or reduce the late filing fee for just cause upon receipt of a written request from such person.
- (F) Failure of a CPA certificate holder or PA registration holder to apply for either an Ohio permit or an Ohio registration within one year from the expiration date of the Ohio permit or Ohio registration last obtained or renewed, or one year from the date upon which the CPA certificate holder was granted a CPA certificate, shall result in suspension of the CPA certificate or PA registration until all fees required under divisions (D) and (E) of this section have been paid, unless the board determines the failure to have been due to excusable neglect. In that case, the fee for the issuance or renewal of the Ohio permit or Ohio registration, as the case may be, shall be the amount that the board shall determine, but not in excess of fifty dollars plus the fee for each triennial period or part of a period the certificate holder or registrant did not have either an Ohio permit or an Ohio registration.

(G) The board by rule may exempt persons from the requirement of holding an Ohio permit or Ohio registration for specified reasons, including, but not limited to, retirement, health reasons, military service, foreign residency, or other just cause.

(H)(1) The board by rule:

(a) May provide for the issuance of Ohio permits and Ohio registrations for less than three years' duration at prorated fees;

(b) Shall add a surcharge to the Ohio permit and Ohio registration fee imposed pursuant to this section of at least fifteen dollars but no more than thirty dollars for a three-year Ohio permit or Ohio registration, at least ten dollars but no more than twenty dollars for a two-year Ohio permit or Ohio registration, and at least five dollars but no more than ten dollars for a one-year Ohio permit or Ohio registration.

(2) Each quarter, the board, for the purpose provided in section [4743.05](#) of the Revised Code, shall certify to the director of budget and management the number of Ohio permits and Ohio registrations issued or renewed under this chapter during the preceding quarter and the amount equal to that number times the amount of the surcharge added to each Ohio permit and Ohio registration fee by the board under division (H)(1) of this section.

(c) **License Qualifications:** OAC 4701-7-08 provides that

(A) *A holder of a CPA certificate who holds an Ohio registration must use the qualification "inactive" after the designation "certified public accountant" or "CPA" each time the designation is used. The qualification must be displayed adjacent to the designation, in print at least as prominent as that used for the designation itself. (emphasis added)*

(B) [Omitted – parallel to (A) except that it pertains to PAs]

(C) A certified public accountant . . . who holds an Ohio registration may not perform any public accounting services defined in paragraph (A) of rule 4701-7-04 of the Administrative Code or any regulated services defined in paragraph (C) of rule 4701-7-04 of the Administrative Code.

### 3. Ohio Permit Exemptions

(a) **Exemptions from the Ohio Permit:** OAC 4701-7-06 provides as follows:

(A) Pursuant to division (A) of section 4701.14 of the Revised Code, a certified public accountant who meets any of the criteria described in paragraph (C), (D), (E), (F), or (G), of this rule may use the term "certified public accountant" without holding an Ohio permit or an Ohio registration as required by section 4701.10 of the Revised Code.

(B) [Omitted – parallel to (A) except that it pertains to PAs]

- (C) A certified public accountant or public accountant who *requests a waiver* of the requirements due to retirement must be submit to the board an affidavit that the certified public accountant or public accountant is retired from public accounting practice. A certified public accountant or public accountant who receives a waiver of the requirements due to retirement must use the term “retired” after the CPA or PA designation.
- (D) A certified public accountant or public accountant who *requests a waiver of the requirements due to health reasons, military service, or foreign residence* must submit appropriate documentation to the board supporting the request. A certified public accountant or public accountant who receives a *waiver of the requirements due to health reasons, military service, or foreign residence* must use the term “inactive” after the CPA or PA designation.
- (E) A *public accountant who does not meet the residency requirement* described in paragraph (A) of rule 4701-3-01 of the Administrative Code *may request a waiver* of the requirements if the public accountant is in good standing at the time of the request.
- (F) A *certified public accountant who holds a CPA certificate who resides in another state and is employed in the other state* may request a waiver of the requirements if the certified public accountant is licensed to practice public accounting in the other state at the time of the request.
- (G) A certified public accountant or public accountant *may request a waiver of the requirements for a reason not specified in paragraph (C), (D), (E), or (F) of this rule by stating the reasons why fulfillment of the requirements would result in a hardship*. If the board grants a waiver based upon the provisions of this paragraph, it may require that the certified public accountant or public accountant place the term “inactive” after the CPA or PA designation. (emphasis added)

(b) **Residence:** OAC 4701-3-01 provides as follows:

- (A) An individual shall be considered a resident of Ohio if
  - (1) The individual maintains a permanent place of residence in Ohio and actually is domiciled in Ohio.
  - (2) The individual is a resident of another state but works full time in Ohio. A person who is employed full time in another state and actually resides in that state will not be considered an Ohio resident.

- (B) [waiver provisions pertaining to CPA candidates omitted]
- (C) A candidate who earns valid conditional credit on the CPA examination, while in compliance with paragraph (A) of this rule, may file for an Ohio CPA certificate under the laws of this state, regardless of residence.
- (D) [requests for waivers omitted]

#### 4. Discussion

- a. In Ohio, merely earning a certificate in public accounting does not entitle a person to practice public accounting or even use the designation CPA or PA.
- b. To use the designation CPA or PA, at a minimum a person must “register” with the accountancy board.
- c. To perform the attest function, a person must hold an Ohio permit.
- d. To practice public accounting, a person must hold an Ohio permit.
- e. To perform services involving the use of accounting skills other than the issuance of an attest report, a person does not have to hold an Ohio permit. But any person performing any such non-attest services is not practicing public accounting and is not permitted to suggest in any way that they are an accountant unless they also make it clear that they do not hold an Ohio permit.
- f. To obtain an Ohio permit, among other things, the applicant must possess a certificate in public accounting or have registered as a public accountant.
- g. As long as the person obtains an Ohio permit, that person may use the designation CPA or PA whether or not she is in the practice of public accounting because she is qualified to practice public accounting if she desired to do so.
- h. If a person who has a certificate in public accounting or has registered as a public accountant and desires to use the designation “CPA” or “PA” but does not want to obtain an Ohio permit, that person must use the designation “inactive” along with the designation CPA or PA. A person with an “inactive” registration may not perform any public accounting or other regulated services.
- i. Waivers from the Ohio permit or Ohio Registration may be granted if:
  - (i) The person is 67 years of age, satisfies the residency requirement, and certifies that she is retired and appends the word “retired” after the CPA designation;

- (ii) The person is 55, does not fulfill the residency requirement, and certifies that she is retired provided that the person appends the word “retired” after the CPA or PA designation;
  - (iii) The person is granted a waiver due to health reasons, military service, or foreign residence provided that the person uses the term “inactive” after the CPA or PA designation;
  - (iv) A person who is registered in Ohio as a public accountant but is no longer a resident, provided that the person uses the term “inactive” after the PA designation.
  - (v) A person who obtained a certificate in public accounting from the State of Ohio by reciprocity but is no longer a resident, provided that the person uses the term “Ohio-inactive” after the CPA designation.
- j. A person who owns real property and votes in Ohio, but has a residence in another state and does not work full time in Ohio, is not a resident in the State of Ohio for accountancy board purposes. Therefore, that person is not entitled to a certificate in public accounting in Ohio and may not obtain an Ohio permit or an Ohio registration (except as permitted in OAC 4701-7-06 (E), (F), or (G) see II.A.6. (ii) and (v)).

## **B. The Ohio Permit and Continuing Education**

### **1. The Ohio Permit.** ORC §4701.10 provides in pertinent part

- (A) . . . Subject to (H)(1) of this section, there shall be a *triennial Ohio permit fee* in an amount to be determined by the board not to exceed one hundred fifty dollars. All Ohio permits shall expire on the last day of December of the year assigned by the board and, subject to division (H)(1) of this section, shall be renewed triennially for a period of *three years* by certificate holders and registrants in good standing upon payment of a triennial fee not to exceed one hundred fifty dollars.

(H)(1) The board by rule:

- (a) May provide for the issuance of Ohio permits and Ohio registrations for less than three years' duration at prorated fees;
- (b) Shall add a surcharge to the Ohio permit and Ohio registration fee imposed pursuant to this section of at least fifteen dollars but no more than thirty dollars for a three-year Ohio permit or Ohio registration, at least ten dollars but no more than twenty dollars for a two-year Ohio

permit or Ohio registration, and at least five dollars but no more than ten dollars for a one-year Ohio permit or Ohio registration.

