

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

**OREGON SOCIETY OF ENROLLED
AGENTS, INC.,**

Petitioner,

v.

**STATE OF OREGON, acting By and
Through the STATE BOARD OF TAX
PRACTITIONERS,**

Respondent.

Appellate Court No. A156623

PETITIONER'S OPENING BRIEF

Tyler Smith
OSB No. 075287
Tyler Smith & Associates, P.C.
181 N Grant St. STE 212
Canby, OR 97013
(503)266-5590
Tyler@RuralBusinessAttorneys.com
Attorney for Petitioner

Denise G. Fjordbeck
OSB No. 822578
Department of Justice
1162 Court Street NE
Portland, OR 97301
(503)378-4402
Attorney for Respondent

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STATEMENT OF THE CASE

1. Nature of Action and Relief Sought

Petitioner here challenges the validity of Oregon Administrative Rule 800-020-0015(5) (also known as the “360 hour rule” hereafter) adopted by the Oregon State Board of Tax Practitioners on January 10, 2013 and effective February 1, 2013. Petitioner seeks a determination that OAR 800-020-0015(5) is invalid because it exceeds the statutory authority granted in ORS 637.605 through 637.740 and also because it is preempted by federal law.

2. Nature of the Judgment

This case presents a challenge to the validity of an administrative rule, rather than an appeal of a judgment.

3. Basis of Appellate Jurisdiction

ORS 183.400(1) states that “[t]he validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases.” The Oregon Supreme Court has held that ORS 183.400(1) is clear in its plain meaning that standing to challenge a rule is conferred on “any person” and that there is no additional constitutional requirement of a showing of a practical effect on a personal interest. *Kellas v. Dep’t of Corrections*, 341 Or 471(2006). ORS 183.310(8) defines a person as “any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.”

Petitioner ORSEA, an Oregon domestic nonprofit corporation, is a person seeking to challenge the validity of OAR 800-020-0015(5) and thus has standing under ORS 183.400(1). Under that same statute, this Court has jurisdiction to determine the validity of the challenged rule.

4. Effective Date for Appellate Purposes

Neither ORS 183.400(1) nor the Rules of Appellate Procedure set forth any time limitation as to when a challenge to an administrative rule may be brought. The rule being challenged was adopted on January 10, 2013, and became effective February 1, 2013.

5. Questions Presented

1. Whether ORS 673.605 through 673.740 grants the State Board of Tax Practitioners the authority to adopt the 360 hour rule contained in OAR 800-020-0015(5)?

2. Whether OAR 800-020-0015(5) exceeds the statutory grant of authority in ORS 673.605-740 by directly conflicting with ORS 673.637(2)?

3. Whether the 360 hour rule from OAR 800-020-0015(5) is preempted by federal law?

6. Summary of the Argument

OAR 800-020-0015(5), the “360 hour rule”, is invalid because by creating that “360 hour rule” the Board of Tax Practitioners has exceeded the statutory authority of the agency. The rule conflicts with directives from statutory

authority which direct the Board to license enrolled agents in Oregon as Licensed Tax Consultants if they pass the Oregon examination. The enabling statute has provided no authority for the 360 hour rule, and statutory authority has explicitly exempted enrolled agents from similar work experience requirements. The Agency has acknowledged that the rule does not exist in statute, and in fact, the Agency's attempt to add it to the statute was defeated.

The 360 hour rule is also invalid because it directly conflicts with and contravenes federal statutes. Federal law has occupied the specific field of licensing enrolled agents to practice before the Internal Revenue Service, and the conflict with federal law created by the 360 hour rule cannot function consistently or harmoniously with the federal scheme. The 360 hour rule adds an additional condition and qualification which the Oregon Board of Tax Practitioners is without authority to add onto a federally granted license.