- (2) Each quarter, the board, for the purpose provided in section [4743.05](#) of the Revised Code, shall certify to the director of budget and management the number of Ohio permits and Ohio registrations issued or renewed under this chapter during the preceding quarter and the amount equal to that number times the amount of the surcharge added to each Ohio permit and Ohio registration fee by the board under division (H)(1) of this section.

**2. Continuing Education**

- a. ORC §4701.11 provides as follows:

The accountancy board *may adopt rules requiring that each applicant for an Ohio permit shall have demonstrated to the satisfaction of the board that the applicant has maintained a high level of professional competence by the completion of programs of continuing education satisfactory to the board during the period immediately prior to the application for the permit. The board shall not require more than one hundred twenty hours of those programs over any three-year period for applicants possessing an Ohio permit.* For purposes of this section, the board shall not approve any continuing education courses for which fees are charged and that are sponsored by an accounting association in this state unless those courses are open to all persons registered or certified under this chapter and unless the fees charged are reasonable for all persons desiring to take the courses.

*The board may issue an Ohio permit for less than three years to any person who is unable to complete continuing education hours required for renewal of a triennial Ohio permit for good cause, as established by rule. The Ohio permit shall be conditioned upon the completion of all required continuing education hours during the period for which the Ohio permit is issued. (emphasis added)*

- b. **Continuing Education Rules:** OAC Chapter 4701-15 provides in pertinent part as follows:

**OAC 4701-15-01 Continuing Education Rules.**

The "Statement on Standards for Continuing Professional Education," jointly issued by the "National Association of State Boards of Accountancy" and the "American Institute of Certified Public Accountants", is considered by the board as an acceptable set of guidelines on matters related to continuing education, and departures from this statement must be justified by an Ohio permit holder who does not follow the standards.

**OAC 4701-15-02 Continuing Education Requirement.**

- (A) The continuing education requirement for certified public accountants and public accountants holding the Ohio permit is one hundred twenty credits for each triennial reporting period. For licensees reporting continuing education in 2005, 2006, or 2007 the triennial reporting period begins on November first of 2002, 2003, or 2004 and ends on December thirty-eight months later. Beginning with licensees reporting continuing education by December 31, 2008, the triennial reporting period is three years beginning on January first and ending on December thirty-first. Credit earned after December thirty-first of the third reporting year may not be claimed toward fulfillment of the continuing education requirement, unless the board grants an extension of time due to a continuing education deficiency in accordance with rule 4701-15-07 of the Administrative Code. The continuing education reporting dates for each of the three continuing education reporting groups are as follows:
- (1) All Ohio permit holders who are in continuing education reporting group one normally report continuing education in 2005, 2008, 2011, and every three years thereafter.
  - (2) All Ohio permit holders who are in continuing education reporting group two normally report continuing education in, 2006, 2009, 2012 and every three years thereafter.
  - (3) All Ohio permit holders who are in continuing education reporting group three normally report continuing education in 2007, 2010, 2013, and every three years thereafter.
- (B) All new certified public accountants will be placed in group one, group two, or group three. The continuing education requirement for new certified public accountants holding the Ohio permit is forty credits. The two-year reporting period begins on January first of the year in which the new certified public accountant obtains the CPA certificate, and ends on December thirty-first of the year following the year in which the new certified public accountant obtains the CPA certificate.

#### **OAC 4701-15-03 Controls and Reporting**

- (A) *All Ohio permit holders who report continuing education must provide a statement to the board under penalty of perjury setting forth the continuing education completed.* The statement must be executed by the Ohio permit holder both in such a manner and within the time limits as prescribed by the board.
- (B) An Ohio permit holder must report continuing education under the provisions of rule 4701-15-02.
- (C) An Ohio permit holder who is deficient in continuing education, if granted an extension of time to complete the deficiency in accordance with rule

4701-15-07 of the Administrative Code, must report continuing education under the provisions of rule 4701-15-08 of the Administrative Code.

- (D) An Ohio registration holder must report continuing education under the provisions of rule 4701-15-09 of the Administrative Code.
- (E) A *non resident Ohio permit holder* shall be determined to have met the Ohio continuing education requirements by meeting the continuing education *requirements of the state in which the Ohio permit holder's principal office is located*. If that state does *not have a continuing education requirement*, then the nonresident permit holder must *comply with the Ohio* continuing education reporting requirements.

**OAC 4701-15-12 Continuing education verification.**

- (A) The board annually conducts a verification of continuing education programs claimed for continuing education credit by selected Ohio permit holders. Consequently, an Ohio permit holder must retain evidence to support fulfillment of the continuing education requirement for a period of one year subsequent to the end of the holder's most recent continuing education reporting period.
- (B) An Ohio permit holder who fails to complete one hundred twenty credits of verified continuing education must make up the deficiency and pay the late filing fee described in division (D) of section 4701.10 of the Revised Code as of the date the Ohio permit holder completes the required continuing education.

**OAC 4701-15-04 Measurement.**

- (A) Measurement of continuing education is in terms of credits. The overriding consideration in determining whether a specific program qualifies for continuing education credit is that it should be a formal program of learning that contributes directly to the professional competence of an Ohio permit holder.
- (B) For classroom programs, a fifty-minute period equals one credit. Beyond the first credit, each twenty-five minute period equals one-half credit. The minimum acceptable length of a classroom program is one credit. Eight credits may be given to a classroom program offered during one day provided the actual session is at least three hundred minutes in length, excluding breaks.
- (C) College courses earn ten credits per quarter hour, or fifteen credits per semester hour, unless an Ohio permit holder earns additional credit in accordance with the provisions of paragraph (G) of this rule.

- (D) Time devoted to reading, computer tutorials, or other self-study does not earn continuing education credit, unless these activities form the basis of a program including one or more examinations that must be successfully completed. A qualifying self-study program will earn credit based on the program's average completion time as determined by pilot testing.
- (E) An instructor or discussion leader of a continuing education program may be awarded continuing education credit up to three times the credit a program participant would receive. Time devoted to preparation for a classroom program does not earn separate credit. Credit for teaching a particular classroom program may be claimed only once each year.
- (F) The board must evaluate continuing education credit claimed for publications or other special learning activities, and may require that the Ohio permit holder submit appropriate documentation to support the credit claimed. Credit awarded for passing major professional examinations that have been approved by the board is normally five credits per half hour if the total examination session is at least two and one half continuous hours in length, up to a maximum of forty-five credits per session.
- (G) The board may increase the continuing education credit awarded to a classroom program as defined in paragraph (B) or (C) of this rule, and award such additional credit to any Ohio permit holder successfully passing the program. Such a program must include one or more examinations to qualify for additional credit. The board may specify the amount of such additional credit awarded, as well as passing scores or grades required to earn such additional credit

**OAC 4701-15-05 Requirements for Continuing Education Program Acceptance**

- (A) The board will accept a continuing education program if the program meets the requirements of rule [4701-15-04](#) of the Administrative Code and the Ohio permit holder retains appropriate supporting documentation.
- (B) Formal programs requiring attendance should qualify if:
  - (1) An outline is prepared and preserved by the program sponsor.
  - (2) The program is at least fifty minutes in length.
  - (3) The program is conducted by a qualified instructor, discussion leader or lecturer.
  - (4) A record of registration or attendance is maintained by the program sponsor.

- (C) The following are deemed to qualify provided the requirements in paragraphs (A) and (B) of this rule are met:
- (1) Professional development programs of the "American Institute of CPAs," the "National Society of Accountants," and state accounting societies and their chapters.
  - (2) Technical sessions at meetings of the "American Institute of CPAs," the "National Society of Accountants," and state accounting societies and their chapters.
  - (3) University or college courses.
  - (4) Formal organized public accounting firm educational programs.
  - (5) Continuing education providers that are approved by an accountancy board of another state, territory, or political subdivision of the United States.
  - (6) Continuing education providers that are approved by the "National Association of State Boards of Accountancy."
  - (7) Continuing education providers registered under the provisions of rule 4701-15-10 of the Administrative Code.
  - (8) Continuing education programs taken from other providers for which the Ohio permit holder has supporting documentation.
- (D) The board may require either sponsors of continuing education programs or Ohio permit holders to furnish proof of attendance or completion of a continuing education program, course material, or any other information the board deems essential for verification purposes.
- (E) Valid continuing education credit earned under the laws of another state, territory, or political subdivision of the United States may be used toward fulfillment of the Ohio continuing education requirements.
- (F) The right is specifically reserved to the board to disapprove credit claimed for any continuing education program that does not meet the requirements of this rule.

#### **ORC 4701-15-06 Reduction of Continuing Education Requirement**

- (A) The board may grant a reduction of the continuing education requirement to an Ohio permit holder who presents appropriate documentation for health reasons, active military duty in the armed forces of the United States, nonresidence, or other just cause.

### **OAC 4701-15-07 Continuing Education Deficiency**

- (A) The board may grant an Ohio permit holder who is deficient in the required continuing education at the renewal date an extension of time, not to exceed one year, to correct the deficiency. The Ohio permit holder must submit appropriate documentation to the board that details the individual circumstances supporting the extension request.
- (B) An Ohio permit holder who is deficient in the required continuing education at the renewal date and does not receive an extension of time must pay the late filing fee described in division (D) of section 4701.10 of the Revised Code as of the date the Ohio permit holder completes the continuing education requirement.

### **OAC 4701-15-08 Deficiency Status**

- (A) An Ohio permit holder who is granted an extension of time to correct a continuing education deficiency in accordance with rule 4701-15-07 of the Administrative Code will be placed in deficiency status for the extension period. If the Ohio permit holder fulfills the applicable continuing education requirement at the end of the extension period, the Ohio permit holder will be removed from deficiency status. The Ohio permit holder must then report one hundred twenty credits of continuing education for the period beginning after the extension period and extending through the Ohio permit holder's reporting date.
- (B) An Ohio permit holder who is still deficient in continuing education at the end of the extension period must obtain an Ohio registration, unless the board grants the Ohio permit holder a reduction in continuing education in accordance with rule 4701-15-06 of the Administrative Code and the Ohio permit holder fulfills the reduced continuing education requirement as a result.
- (C) If the Ohio permit holder obtains an Ohio registration in accordance with paragraph (B) of this rule, any application for a subsequent Ohio permit shall be in accordance with the provisions of rule 4701-15-09 of the Administrative Code

### **OAC 4701-15-09 Converting to Ohio permit status**

- (A) A holder of a CPA certificate or PA registration *who holds an Ohio registration* defined in division (B) of section 4701.10 of the Revised Code, and who *wishes to obtain the Ohio permit* defined in division (A) of section 4710.10 of the Revised Code *must first complete* One hundred twenty credits of continuing education that must be earned in the three-

year period preceding application for the Ohio permit, unless the Ohio registration holder is a CPA and has not held an Ohio CPA certificate for three years. The continuing education must be taken in subjects approved by the board.

- (B) An Ohio permit holder who is deficient in continuing education at the time of obtaining an Ohio registration must report the amount of the deficiency plus the continuing education requirement specified in paragraph (A) of this rule before an Ohio permit can be issued, unless the board waives or reduces this requirement in accordance with rule 4701-15-06 of the Administrative Code.

#### **OAC 4701-15-10 Continuing Education Sponsor Registration**

[OMITTED]

#### **OAC 4701-15-11 Required Continuing Education Programs**

*(A) An Ohio permit holder who assumes responsibility by performing work on any financial reporting engagement, prepares any financial report, or signs any financial report in accordance with the professional standards outlined in rule 4701-9-03 [pertaining to generally accepted auditing standards] 4701-9-04 [pertaining to generally accepted accounting principles], 4701-9-05 [pertaining to attestation engagement standards], or 4701-9-06 [pertaining to compilations and review services] of the Administrative Code shall complete at least twenty-four continuing education credits in the fields of accounting or auditing during the three-year reporting period, specific to the types of services provided by the Ohio permit holder.*

(B) An Ohio permit holder who performs regulated services in financial reporting or internal controls reporting defined in paragraph (C)(2) of rule 4701-7-04 of the Administrative Code shall complete at least twenty-four continuing education credits in the fields of accounting and auditing during the three-year reporting period.

(C) An Ohio permit holder who assumes responsibility by performing work on any tax engagement, prepares any tax return, or signs any tax return as a certified public accountant or public accountant shall complete at least twenty-four continuing education credits in the field of taxation during the three-year reporting period, specific to the types of services provided by the Ohio permit holder.

(D) An Ohio permit holder specializing in taxation who assumes responsibility by performing tax work on any engagement that will result

in the issuance of a report in accordance with the professional standards defined in rule of 4701-9-03 or 4701-9-05 of the Administrative Code shall complete at least eight continuing education credits during the three-year reporting period covering the specific auditing or attestation standards related to the services provided by the Ohio permit holder.

(E) An Ohio permit holder who practices public accounting or performs regulated services other than those defined in paragraph (A), (B), (C) or (D) of this rule, or who holds out to the public as a certified public accountant or public accountant, *shall compete at least seventy-five per cent of the continuing education requirement in subjects directly related to the professional services provide by the Ohio permit holder.*

(F) All Ohio permit holders must complete three continuing education credits each three-year reporting period covering the applications of professional standards and responsibilities. The following guidelines are applicable:

- (1) All new certified public accountants who obtain an Ohio permit must complete a program approved by the board that emphasizes the accountancy law, defined in Chapter 4701 of the Revised Code, and the board rules, defined in agency 4701 of the Administrative Code. The program must be completed prior to the expiration date of the permit.
- (2) The board may require that the program described in paragraph (F)(1) of this rule be taken by any certified public accountant, public accountant, or staff member of a public accounting firm that is the subject of a disciplinary action by the board.
- (3) An Ohio permit holder who has completed the program described in paragraph (F)(1) of this rule may claim credit in professional standards and responsibilities for other courses that are acceptable to the board. Such courses may cover the subjects of professional ethics, ethical philosophy, or the accountancy laws and regulations of another state.
- (4) The board may approve a program in professional standards and responsibilities of fewer than three credits.

**OAC 4701-7-08 License Qualifications** (see II.A.2. (b))

**OAC 4701-15-13 Continuing Education Requirements of Non CPA Owners**

- (A) Pursuant to division (D)(6) of section 4701.04 of the Revised Code, an individual who owns an equity interest in a public accounting firm, and does not hold an Ohio permit or a foreign certificate, shall maintain certain minimum continuing education requirements as described in paragraphs (B) and (C) of this rule.
- (B) An individual who does not hold a professional license issued by the state of Ohio or any other state, must comply with the continuing education requirements established by section 4701.11 of the Revised Code and Chapter [4701-15](#) of the Administrative Code.
- (C) An individual who holds a professional license issued by the state of Ohio or any other state must comply with the continuing education requirements established by law to maintain that professional license.

### 3. Discussion

- a. To obtain an Ohio permit a fee must be paid every three years and the applicant must satisfy the continuing education requirement.
- b. 120 classroom hours (100 actual hours) of continuing education must be completed every three years. Exceptions:
  - (1) The board may reduce the required hours due to extraordinary circumstances such as prolonged health problems or military service.
  - (2) The board may grant an additional year to attain the required continuing education due to special circumstances.
- c. Continuing education programs that qualify include:
  - (1) AICPA, OSCP, NASBA and other sponsored classroom courses;
  - (2) University courses;
  - (3) Correspondence courses with some evidence of satisfactory completion (i.e., a test or quiz); and
  - (4) Service as instructor qualifies so long as the presentation is not repetitious and in the aggregate does not exceed three times actual class hours.
- d. If an Ohio permit holder has responsibility for any financial reporting engagements, prepares or signs any attest report, he must complete at least twenty-four continuing education hours in accounting or auditing.

- e. If an Ohio permit holder has responsibility for any tax engagement, prepares or signs any tax return, he must complete at least twenty-four continuing education hours in the field of taxation.
- f. All other Ohio permit holders must complete at least seventy-five per cent of the continuing education requirement in subjects directly related to their principal professional work.
- g. Each Ohio permit holder must certify to the board under penalty of perjury that she has completed her continuing education requirement and she must retain evidence in support of her certification for up to period of four years.
- h. A licensed professional who does not possess an Ohio permit but who is an owner of a public accounting firm must maintain the minimum continuing education requirements necessary to maintain his individual professional license.
- i. Unlicensed individuals who are owners of a public accounting firm must maintain the minimum continuing education requirements applicable to Ohio permit holders.