7. Statement of the Facts

Petitioner is the Oregon Society of Enrolled Agents, Inc. ("OrSEA" hereafter). OrSEA. OrSEA's mission is to "Foster professionalism and growth of members, be an advocate of taxpayer rights, protect the interests of its members and enhance the role of enrolled agents among government agencies, other professions, and the public at large." Declaration of Marie Linders. A-1-2. Enrolled agents are individuals who are licensed by the United States government to "practice before the Internal Revenue Service." 31 CFR § 10.2(4) (2011). This

practice includes, but is not limited to preparing and filing federal taxes and rendering tax advice to individuals and other entities. *Id.*

Under Oregon law, no person may prepare, advise, or provide assistance in the preparation of personal income tax returns without first being licensed as a tax consultant. ORS 673.615(1). The Legislature enacted broad rules for licensing tax consultants which includes, among other things, an age requirement, education requirement, and a minimum hours work experience requirement. ORS 673.625. However, in ORS 673.637(3), the Legislature specifically exempted from the requirements of ORS 673.625 those persons who are licensed to practice before the IRS as enrolled agents. Under ORS 673.637(3), to be licensed as a tax consultant in Oregon, an enrolled agent only has to actually be an enrolled agent and pass an exam covering Oregon tax law. However, in 2013, the State Board of Tax Practitioners, apparently acting under the color of its rulemaking authority in ORS 673.730(10) adopted OAR 800-020-0015(5) requiring that enrolled agents applying to take the tax consultant's exam must present evidence that they have at least 360 hours of work experience in at least two of the last five years. Under the Rule an Enrolled Agent cannot utilize their existing federal license unless they comply with the extra requirement of OAR 800-020-0015(5) first. Members of Plaintiff's board of directors and many others provided public comment opposing the rule, but on January 10, 2013, the rule became effective. Petitioner participated throughout the rulemaking process and

objected to this specific rule thereby preserving its assignments of error. Petitioner put Respondent on notice of the invalidity of this rule on August 2, 2013 and Respondent took no corrective action.

In 2013 Respondent, the State Board of Tax Practitioners, adopted Administrative Rule "OAR 800-020-0015(5)". That rule has harmed OrSEA and its members. Potential members and new EA's have been prevented from becoming EA's by the rule. Declaration of Candi Dawn Hamilton. A-8. Members have found that this rule has caused the pool of potential buyers for enrolled agent business' to be limited to only in-state, already practicing enrolled agents, effectively eliminating the market. Declaration of Catherine Giovinco. A-10-11. OrSEA has witnessed a reduction in the pool of potential members, and had members who are no longer able to practice in the State of Oregon. Declaration of Marie A. Linders. A-1-6. Enrolled agents have seen the rule reduce and nearly eliminated an enrolled agent's ability to recruit and train new employees. Declaration of Susan Bladorn. A-12. The rule has caused enrolled agents to lose available revenue. Declaration of Jeffrey Linders. A-15-16. The Enrollment in enrolled agent license training programs has dropped because of the rule. Declaration of Debra Sheehan. A-18-19. Each of these harms has been attributed to the 360 hour rule found in OAR 800-020-0015(5).

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FIRST ASSIGNMENT OF ERROR

OAR 800-020-0015(5) exceeds the statutory authority of the State Board of Tax Practitioners.

A. Preservation of Error

To the extent necessary for a review of the validity of an administrative rule, Petitioner along with many of its members, specifically objected and explained this defect to Respondent during the rulemaking process and afterward. ER 1-6. Those comments and objections among other things were outlined by Petitioner and its officers on behalf of the organization. Specifically some of the objections stated “that the rule was unconstitutional” (ER 7), “the OAR’s conflict with circular 230,” and “we submit the Division 20 procedural change for enrolled agents is significant and does not fit within that parameter.” ER 2.

B. Standard of Review

ORS 183.400(4)(a)-(b) states that this court shall declare a rule invalid if it finds that the rule “[v]iolates constitutional provisions” or “[e]xceeds the statutory authority of the agency.” In making this determination, the Court must limit its examination to “(a) The rule under review; (b) The statutory provisions authorizing the rule; and (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.” Thus, this court’s review of the validity of OAR 800-020-0015(5) is a review for error of law.

C. Argument

1. The Oregon State Board of Tax Practitioners exceeded its statutory authority when it adopted ORS 800-020-0015(5) because ORS 673.605 through 673.740 does not expressly or impliedly grant authority for the rule and because the rule directly conflicts with ORS 673.637.