### C. Firm Registration

1. **Definitions:** ORC §4701.01 provides in pertinent part as follows:

(B) “Public accounting firm” means a sole proprietorship, a partnership, a limited liability company, a corporation-for-profit, or any other business organization that is engaged in the practice of public accounting in this state.

...

(I) “Qualified firm” means a sole proprietorship, partnership, professional association, corporation-for-profit, limited liability company, or other business organization in *which the individuals who own a majority of the business organization interests in the business organization and control the business organization hold an Ohio permit or a foreign certificate.*

(J) “Own” means any *direct or indirect ownership* of an equity interest in a public accounting firm or qualified firm.

(K) “Control” or “controlled” means the right to exercise the *majority of the voting equity interests* in a public accounting firm or qualified firm with respect to any matter.

(L) “Equity interest” means any *capital interest or profit interest* in a sole proprietorship, partnership, professional association, corporation-for-profit, limited liability company, or other business organization.

(O) “Firm registration” or “registered firm” means registration as a public accounting firm under section 4701.04 of the Revised Code.

(R) “Foreign certificate” means a certificate of a certified public accountant issued under the laws of another state. (emphasis added)

2. [UNUSED]

3. **Unlawful use of titles and designations:** ORC §4701.14 provides in pertinent part as follows:

(C) *Except as provided in divisions (C)(1), (2), (3), and (4) of this section, no partnership professional association, corporation-for-profit, limited liability company, or other business organization not addressed in this section that is practicing public accounting in this state shall assume or use the title or designation certified public accountant, “certified accountant,” “chartered accountant,” “enrolled accountant,” “licensed accountant,” or “registered accountant” or any other title or designation likely to be confused with “certified public accountant,” or any of the abbreviations “CPA,” “PA,” “CA,” “EA,” “LA,” or “RA,” or similar abbreviations likely to be confused with “CPA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the business organization is a public accounting firm.*

(1)(a) A *partnership* may assume the title or designation “certified public accountant,” the abbreviation “CPA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership is composed of certified public accountants *if it is a registered firm, if a majority of its partners who are individuals hold a CPA certificate or a foreign certificate, and if a majority of the owners of any qualified firm that is a partner hold a CPA certificate or a foreign certificate.*

(1)(b) [Omitted – parallel to (1)(a) except that it pertains to PAs]

(2) [Omitted – parallel to (1) except that it pertains to professional associations and their shareholders]

(3) [Omitted – parallel to (1) except that it pertains to corporations-for-profit and their shareholders]

(4) [Omitted – parallel to (1) except that it pertains to limited liability companies and their members]

[(D) omitted - covered under Permit to Practice v. Inactive Registration]

(E) *No person shall sign, affix, or associate the name of a partnership, limited liability company, professional association, corporation-for-profit, or any other business organization not addressed in this section to any attest report with any wording accompanying or contained in the attest report that indicates that the partnership, limited liability company, professional association, corporation-for-profit, or other business organization is composed of or employs accountants or auditors or persons having expert knowledge in accounting or auditing or expert knowledge regarding compliance with conditions established by law or contract, including but not limited to, statutes, ordinances, regulations, grants, loans, and appropriations, unless the partnership, limited liability company, professional association, corporation-for-profit, or other business organization is a registered firm.*

[(F) omitted – covered under Permit to Practice v. Inactive Registration]

(G) *No partnership, limited liability company, professional association, corporation-for-profit, or any other business organization not addressed on this section that is not entitled to assume or use the title “certified public accountant” or “public accountant” under division (C) of this section shall hold itself out to the public as a partnership, limited liability company, professional association, corporation-for-profit, or any other business organization not addressed on this section as being composed of or employing “accountants” or “auditors” by use of either or both of those words on any sign, card, or letterhead, in any advertisement or directory, or otherwise, without indicating on the sign, card, or letterhead, in the advertisement or directory, or in the other (sic) manner of holding out that the partnership, professional association, corporation-for-profit, limited liability company, or any other business organization is not a registered firm and is not permitted by law to practice as a public accounting firm.*

(H) *No person shall assume or use the title or designation, “certified public accountant” or “public accountant” in conjunction with names indicating or implying that there is a partnership or in conjunction with the designation “and Company” or “and Co.” or a similar designation if, in any of those cases, there is in fact no bona fide partnership of certified public accountants under division (C)(1)(a) of this section or as a partnership of public accountants under divisions (C)(1)(b) of this section. However, a sole proprietor or partnership that was on October 22, 1959, or a corporation that on or after September 30, 1974, has been, lawfully using a title or designation of those types, may continue to do so if the sole proprietor, partnership, or corporation otherwise complies with this section. (emphasis added)*

4. **Registration of firms; equity interests; peer review:**

A. ORC §4701.04 provides as follows:

(A) *No public accounting firm shall engage in the practice of public accounting in this state unless it registers with the accountancy board and pays a registration fee set by the board.*

(B) Public accounting firms shall apply for initial registration within ninety days after formation or within ninety days after commencement of practicing public accounting in this state. All public accounting firms shall renew their registration triennially. All public accounting firms shall submit with their initial and renewal registration applications all of the following:

(1) A list of the names, addresses, and certificate or registration numbers of all individuals who hold an Ohio permit and who own an equity interest in the public accounting firm or are employed by the public accounting firm;

(2) A list of names and addresses of each person who does not hold an Ohio permit or a foreign certificate and who owns an equity interest in the public accounting firm if the person's principal place of business is located in this state;

(3) A statement that the public accounting firm and each person who owns an equity interest in the public accounting firm or is employed by the firm and who does not hold an Ohio permit or a foreign registration is in compliance with divisions (C) and (D) of this section.

(C) A public accounting firm shall satisfy all of the following requirements in order to register:

(1) Except as provided in division (C)(5) of this section, each partner, shareholder, member or other person who owns an equity interest in the public accounting firm shall hold an Ohio permit or a foreign certificate.

(2) The chief executive of any office of a public accounting firm located in or doing business in this state shall hold an Ohio permit or a foreign certificate.

(3) Each individual in a public accounting firm who signs any attest report issued from an office of the public accounting firm located in this state shall hold an Ohio permit.

(4) An individual who owns an equity interest in the public accounting firm and who holds an Ohio permit or a foreign certificate, or a qualified firm

that owns an equity interest in the public accounting firm, shall assume ultimate responsibility for any attest report issued from an office of the public accounting firm located in this state.

- (5) Any person who does not hold an Ohio permit or a foreign certificate and who holds an equity interest in the public accounting firm satisfy the conditions set forth in division (D) of this section.
  - (6) The public accounting firm shall provide for the transfer of the equity interest owned by persons who do not hold an Ohio permit *or a foreign certificate to either the public accounting firm or to another person who owns an equity interest in the firm if a person who does not hold an Ohio permit or foreign certificate withdraws from or ceases to be an employed by the public accounting firm. The public accounting firm may make payments in connection with the person's withdrawal from the firm to that person or, if that person is deceased or dissolved, to the person's estate or successor in interest.*
- (D) A person who does not hold an Ohio permit or a foreign certificate may own an equity interest in a public accounting firm if all of the following conditions are met:
- (1) All of the individuals who hold an Ohio permit or a foreign certificate and who own equity interests in the public accounting firm, and qualified firms that own equity interests in the public accounting firm, own, in the aggregate, a majority of the equity interests in the public accounting firm and control the public accounting firm.
  - (2) The person does not assume or use any titles or designations specified in division (A) of section 4701.14 of the Revised Code. The person may designate or refer to the person as a shareholder, partner, member, principal, owner, or officer of the public accounting firm and also may use any other title that the board authorizes by rule.
  - (3) The person is not in violation of any standard regarding the character or conduct of that person that the board establishes by rule.
  - (4) The person's participation in the business of the public accounting firm is the person's principal occupation and consists of providing services to or on behalf of the public accounting firm, and the person is not functioning solely or predominately as a passive investor in the public accounting firm.
  - (5) The person has graduated with a baccalaureate or higher degree conferred by a college or university approved by the board.

- (6) The person meets or exceeds the continuing education requirements that the board establishes by rule.
- (7) A person who holds a professional license, registration, or certification issued by this state or another state complies with the requirements of that license, registration or certification.
- (8) The person abides by the code of conduct of the American Institute of Certified Public Accountants or a comparative code of professional conduct that the board adopts by rule.
- (9) The person complies with all applicable provisions of this chapter and the rules adopted by the board.
- (E) A person who owns a voting equity interest in a public accounting firm may not delegate, by proxy or otherwise, the duty to exercise any voting rights to a person that does not hold an Ohio permit or a foreign certificate or to a person that is not a qualified firm.
- (F) As a condition for initial or renewal registration of a public accounting firm on and after January 1, 1993, the board by rule shall require that each public accounting firm undergo a peer review . . . .

**B. OAC 4701-7-09 Internet Practice**

- (A) A firm that provides public accounting services to Ohio clients via a website shall provide, in the website's home page, a means for regulators and the public to contact a responsible licensed CPA in that firm regarding complaints, questions, or the firm's compliance with applicable statutes and administrative regulations.
- (B) The board may either bring an action or file a complaint with the appropriate state accountancy board against any certified public accountant or public accounting firm located and licensed in another state who is not in compliance with paragraph (A) of this rule in accordance with the provision of division (I)(4) of section 4701.14 of the Revised Code.

**5. Fees for Registration of Public Accounting Firms; Insurance:**

**A. OAC 4701-13-01 provides as follows:**

- (A) The registration fee for a public accounting firm shall be assessed as follows:
  - (1) A public accounting firm with one to four Ohio permit holders or foreign certificate holders shall pay an initial registration fee of ten dollars. The

renewal fee for such firms shall be thirty dollars, plus five dollars for each office maintained by the firm.

- (2) A public accounting firm with five to nine Ohio permit holders or foreign certificate holders shall pay an initial registration fee of ten dollars. The renewal fee for such firms shall be thirty dollars, plus five dollars for each office maintained by the firm.
- (3) A public accounting firm with ten or more Ohio permit holders or foreign certificate holders shall pay an initial registration fee of ten dollars. The renewal fee for such firms shall be thirty dollars, plus five dollars for each office maintained by the firm.
- (4) The board may prorate the registration fee for the purpose of administering the firm registration and peer review rules.
- (5) Any public accounting firm which does not comply with any legal firm registration or peer review requirement described in section 4701.04 of the Revised Code and that requirement's associated deadline, described in paragraph (C) of this rule, shall be assessed a penalty fee based upon the number of licensees in the firm. The amount of the penalty shall be determined as follows:
  - (a) A public accounting firm with one to four Ohio permit holders or foreign certificate holders, described in paragraph (A)(1) of this rule, shall pay a penalty fee of one hundred fifty dollars.
  - (b) A public accounting firm with five to nine Ohio permit holders or foreign certificate holders, described in paragraph (A)(2) of this rule, shall pay a penalty fee of three hundred sixty dollars.
  - (c) A public accounting firm with ten or more Ohio permit holders or foreign certificate holders, described in paragraph (A)(3) of this rule, shall pay a penalty fee of nine hundred dollars.
- (B) Each public accounting firm in Ohio not organized as a proprietorship or general partnership shall provide written evidence satisfactory in form and substance to the board and shall provide a certification satisfactory in form and substance to the board as part of its triennial registration that it has purchased and will maintain in effect until its next registration professional liability insurance as follows:
  - (1) Public accounting firms with two to four partners, shareholders, members or other Ohio permit holders or foreign certificate holders shall purchase and maintain no less than \$250,000 of professional liability insurance.

- (2) Public accounting firms with five to nine partners, shareholders, members or other Ohio permit holders or foreign certificate holders shall purchase and maintain no less than \$500,000 of professional liability insurance.
- (3) Public accounting firms with ten or more partners, shareholders, members or other Ohio permit holders or foreign certificate holders shall purchase and maintain no less than \$1,000,000 of professional liability insurance.

(C) The renewal deadlines for registration of public accounting firms are as follows:

(1) A public accounting firm that performs engagements subject to peer review must renew its firm registration by October thirty-first of the year assigned by the board to the firm for renewal. The firm must submit to the board all required firm registration renewal documentation, including evidence of an approved peer review not previously submitted to the board, by that date.

(2) A public accounting firm that does not perform any engagement subject to peer review, and that uses the designation “Certified public accountant,” the abbreviation “CPA,” “public accountant,” or the abbreviation “PA” must renew its firm registration by July thirty-first of the year assigned by the board to the firm for renewal. The firm must submit to the board all required firm registration renewal documentation to the board by that date.

B. OAC 4701-13-02: Authorized peer review program administrator

(A) The board designates the “Ohio Society of Certified Public Accountants” as its agent and authorized peer review program administrator pursuant to division (G) of section 4701.04 of the Revised Code.

(B) The “Ohio Society of Certified Public Accountants” may charge a fee to firms required to participate in the peer review program in order to cover costs of program administration. The board shall approve this fee.

C. OAC 4701-13-03: Designated peer review committee

(A) The board designates the peer review acceptance committee of the “Ohio Society of Certified Public Accountants” as its peer review committee pursuant to division (G)(1) of section 4701.04 of the Revised Code.

6. **Definitions:** OAC 4701-13-05 provides in pertinent part as follows:

(A) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(B) “Professional liability insurance” means any of the following:

(1) Commercially available professional liability insurance or a professional liability insurance program;

(2) A deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States treasury obligations;

(3) A bank letter of credit or insurance company bond.

7. **Discussion**

a. A business organization practicing public accounting may not use the designation CPA, PA, accountant, etc., unless a majority of its owners, or a majority of the owners either directly or indirectly through a qualified firm, possess a CPA certificate issued from the state of Ohio or another jurisdiction.

b. A business organization may not associate its name with an attest report unless it is registered as a public accounting firm with the accountancy board.

c. A business organization that is not registered as a public accounting firm may not hold itself out as employing accountants or auditors without indicating on its professional cards, letterhead, etc., that it is not registered as a public accounting firm.

d. In order to register as a public accounting firm

(i) the CEO of any office located in or doing business in Ohio must be a CPA;

(ii) any person who signs an attest report issued from an office in Ohio must hold an Ohio permit;

(iii) the majority of the capital, profits and voting rights of the firm must be owned and controlled by CPAs;

(iv) among other things, non-CPA owners must

(A) have as their principal occupation employment at the CPA firm;

(B) possess an undergraduate degree;

- (C) maintain the requirements for his professional license, if any;
  - (D) not delegate his vote by proxy to anyone other than a CPA; and
  - (E) must be contractually restricted from selling his shares to anyone other than the firm or a CPA.
- e. Registered firms other than sole proprietors or general partnerships, shall maintain minimum insurance.

**D. Foreign Certificate and Substantial Equivalency**

**1. Substantial Equivalency; Employees of Public Accountants; Incidental Practice:**

- a. ORC §4701.1 provides in pertinent part as follows:

(I)(1) Notwithstanding any other provision of this chapter, an individual whose principal place of business is not in this state and who holds a valid foreign certificate as a certified public accountant shall be presumed to have qualifications substantially equivalent to this state's CPA requirements and shall have all of the privileges of a holder of a CPA certificate and an Ohio permit without the need to obtain a CPA certificate and an Ohio permit if the accountancy board has found and has specified in its rules adopted pursuant to [division \(A\) of section 4701.03](#) of the Revised Code that the CPA requirements of the state that issued the individual's foreign certificate are substantially equivalent to this state's CPA requirements.

(2) Any individual exercising the privilege afforded under division (I)(1) of this section hereby consents and is subject, as a condition of the grant of the privilege, to all of the following:

- (a) The personal and subject matter jurisdiction of the accountancy board;
- (b) All practice and disciplinary provisions of this chapter and the accountancy board's rules;
- (c) The appointment of the board that issued the individual's foreign certificate as the individual's agent upon whom process may be served in any action or proceeding by the accountancy board against the individual.