The Court must declare a rule invalid if it finds that the rule exceeds the statutory authority of the agency. ORS 183.400(4)(b); *La Forge v. Dept of Human Serv*, 237 Or App 500, 502 (2010). A rule exceeds statutory authority if it “departs from the legal standard expressed or implied in the particular law being administered, or contravene[s] some other applicable statute.” *Planned Parenthood Ass’n v. Dept of Human Res*, 297 Or 562, 565 (1984). In addition, “to the extent that the rule departs from the statutory policy directive, it ‘exceeds the statutory authority of the agency’ within the meaning of those words in ORS 183.400(4)(b).” *Id.* at 573. When an agency enacts a rule which conflicts with another statute by prohibiting an act which the statute permits or permitting an act which the statute prohibits, the agency “departs from the policy objective of the statute” and the rule is invalid. *La Forge*, 237 Or App at 506; *See e.g. City of Portland v. Dollarhide*, 300 Or 490, 502 (1986). Further, where the enabling statute has provided no authority for a rule, either express or implied, the agency has exceeded its statutory authority and the rule is invalid. *Planned Parenthood*, 297 Or at 565.

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- I. *ORS 673 does not grant express or implied authority for the Board of Tax Practitioners to adopt the 360 hour rule contained in OAR 800-020-0015(5).*

ORS 673.730(1) grants the State Board of Tax Practitioners the power to “determine qualifications of applicants for licensing as tax consultant or tax preparer in this state; to cause examinations to be prepared, conducted and graded; and to issue licenses to qualified applicants upon their compliance with ORS 673.605 to 673.740 and the rules of the board.” This statute is clear. It gives the Board the authority to *determine* whether an applicant possesses the statutory qualifications required to be licensed as a tax consultant and it gives the Board the power to issue licenses to applicants who have complied with ORS 673.605 to 673.740 and the rules of the board. ORS 673.730(10) gives the board the power to adopt only those administrative rules “necessary to carry out the provisions of ORS 673.605 to 673.740.” The Board’s authority to adopt rules, then, is limited to rulemaking which is necessary to carry out the applicable provisions of ORS Chapter 673.

Nothing in the language of ORS 673.637(2) suggests that the legislature intended to authorize the Board to adopt a rule requiring enrolled agents to have 360 hours of work experience before being able to take the tax consultant’s exam. In fact, just the opposite is true. ORS 673.637(2) is an explicit exception for enrolled agents from ORS 673.625(1) and (3) which require that other applicants for licensure as a tax consultant show that they have been employed as a tax

preparer or tax consultant for “not less than a cumulative total of 1,100 hours during at least two of the last five years.” The Legislature specifically exempted enrolled agents from this requirement when it adopted ORS 673.637(2) and stated that “notwithstanding ORS 673.625(1) and (3)...the board shall license...” enrolled agents who have passed the Oregon tax consultant examination. If the Legislature had intended enrolled agents to have an hours worked requirement, it surely would not have exempted them from that same statutory requirement which applies to all other applicants.

Further, ORS 673.710(10) does not authorize the board to adopt the 360 hour rule because a rule requiring 360 hours of work experience before licensure is clearly not necessary to carry out the provisions of ORS 673.637. ORS 673.637(2) explicitly states the only two statutory requirements for an enrolled agent to be licensed as a tax consultant, neither of which include work experience. This statute was enacted by the Legislature in 1977, and the Board of Tax Practitioners did not adopt the 360 hour rule until January of 2013. Therefore, the Board successfully carried out the provisions of ORS 673.637 for at least thirty-six years without any work experience requirement on an enrolled agent. Clearly, if the Board can accomplish the purpose of ORS 673.637(2) for thirty-six years without the 360 hour rule, then the new rule is not “necessary to carry out the provisions of ORS [673.637(2)]” in order to issue a tax consultant’s license to an enrolled agent who has passed the tax consultant exam. For that

reason, OAR 800-020-0015(5) is beyond the scope of statutory authority granted to the Board by the Legislature, and this Court must hold that it is invalid.

II. OAR 800-020-0015(5) directly conflicts with ORS 673.637(2) because it prohibits what ORS 673.637(2) permits.

As explained above, “a rule that permits what a statute prohibits departs from the policy objective of the statute.” *La Forge*, 237 Or at 506. In the same way, a rule that prohibits what a statute permits directly conflicts with the statute and departs from the policy objective of the statute.¹ *Id.* The Oregon Legislature has enacted legislation restricting the ability of tax consultants to “advise or assist in the preparation of personal income tax returns for another and for valuable consideration or represent that the person is so engaged” without first being license by the State of Oregon to do so. ORS 673.615(1). The Legislature has also enacted very detailed qualifications and requirements for licensure as a tax consultant in Oregon. These requirements are listed in ORS 673.625. In addition to the age, education, and testing requirements, the Legislature requires that any applicant for licensing as a tax consultant have at least 1,100 hours of work experience in at least two of the last five years. In ORS 673.637(2), however, the Legislature specifically exempts enrolled agents from the requirements of ORS 673.625 and instead only requires that a person be enrolled to practice before the

¹ OAR 800-020-0015(5) directly conflicts with both the state statutory directive of ORS 673.637(2) and federal statutes delegating licensing authority of enrolled agents to the Department of Treasury under 31 USC § 330, which is discussed below in Petitioners Second Assignment of Error.