(3) The holder of a CPA certificate and an Ohio permit who offers or renders attest services or uses the holder's CPA title in another state shall be subject to disciplinary action in this state for an act committed in the other state for which the holder of a foreign certificate issued by the other state would be subject to discipline in the other state.

- (4) The holder of a foreign certificate who offers or renders attest services or uses a CPA title or designation in this state pursuant to the privilege afforded by division (I)(1) of this section shall be subject to disciplinary action in this state for any act that would subject the holder of a CPA certificate and an Ohio permit to disciplinary action in this state.

b. ORC §4701.15, Ohio Revised Code provides as follows:

Nothing contained in sections 4701.01 to 4701.19, inclusive, of the Revised Code, shall prohibit any person not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant or partnership composed of certified public accountants or public accountants or a foreign accountant registered under section 4701.09 of the Revised Code; provided that such employee or assistant does not issue any accounting or financial statement over his name.

*Nothing contained in sections 4701.01 to 4701.19, inclusive, of the Revised Code, shall prohibit a certified public accountant or a registered public accountant of another state, or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from temporarily practicing in this state on professional business incident to his regular practice outside the state; provided, that such temporary practice is conducted in conformity with the regulations and rules of professional conduct promulgated by the accountancy board.*

2. **Substantial Equivalency:** OAC 4701-7-02 provides as follows:

(A) The board may rely on the “National Qualification Appraisal Service” of the “National Association of State Boards of Accountancy” to assist it in determining the states that have, with respect to Ohio, substantially equivalent requirements for the CPA certificate in accordance with the provisions of division (E) of section 4701.06 of the Revised Code. The board shall maintain a list of states meeting the requirements.

(B) The board may rely on the “International Qualifications Appraisal Board” to assist it in determining the countries that have, with respect to Ohio, substantially equivalent requirements for the CPA certificate in accordance with the provisions of division (E) of section 4701.06 of the Revised Code. The board shall maintain a list of countries meeting the requirements.

3. **International Reciprocity:** OAC 4701-7-07 provides as follows:

- (A) The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a CPA certificate, and may rely on the “International Qualifications Appraisal Board” to assist it in evaluation of foreign credential equivalency.
- (B) The board may determine that the holder of a foreign accounting credential meets the CPA certification requirements if:
  - (1) A private or governmental body recognized by the board issued the foreign accounting credential, and the holder of the foreign accounting credential met the issuing body's education requirement and passed the issuing body's examination used to qualify its own domestic candidates.
  - (2) The foreign accounting credential holder’s education and the issuing body’s examination are substantially equivalent to the Ohio education and examination requirements for the CPA certificate.
  - (3) The foreign credential is valid and in good standing at the time the holder applies for the CPA certificate.
- (C) An applicant for renewal of a CPA certificate originally issued in reliance on a foreign accounting credential shall present appropriate documentation from the foreign credential issuing body that the applicant's foreign credential has not been suspended or revoked as a result of disciplinary proceedings conducted by the issuing body.

### III. PEER REVIEW

A. **Registration of firms; equity interests; peer review:** ORC §4701.04 provides as follows:

(F) *As a condition for initial or renewal registration* of a public accounting firm on and after January 1, 1993, the board by rule, *shall require that each public accounting firm undergo a peer review* to determine the public accounting firm's degree of compliance in the practice of public accounting with generally accepted accounting principles, generally accepted auditing standards, and other generally accepted technical standards, unless the public accounting firm meets one of the exceptions in division (J) of this section.

(G) The board shall adopt rules establishing guidelines for peer reviews. The rules shall do all of the following:

(1) Designate a peer review committee consisting of accounting professionals so serve as advisors to the board and to ensure that the board's guidelines are followed. The board may establish fair and reasonable compensation for the committee members to be paid for time they spend conducting committee business.

(2) Require that the peer review be conducted by a reviewer that is both independent of the public accounting firm reviewed and qualified pursuant to board rules;

(3) *Require that the standards and practices applied to the reviewer be at least as stringent as those applied by the American institute of certified public accountants;*

(4) Prohibit the use or disclosure of information obtained by members of the board or a committee of peer reviewers during or in connection with the peer review process for purposes other than those related to determining the degree of compliance by the public accounting firm with generally accepted accounting principles, generally accepted auditing standards, and other generally accepted technical standards. Division (G)(4) of this section does not apply to the use or disclosure of information that is described in division (K)(3) of this section or that is necessary to comply with any provision of law.

(H)(1) If a peer review report indicates that a public accounting firm does not comply with standards and practices set forth in board guidelines, the board, in its discretion, may hold a hearing to review the results of the peer review report. *If the board, after conducting the hearing, determines that the public accounting firm does not comply with the standards and practices, it may issue an order that requires both of the following:*

- (a) Remedial or disciplinary action, which may include any of the following:
  - (i) *Requiring employees of the public accounting firm to complete general or specific continuing professional education courses;*
  - (ii) Requiring the public accounting firm to undergo peer review *more frequently* than triennially and peer review that is conducted in whole or in part under the direct supervision of the board or its designee;
  - (iii) Any other remedial action specified by the board;
  - (iv) Imposing any disciplinary measures set forth in division (B) of section 4701.16 of the Revised Code.
- (b) An affidavit from the public accounting firm submitted within the time specified by the board indicating completion or required remedial actions.
- (2) Notwithstanding divisions (K)(1) and (2) of this section, all matters relating to the procedures for determining compliance with the standards and practices under division (H)(1) of this section are subject to Chapter 119 of the Revised Code, including the notice and conduct of any hearing and the issuance and appeal of any order.
- (I) *The public accounting firm reviewed shall pay for any peer review performed.*
- (J) *The board may exempt a public accounting firm from the requirement to undergo a peer review if the public accounting firm submits to the board a written and notarized statement that the public accounting meets at least one of the following grounds for exemption identified in the statement:*
  - (1) Within three years of the date of application for initial or renewal registration, the public accounting firm has been subject to a peer review acceptable to the board and conducted pursuant to standards not less stringent than review standards applied by the American institute of certified public accountants. The public accounting firm shall submit to the board a copy of the results of the peer review and any additional documentation required by the board. The board shall not require submittal of the working papers related to the peer review process.
  - (2) Within three years of the date of application for initial or renewal registration, the public accounting firm has undergone a peer review conducted in another state or foreign country. The public accounting firm shall submit to the board a copy of the results of the peer review and any additional documentation required by the board, including a detailed report of the procedures and standards applied by the reviewer.

- (3) The public accounting firm has never practiced public accounting in this state or any other state or foreign country and will undergo a peer review within eighteen months of registration.
- (4) *The public accounting firm, on a schedule as required by rule adopted by the board, submits a report to the board that states all of the following:*
  - (a) *The public accounting firm does not undertake any engagement that will result in the issuance of an attest report.*
  - (b) *Within the next three years, the public accounting firm does not intend to undertake any engagement that will result in the issuance of any attest report.*
  - (c) The public accounting firm agrees to notify the board within ninety days after accepting any engagement that will result in the issuance of any attest report and will undergo a peer review within one year after the acceptance of an engagement of that nature.
- (5) Subject to the board's approval, for reasons of personal health, military service, or other good cause, the public accounting firm is entitled to an exemption.
- (K) [Omitted – covered under Confidential Duty and Privilege]
- (L) *If a peer review report indicates that a public accounting firm complies with standards and practices set forth in board guidelines, the board shall destroy all documents and reports related to the peer review report within thirty days after the board completes its review of the report. If a peer report indicates that a public accounting firm does not comply with those standards and practices, the board shall retain all documents and reports related to the peer review until completion of the next peer review.*

**C. Purpose of Peer Review:** OAC 4701-13-04 provides as follows:

- (A) The purpose of the peer review program is to monitor compliance with applicable professional standards defined in rules 4701-9-03, 4701-9-04, 4701-9-05, and 4701-9-06 of the Administrative Code. In the event a public accounting firm fails to comply with professional standards, the board may take appropriate disciplinary action against the public accounting firm in accordance with division (H) of section 4701.04 of the Revised Code.
- (B) The provision of paragraph (A) of this rule do not apply to public accounting firms that meet the provisions of paragraph (A) of rule 4701-13-07 of the Administrative Code.

**D. Definitions:** OAC 4701-13-05 provides in pertinent part as follows:

(A) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(B) – under “insurance”

(C) “Peer Review sponsoring organization” means any organization approved by the board that meets the peer review standards specified in rule 4701-13-06 of the Administrative Code.