IRS under 31 CFR § 10 and that the person pass an exam covering Oregon personal income tax law. In ORS 673.637(2), the Legislature clearly distinguished enrolled agents from other applicants for a tax consultant's license and created specific instructions for licensing enrolled agents when it stated that

Notwithstanding ORS 673.625 (1) and (3), but as otherwise provided in ORS 673.605 to 673.740, the board shall license as a tax consultant any person who is, on the date of the application for a tax consultant's license, enrolled to practice before the Internal Revenue Service pursuant to 31 CFR. § 10 if the person has passed to the satisfaction of the board an examination covering Oregon personal income tax law, theory and practice, the provisions of ORS 673.605 to 673.740 and the code of professional conduct prescribed by the board.

ORS 673.637(2) (emphasis added).

More than thirty years after the Legislature adopted ORS 673.637(2), the State Board of Tax Practitioners has attempted to add by administrative rule OAR 800-020-0015(5) a requirement that the Legislature specifically removed when it adopted ORS 673.627(2). OAR 800-020-0015(5) states:

An enrolled agent applicant who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, shall submit verification by the applicant employer or employers, on forms prescribed and furnished by the Board, that the applicant has completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years.

ORS 673.637 establishes two requirements for enrolled agents to be licensed as tax consultants in Oregon. First, they must be enrolled to practice before the IRS pursuant to 31 CFR § 10. Second, they must pass an examination. The Legislature did not create any other requirements for enrolled agents to be

licensed as tax consultants. Instead, the Legislature specifically exempted enrolled agents from the work experience requirements of ORS 673.625(3) and instructed that the State Board of Tax Practitioners *shall* license as a tax consultant any person who meets the two requirements in ORS 673.637(3).

Under Oregon law, “it is elementary that the word ‘shall’ connotes the imperative.” *Stanley v. Mueller*, 211 Or 198, 208 (1957). In *Stanley v. Mueller*, the Supreme Court of Oregon considered whether the word “shall” in a statute is mandatory or permissive and stated that,

The courts are...reluctant to contravene or construe away terms of a statute which in themselves are mandatory, except where the intent and purpose of the legislature are plain and unambiguous and clearly signify a contrary construction. Moreover, if any right to anyone depends on giving the word an imperative construction, the presumption is that the word was used in reference to such right or benefit.

Id. (quoting 54 Am Jur 32).

In this case, there is nothing in ORS 673.637(2) which suggests anything except that the Legislature intended the word shall to be mandatory. If anything, the text of the rest of that statute proves that the Legislature absolutely did intend for the word shall to be mandatory when it explicitly and specifically adopted Section (2) of ORS 673.637 as an exemption from all of the additional requirements of ORS 673.625. Section (1) of ORS 673.637 uses the word “may” instead of “shall” (“The State Board of Tax Practitioners *may* issue a license to an applicant for a license as a tax consultant...who: (a) presents evidence satisfactory to the

board that the applicant is licensed as tax consultant...in a state that has requirements for licensing substantially similar to the requirements...in this state....”) clearly giving the Board discretion to issue that type of license based on the Board’s satisfaction with the applicant’s qualifications. Section (2) of ORS 673.637 stands in stark contrast to the “may” language in Section (1) when it requires that “Notwithstanding ORS 673.625(1) and (3), but as otherwise provided in ORS 673.605 to 673.740, the board *shall* license as a tax consultant a person who is...” an enrolled agent and who has passed the Oregon tax consultant’s exam. Further, ORS 673.637(2) is a statute which confers on enrolled agents a right to be licensed to practice in Oregon. That right depends on the imperative interpretation of the word “shall.” Under the Supreme Court ruling in *Stanley*, this fact creates a presumption that “shall” is mandatory, not permissive.