**E. Peer Review Program:** OAC 4701-13-06 provides as follows:

(A) *The board hereby adopts “Standards for Performing and Reporting on Peer Reviews” promulgated by the “American Institute of Certified Public Accountants”, and published on that organization’s website (www.aicpa.org) as its minimum standards for peer review of public accounting firms. No public accounting firm shall be required to become a member of any peer review sponsoring organization.*

(B) Peer review sponsoring organizations shall include the “American Institute of Certified Public Accountants” peer review program, the “Ohio Society of Certified Public Accountants” peer review program, and other such organizations which register with and are approved by the board based upon their adherence to the peer review standards defined in paragraph (A) of this rule.

(C) *The firm or entity selected to conduct a peer review for any public accounting firm not currently enrolled in an approved peer review program must be approved to conduct the peer review by the board or its authorized peer review program administrator.*

(D) *Any peer review completed in accordance with the standards defined in paragraph (A) of this rule must be submitted to the board or its authorized peer review program administrator for approval. The board or its authorized peer review program administrator shall issue an acceptance letter to the public accounting firm for which a peer review was performed if the designated peer review committee, defined in rule 4701-13-03 of the Administrative Code, approves the firm’s peer review.*

(E). Based upon the peer review outcome as stated in the acceptance letter, the board or its authorized *peer review program administrator* may impose remedial actions, including specified continuing education courses, that the public accounting firm must complete as a condition for continued registration under this chapter. The board may issue a temporary registration to the firm

that will be valid until the deadline for completion of remedial actions by the firm. The board must approve any extensions to the deadline for completion of remedial actions. After the firm completes the required remedial actions, the peer review program administrator will issue a final acceptance letter to the firm approving the peer review. Only the final acceptance letter issued by the peer review program administrator and accepted by the board will qualify a public accounting firm for continued registration under this chapter.

- (F) The board may take disciplinary action against a public accounting firm that does not comply with any remedial action mandated in accordance with paragraph (E) of this rule.

**OAC 4701-13-10 Peer review deficiencies; hearings**

- (A) The board may rely on the peer review acceptance letter issued by the peer review committee, defined in rule 4701-13-03 of the Administrative Code, and related peer review supporting documentation as prima facie evidence of a violation of the professional standards in any disciplinary hearing arising under chapter 4701.04 of the Revised Code held in accordance with Chapter 119 of the Revised Code.

**OAC 4701-13-11 Required submission of peer review reports.**

- (A) Each public accounting firm that receives any of the following peer review reports must submit the report to the board by the deadline specified in paragraph (B) of this rule, along with any applicable letters of comment, letters of response, and peer review acceptance letter:
  - (1) An adverse (fail) peer review report.
  - (2) A modified (pass with deficiencies) peer review or report review that contains a deficiency or deficiencies concerning the professional standards in Chapter 4701-9 of the Administrative Code deemed by the peer review committee defined in rule 4701-13-03 of the Administrative Code to be significant and continuing from the firm's previous peer review or report review.
  - (3) A second consecutive modified (pass with deficiencies) peer review report that does not contain any deficiency concerning the professional standards in Chapter 4701-9 of the Administrative Code deemed by the peer review committee defined in rule 4701-13-03 of the Administrative Code to be significant and continuing from the firm's previous peer review or report review.
- (B) The firm must submit the report, along with any applicable letters of comment, letters of response, and peer review acceptance letter to the board no later than

thirty days after the firm receives a peer review acceptance letter issued by the peer review committee defined in rule 4701-13-03 of the Administrative Code.

(C) Failure to comply with the provisions of this rule shall be a violation of section 4701.16(A)(4) of the Revised Code.

F. **Exemptions:** OAC 4701-13-07 provides as follows:

- (A) *A public accounting firm that does not perform any services which result in the issuance of an attest report is exempt from the peer review requirements.*
- (B) A public accounting firm that begins providing services which result in the issuance of an attest report must notify the board of this fact within ninety days, and it shall register with the board pursuant to section 4701.04 of the Revised Code.
- (C) *A public accounting firm described in paragraph (A) of this rule that does not assume or use the title or designation “certified public accountant,” “public accountant,” may voluntarily register with the board as a registered firm.*
- (D) *A public accounting firm described in paragraph (A) of this rule that desires to assume or use the title or designation “certified public accountant,” “public accountant,” must register with the board as a registered firm.*

G. **Retention of Documents Relating to Peer Review:** OAC 4701-13-08 provides as follows:

- (A) *Each reviewer shall maintain in files all documentation necessary to establish that each peer review performed by the reviewer conformed to the peer review standards defined in paragraph (A) of rule 4701-13-06 of the Administrative Code. The documentation maintained by the reviewer should include the following:*
  - (1) Peer review working papers;
  - (2) Copies of the peer review report;
  - (3) All comment letters related to the peer review;
  - (4) All correspondence that indicates the public accounting firm’s concurrence or non-concurrence with the results of the peer review; and
  - (5) All proposed remedial actions and all information relevant to those remedial actions, including the implementation of the remedial actions.
- (B) *The documents described in paragraph (A) of this rule shall be retained in the reviewer’s office for a period of time corresponding to the retention period of the relevant sponsoring organization and shall be made available upon request to the board.. The public accounting firm receiving the review, upon written authorization from the board, shall have the responsibility of notifying its*

reviewing firm to destroy documents related to the peer review in accordance with division (L) of section 4701.04 of the Revised Code.

**H. Change of Firm's Status:** OAC 4701-13-09 provides as follows:

- (A) A public accounting firm that changes its name shall notify the board within ninety days of the effective date of the change.
- (B) In the event that two or more public accounting firms subject to the peer review requirements are merged by any legal means, the surviving public accounting firm shall retain the latest firm registration deadline of the former public accounting firms.
- (C) In the event that two or more public accounting firms are merged by any legal means, and not all of the public accounting firms are subject to the peer review requirements, the surviving public accounting firm shall be subject to the peer review requirements and retain the latest firm registration deadline of any former public accounting firm subject to peer review, except that twelve months must elapse between the time of the merger and the public accounting firm's registration deadline.
- (D) In the event that two or more public accounting firms are merged by any legal means, and none of the former public accounting firms are subject to the peer review requirements, then the new public accounting firm must renew its firm registration within eighteen months of the date of initial registration with the board.
- (E) In the event that a public accounting firm subject to the peer review requirements is divided, each new public accounting firm shall be subject to the peer review requirements and retain the firm registration deadline of the former public accounting firm, except that at least twelve months must elapse before the new public accounting firms must renew their firm registrations.
- (F) In the event that public accounting firm is dissolved and subsequently reestablished as a different public accounting firm with substantially similar ownership, the successor public accounting firm will retain the predecessor public accounting firm's firm registration renewal deadline.
- (G) The board may change a firm's registration renewal deadline for just cause.

**I. Discussion**

1. In order to register as a public accounting firm, any firm performing any attest functions must undergo a peer review at least every three years.

2. The peer review must be performed in accordance with standards no less stringent than those established by the AICPA by an independent reviewer selected and paid by the reviewed firm, and who is approved by the accountancy board or its agent.
3. The review must be accepted by the accountancy board or its authorized agent. The report is then presented to the Peer Review Oversight Board for final acceptance by the board.
4. If after conducting a hearing the review is not accepted by the board, the board may impose a variety of remedial actions such as additional CPE, more frequent peer reviews and other disciplinary actions that will be discussed later.
5. In addition to not being able to register as a public accounting firm, if a firm does not comply with peer review requirements, it could also be penalized by the board.
6. The reviewer must retain working papers at least 90 days after the report has been accepted by the Peer Review Oversight Board.
7. If the review is accepted, the reviewer must destroy all working papers within 30 days after the board notifies the reviewer of the report's acceptance.
8. If the review is not accepted because of deficiencies, the working papers must be retained until completion of the next peer review.
9. A public accounting firm may be exempted from peer review if it reports to the board that it has not and does not plan, within the next 3 years, to perform any attest function.
10. A firm must notify the accountancy board and register within 90 days of commencing any attest function.
11. A firm that is exempt from peer review must nonetheless still register with the accountancy board if it desires to use the CPA or similar designations.
12. CPA firms must submit substandard reports to the board. In addition to adverse reports that fail the firm, the firm is required to submit reports that pass the firm (but with certain significant deficiencies) as well as second consecutive reports that pass the firm (but with certain minor deficiencies).