The 360 hour rule directly conflicts with ORS 673.637(2) because it creates an additional requirement for licensure as a tax consultant beyond the two requirements which the legislature clearly established. ORS 673.637(2) makes it mandatory that the Board license an enrolled agent as a tax consultant if he is enrolled to practice before the IRS and if he passes an examination. As explained, the word “shall” in the statute takes away the discretion of the Board to license an applicant if he meets the two stated requirements. The 360 hour rule prohibits an enrolled agent from being licensed as a tax consultant without first having 360

hours work experience even if he meets the statutory qualifications of ORS 673.637. Like in *La Forge*, the Board of Tax Practitioners adopted a rule which prohibits that which a statute mandates. Thus, OAR 800-020-0015(5) directly conflicts with ORS 673.637(2) and is therefore invalid.

III. The Legislature has specifically considered and declined to add the provisions of OAR 800-020-0015(5) to the statute.

In 2013, the House Committee on Business and Labor considered an amendment to HB 2214 (2013) which would change ORS 673.637(2) to allow an enrolled agent to be licensed as a tax consultant only after a showing that the enrolled agent has completed 360 hours of work experience during at least two of the last five years. A-1-2. This Amendment was submitted by the Board of Tax Practitioners on February 13, 2013, thirteen days after the Board made OAR 800-020-0015(5) effective. The Board provided a statement to the House Committee on Business and Labor regarding the Proposed Amendment and explained that the “normal route to becoming a Licensed Tax Consultant” includes the applicant providing proof to the Board that he or she has completed at least 1,100 hours of work experience. The Board also stated that “currently there are no statutory requirements to have any experience preparing income tax returns if one has passed the enrolled agent exam.” *Statement, House Committee on Business and Labor, HB 2214, February 15, 2013, Ex 5 (Testimony of Ron Wagner)*. A-20.

The bill never made it out of committee. In fact, the Board of Tax

Practitioners recognized this in its May 9, 2013 Board Meeting Minutes when it said,

Also added as an amendment was the minimum 360 hour work experience requirement to take the enrolled agent exam. The bill with these provisions did not make it out of committee, thus will not become law. The Board members would like to retain the 360 hour requirement regardless of the absence of the requirement in the statutes. The Board has the requirement included in the Oregon Administrative Rule. The Board was simply wanting to add the requirement to Oregon statutes. But the lack of wording in the statutes does not negate the authority of the rule. A-26.

On this point, the Board is wrong. The words "shall license" in ORS 673.637(2) require the Board to license any enrolled agent who passes the Oregon Consultant State Exam. The mandatory word "shall" leaves no room for the Board to add conditions to licensure above and beyond those named in the statute. Here, the Board adopted a rule which is in direct conflict with the statute then attempted to solve the problem by presenting a bill with the rule to the Legislature to add it to the statute. However, the Legislature tabled the bill, and certainly did not adopt the Board's proposed changes. Not only did the Board exceed its statutory authority, it did so knowingly.

Petitioner requests that this Court award costs and reasonable attorney fees to Petitioner under both ORS 183.497(1)(a) and (b). Respondent was informed and knew it did not have a reasonable basis in the facts or law to create the 360 hour rule through OAR 800-020-0015(5) but elected to do so nonetheless.

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SECOND ASSIGNMENT OF ERROR

OAR 800-020-0015(5) is invalid because it is preempted by federal law licensing and regulation of enrolled agents.

A.Preservation of Error

Petitioner clearly and directly objected to this rule on the grounds that federal law preempts the State of Oregon from adding additional licensing qualification prior to an enrolled agent being able to practice before the IRS.

Petitioner's treasurer Mr. Daniel Sterns, stated the objection this way:

“By denying an enrolled agent the right to prepare tax returns, the Tax Board is attempting to disallow practice that is regulated by the federal government. The federal regulation on enrolled agents would preempt the Oregon Tax Board from restricting the practice. This is explicitly forbidden by the supremacy clause of the United States Constitution.”

US Const, Amend VI, § 2. ER 7.

Petitioner also objected throughout the process through its then President, Vice President as well as through its various members. ER 1, 5, 7-11.

B.Standard of Review

ORS 183.400(4)(a)-(b) states that this court shall declare a rule invalid if it finds that the rule “[v]iolates constitutional provisions.” In making this determination, the Court must limit its examination to “(a) The rule under review; (b) The statutory provisions authorizing the rule; and (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking

procedures.” Thus, this court’s review of the validity of OAR 800-020-0015(5) is a review for error of law.

C. Argument

1. OAR 800-020-0015(5) is invalid because it is preempted by Federal law regulating enrolled agents.

An administrative rule is invalid if it violates constitutional provisions. ORS 183.400(4). Article VI of the United States Constitution makes the Constitution and all federal law the “supreme law of the land.” Where Congress intends, expressly or implicitly, to occupy a field of law, federal law will preempt state regulation of that field. *Cipollone v. Ligget Grp, Inc*, 505 US 504, 516 (1992); *See also Hines v. Davidowitz*, 312 US 52, 67 (1941) (“We have recognized that a federal statute implicitly overrides state law either when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively or when state law is in actual conflict with federal law.”). “State law is preempted if that law actually conflicts with federal law or if federal law so thoroughly occupies a legislative field as to make reasonable inference that Congress left no room for the States to supplement it.” *Id.* (citations omitted). The Supreme Court has “found implied conflict pre-emption where it is impossible for a private party to comply with both state and federal requirements or where state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.” *Hines*, 312 US at 67. It is well settled that “the law of the state, though enacted in the exercise of powers not

controverted, must yield' when incompatible with federal legislation." *Sperry v. State of Florida ex rel Florida Bar*, 373 US 379, 384 (1963) (quoting *Gibbons v. Ogden*, 22 US (9 Wheat) 1 (1824)). To determine whether there is a direct conflict between state law or regulation and federal law, the Supreme Court will read the two laws as if they were enacted by the same legislature and the federal law was enacted later than the state law. If "the state law does not function consistently and harmoniously with the overriding federal scheme, then it is replaced by the federal statute." *Gonzalez v. Arizona*, 624 F3d 1162, 1181 (2010).

In this case, an individual who is fully licensed by the United States federal government as an enrolled agent cannot use that license in the state of Oregon, unless they comply with additional qualifications which have been added by OAR 800-020-0015(5). That directly obstructs and hinders the use of the federally granted license. In *Sperry*, the United States Supreme Court considered whether the state of Florida could prohibit a person who was federally licensed to practice before the Patent Office from practicing patent law in Florida without first being licensed by the state bar as an attorney. Under federal law, Mr. Sperry could be and was licensed to practice before the Patent Office without being licensed as an attorney. Under Florida law, however, Mr. Sperry could not lawfully practice before the Patent Office without first being licensed as a Florida attorney. The Supreme Court held in no uncertain terms that a state "may not enforce licensing requirements which, though valid in the absence of federal

regulation, give the State's licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions." *Sperry*, 373 US at 384. Neither can a state "impose upon the performance of an activity sanctioned by federal license additional conditions not contemplated by Congress." *Id.* The Court held that "no State law can hinder or obstruct the free use of a license granted under an act of Congress." *Id.* (quoting *Pennsylvania v. Wheeling & Belmont Bridge Co*, 54 US (13 How) 518, 566 (1852)).

In this case, Federal law regulates who can practice before the Internal Revenue Service and states that "any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service." 31 CFR § 10.3(1)(c). The definition of "practice before the Internal Revenue Service" under 31 CFR § 10.2(4) is

All matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(emphasis added).

Federally licensed practice before the IRS necessarily includes what ORS

673.615(1) and OAR 800-020-0015(5) prohibit. As part of an enrolled agent's practice before the IRS, he or she advises clients on tax strategies, tax avoidance strategies, and settlements with the IRS, among other things. This practice inevitably includes preparing and filing personal income taxes. In fact, where an enrolled agent is advising a client regarding a settlement with the IRS, the first step in the process is filing delinquent personal income taxes. As explained above in Section 1, the Oregon Legislature has enacted statutes restricting the ability of any person, including enrolled agents, to "*advise or assist in the preparation of personal income tax returns for another and for valuable consideration or represent that a person is so engaged*" without first being licensed by the State of Oregon as a tax consultant. ORS 673.615(1). OAR 800-020-0015(5) further prohibits an enrolled agent from even being licensed by the State of Oregon as a tax consultant without a showing that the enrolled agent has logged 360 hours of work experience. Therefore, an enrolled agent federally licensed to practice before the IRS cannot do so in Oregon without first complying with Oregon's 360 hour rule.