### **III.1 Accountant's Work papers; Retention of Client Records:**

A. ORC §4701.19(A) provides as follows:

(A) All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client, *shall be and remain the property of such accountant*, in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper or memoranda shall be sold, transferred or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or new partners of such accountant.

B. OAC 4701-11-06 provides as follows:

(A) If a client makes a written request for records from a registered firm or Ohio permit holder, the registered firm or Ohio permit holder shall comply with the request within thirty days after receipt of the request. The thirty-day deadline may be extended by the board if the registered firm or Ohio permit holder requests an extension of time in accordance with paragraph (I) of this rule.

(B) A client's records are any accounting or other records belonging to the client that were provided to the registered firm or Ohio permit holder by or on behalf of the client, as well as records defined in paragraph (E) of this rule as client records.

(C) The work papers of the registered firm or Ohio permit holder include, but are not limited to, the following:

(1) The registered firm's or Ohio permit holder's notes or memos regarding the engagement;

(2) Records kept by the registered firm or Ohio permit holder of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement;

(3) Analyses and schedules prepared by the client at the registered firm's or Ohio permit holder's request, and;

(4) Audit programs, audit analyses and memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries either prepared or obtained by the registered firm or Ohio permit holder.

- (D) Workpapers may also be in the form of data stored on tapes, films, or any media other than paper. Workpapers are considered to be the registered firm's or Ohio permit holder's property. In the event of a dispute between the registered firm or Ohio permit holder and the client concerning records, the board will determine whether or not a document may be classified either as a registered firm's or Ohio permit holder's workpaper, or as a client's record.
- (E) Workpapers may contain information that is not reflected in the client's books and records, with the result that the client's financial information is incomplete. These are defined as client records, and may include but are not limited to:
- (1) Adjusting, closing, combining or consolidating journal entries;
  - (2) Depreciation and amortization schedules, including tax carryforward information; and
  - (3) Information normally contained in books of original entry, as well as general ledgers and subsidiary ledgers.
- (F) If the registered firm or Ohio permit holder has converted client information onto computer files for use with the registered firm's or Ohio permit holder's software and the registered firm or Ohio permit holder has not been paid for professional services rendered, then the registered firm or Ohio permit holder is under no obligation to provide the client with electronic files or a copy of any software. If the client has paid the registered firm or Ohio permit holder for professional services rendered, then the registered firm or Ohio permit holder must provide a copy of all relevant electronic data files to the client.
- (G) If the registered firm or Ohio permit holder has provided the information described in paragraph (B) or (E) of this rule to the client, then the registered firm or Ohio permit holder need not comply with further client requests for the same information.
- (H) The registered firm or Ohio permit holder may demand that agreed-upon fees be paid prior to providing any information described in paragraph (E) of this rule if there is an engagement letter or other documented understanding prepared prior to the engagement and communicated to the client that states the specific fee payment arrangements for providing such information.
- (I) In the event of a dispute between the client and a registered firm or Ohio permit holder over the return of records described in paragraph (E) of this rule, the registered firm or Ohio permit holder may request an extension of

the deadline specified in paragraph (A) of this rule in order to mediate the dispute. The request must be filed within thirty days of the date the records retention complaint is filed with the board. The mediation must be conducted before a mediator mutually agreeable to and selected by the parties, and must be completed within sixty days of the date the complaint is filed with the board. The mediator may be the executive director of the board or a designee if the parties agree. If either party is dissatisfied with the recommendations of the mediator, that party may request a hearing before the board.

### C. Discussion

Under Ohio law, CPAs are required to return any original records that were provided to the CPA by the client for purposes of the engagement.<sup>1</sup> Therefore, as long as a CPA is in possession of client records, the CPA must maintain those records. Second, under Ohio law, if a client requests work papers, a CPA must generally provide copies of work papers to the client if they contain information that is not reflected in the client's books and records, such as adjusting journal entries and depreciation schedules. If a CPA is going to insist on payment of the agreed upon fees prior to providing the work papers to the client, then the CPA must have communicated that in writing to the client prior to the engagement.<sup>2</sup>

Unlike other states though,<sup>3</sup> Ohio law does not specifically say how long a CPA must retain client records and work papers containing information not otherwise reflected in the client's work papers prior to destruction. Therefore, it would appear that a CPA's obligation to maintain such records would extend into perpetuity. However, Ohio law does provide that once a CPA provides these records to the client, the CPA does not need to provide the documents to the client again.<sup>4</sup> Therefore, subject to other considerations discussed below, once a CPA has provided the documents to the client, the CPA does not have to maintain additional copies forever. Obviously, a receipt evidencing delivery of such documents to the client is recommended.

Furthermore, Ohio law does not specifically say how long a CPA must retain work papers in general. However, it would be prudent to retain work papers for some period of time after an engagement. While records generated in an engagement can potentially provide evidence of liability, the information contained in the records may also provide the best defense to claims against the CPA. If the records have been destroyed, the court will be presented with only the records provided by the plaintiff.

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<sup>1</sup> Ohio Administrative Code §4701-11-06(A & B)

<sup>2</sup> Ohio Administrative Code §4701-11-06(E)(H).

<sup>3</sup> See *eg.* La. R.S. 37:89 which provides that an accountant may destroy records three years after the close of an engagement and not be liable to a client for their destruction.

<sup>4</sup> Ohio Administrative Code §4701-11-06(G).

Therefore, a CPA should keep work papers as long they might be relevant to the defense of a CPA or the CPA's client.

For example, under Ohio law, a client must bring an action for professional negligence against a CPA within four years after the negligent act has occurred.<sup>5</sup> The work papers related to the engagement may provide a very important defense for the CPA to such a claim. Therefore, retaining these records until at least after the statute of limitations expires would be a good idea.

Similarly, because of the three year statute of limitations under federal income tax law, a tax preparer should maintain client tax returns at least until that statute of limitations has lapsed.<sup>6</sup> Indeed, federal tax law imposes a penalty on a CPA if the CPA does not maintain client tax returns for at least three years after the close of the tax year.<sup>7</sup> However, it might be prudent to maintain client tax returns for six years due to the longer statute of limitations for substantial omissions and understatements of gross income.<sup>8</sup> If the IRS were to audit the client, the work papers would be helpful in demonstrating that the CPA had substantial authority for the position taken on the return to avoid the imposition of penalties.<sup>9</sup>

In addition to the statute of limitations rationale for work paper retention, the recently enacted Sarbanes-Oxley Act of 2002 requires CPA firms that audit public companies to retain their audit work papers for seven years or be subject to disciplinary action by the newly created Public Accounting Oversight Board.<sup>10</sup> Furthermore, if an accounting firm destroys audit records sooner than five years after the close of the audit, it may also be subject to criminal penalties.<sup>11</sup> This legislation does not apply to CPAs who provide audit services to closely held businesses.

There are numerous other record retention requirements imposed by state and federal law that vary depending on the nature of the business and the type of business record. Ultimately, however, the destruction of records requires a personal review of the file to cull the less important documents from those that should be retained. If work papers identified for destruction include client records or work papers containing information that is not reflected in the client's books, those documents should be either retained, returned to the client, or the CPA should obtain the client's consent prior to destruction. Finally, when the records are destroyed, they should be destroyed in a consistent manner to avoid the appearance that any particular record, one that may now be the subject of a dispute, received special treatment, and was not handled in the ordinary course of business.

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<sup>5</sup> *Investors REIT One v. Jacobs*, 46 Ohio St. 3d 176 (1989).

<sup>6</sup> Internal Revenue Code §6501(a).

<sup>7</sup> Internal Revenue Code §6695(d).

<sup>8</sup> Internal Revenue Code §6501(e).

<sup>9</sup> Internal Revenue Code §6694(a) and §6695.

<sup>10</sup> Sarbanes-Oxley Act of 2002, H.R. 3763 Sec. 103(a)(2)(A)(i).

<sup>11</sup> Sarbanes-Oxley Act of 2002, H.R. 3763 Sec. 802(a).