The state of Oregon has attempted to add additional conditions or qualifications as a prerequisite to the use of that federal license granted pursuant to an act of Congress.² While any ordinary person desiring to be a tax

² The Department of Treasury has been given the authority to regulate and license agents, attorneys and other persons representing claimants before the agency. 23 Stat. 258 (General Deficiency Act of July 7, 1884, Section 3); 31 USC § 330.

consultant must comply with very detailed requirements, including a minimum of 1,100 hours of work experience, the Oregon Legislature has exempted enrolled agents from these requirements. ORS 673.625(1) and (3). ORS 673.637(2) specifically exempts enrolled agents from these requirements and requires the Board of Tax Practitioners to license any person who is enrolled to practice before the Internal Revenue Service under 31 CFR § 10 and who has passed an exam covering Oregon personal income tax law. When it adopted OAR 800-020-0015(5) requiring that even enrolled agents have at least 360 hours of work experience before applying to be licensed as a tax consultant, the State Board of Tax Practitioners acted outside its statutory authority and added a requirement that the Legislature specifically removed.³

Under *Sperry*, OAR 800-020-0015(5) is preempted by federal law insofar as it prohibits an enrolled agent from preparing, advising, or assisting in the preparation of federal personal income tax returns without first accruing 360 hours of work experience. The Code of Federal Regulations specifically allows any enrolled agent to prepare and file federal income tax returns without the

³ Petitioners acknowledge and assert that under federal preemption law and the analysis put forth in this brief, the requirement from ORS 673.637(2) that enrolled agents pass a test covering Oregon tax law before being allowed to work as a tax consultant and prepare or file any federal income taxes in Oregon is likely also invalid because it adds a condition to performing an activity authorized by a federal license. Because this is an ORS 183.400 case, Petitioners are not asking this Court in this proceeding to declare ORS 673.637(2) invalid as preempted by federal law; however, such a conclusion is inevitable after a complete and correct analysis of both the statute and the OAR at issue.

work experience requirement in OAR 800-020-0015(5). Like the state of Florida in *Sperry*, Oregon has “impose[d] upon the performance of an activity sanctioned by federal license additional conditions not contemplated by Congress.” The Court in *Sperry* held that a state “may not enforce licensing requirements which, though valid in the absence of federal regulation, give the State’s licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions.” The 360 hour rule specifically adds an additional requirement to 31 CFR § 10, adding a 360 hour rule that is not in federal law. This hinders and obstructs the use of the license as found unconstitutional in *Sperry* and gives the State Board of Tax Practitioners the “power of review” over the enrolled agent’s ability to “practice before the Internal Revenue Service.” *Id* at 384. Using the *Gonzalez* process, if the Court were to read OAR 800-020-0015(5) and 31 CFR § 10.3(1)(c) (2011) successively, it would find that the two laws do not function consistently because the Oregon rule restricts what the federal law allows. Therefore, OAR 800-020-0015(5) directly conflicts with 31 CFR § 10, is preempted, and is invalid.

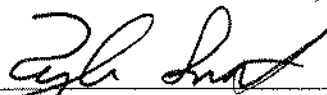
Petitioner requests this Court award costs and reasonable attorney fees to Petitioner under both ORS 183.497(1)(a) and (b). Respondent was informed and knew it did not have a reasonable basis in the facts or law to create the 360 hour rule through OAR 800-020-0015(5) but elected to do so nonetheless.

CONCLUSION

The Board of Tax Practitioners acted outside of its statutory authority in adopting OAR 800-020-0015(5) for which there was no express or implied authority and which directly conflicts with the legal standard expressed in ORS 673.637(2). Further, OAR 800-020-0015(5) is in direct conflict with federal law and is therefore preempted. For these reasons, this Court should determine that OAR 800-020-0015(5) is invalid.

Dated: August 7, 2014

Tyler Smith & Associates, P.C.

By: 
Tyler Smith (OSB# 075287)
Of Attorneys for Petitioner
181 N Grant St STE 212
Canby, OR 97013
(503)266-5590

**CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND
TYPE SIZE REQUIREMENTS**

Brief length

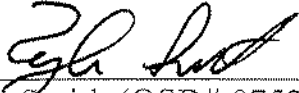
I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 5,610 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Dated: August 7, 2014

Tyler Smith & Associates, P.C.

By: 

Tyler Smith (OSB# 075287)

Of Attorneys for Petitioner

181 N Grant St STE 212

Canby, OR 97013

(503)266-5590

PROOF OF SERVICE

Certificate of Filing

I certify that on August 7, 2014, I filed the original of Petitioner's Opening Brief and Excerpt of Record by hand delivery with the Appellate Court Administrator at this address:


Appellate Court Administrator
Appellate Court Records Section
1163 State Street
Salem, Oregon 97301-2563

Certificate of Service

I certify that on August 7, 2014, I served two copies of Petitioner's Opening Brief and Excerpt of Record by first class mail to the following attorney:

Denise G. Fjordbeck
OSB No. 822578
Department of Justice
1162 Court Street NE
Portland, OR 97301
(503)378-4402
denise.fjordbeck@doj.state.or.us

Tyler Smith & Associates, P.C.

By: 
Tyler Smith (OSB# 075287)
Of Attorneys for Petitioner
181 N Grant St STE 212
Canby, OR 97013
(503)266-5590

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

OREGON SOCIETY OF ENROLLED
AGENTS, INC.,

Petitioner,

v.

STATE OF OREGON, acting By and
Through the STATE BOARD OF TAX
PRACTITIONERS,

Respondent.

Appellate Court No. A156623

EXCERPT
OF
RECORD

EXCERPT OF RECORD

INDEX

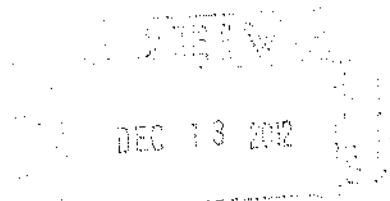
Comment received from Ira Rosenberg, dated 12/17/12 (received 12/13/12)	ER – 1-3
Email from Monica Walker, OBTP, to Board Members transmitting The December 19, 2012 Presiding Officer’s Report to Agency on [the] Rulemaking Hearing, dated 1/3/13	ER – 4-6, 8-11
Comment received from Daniel O. Stearns, undated	ER – 7

ORSEAOREGON SOCIETY
OF ENROLLED AGENTS

POWERING AMERICA'S TAX EXPERTS

530 NW Battaglia Ave
Gresham, Or 97030

December 17, 2012

Oregon Board of Tax Practitioners
3218 Pringle Road Southeast
Suite 120
Salem, OR 97208-4395

Re: Opposition to EA Provision in Notice of Proposed Rulemaking

The Oregon Society of Enrolled Agents (ORSEA) appreciates the opportunity to comment on the notice of proposed rulemaking that would modify provisions of Administrative Rules Chapter 800, Divisions 1, 10, 15, 20, 25, and 30. ORSEA is the only state organization solely representing the interests of the state's 1,100+ enrolled agents (EAs), who are licensed by the Internal Revenue Service and granted unlimited rights to practice before the agency in both tax preparation and representation matters. We are committed to increasing the professionalism of our industry, increasing the integrity of the tax administration system, and protecting the representation rights of taxpayers.

The proposed amendments are for general housekeeping and maintenance as well as to change language to better reflect industry standards. While many proposed changes may be reasonable and necessary, we focus our comments on one change in particular: 800-020-0015—Application for Examination.

Before we outline our concerns in detail, I would like to provide further background on the enrolled agent license. The Internal Revenue Service embarked on its return preparer oversight program in late 2009¹ and in the intervening years has launched a significant effort to provide a framework for all those who prepare federal income tax returns for compensation.

Probably the most fundamental decision the agency made was to require all return preparers to demonstrate competency. When making this determination, the agency also exempted the then-Circular 230 practitioners (attorneys, certified public accountants, and enrolled agents²) from this requirement. IRS recognized that legacy Circular 230 practitioners had already demonstrated higher competency than required for the newly regulated.

¹ See Publication 4832, Return Preparer Review

² Attorneys, certified public accountants, and enrolled agents are commonly referred to as legacy Circular 230 practitioners

ORSEA Comments on Proposed Regulations
 December 17, 2012
 Page 2 of 3

Further, IRS also stated that legacy Circular 230 practitioners were granted unlimited practice authority. This means that enrolled agents are unrestricted as to which taxpayers they may represent, which tax matters they may handle, and the offices before which they may represent clients.

In a recent letter to some 300,000 return preparers who have not yet demonstrated competency (by becoming an attorney or certified public accountant or by passing either the registered tax return preparer basic competency test or by passing the multi-part comprehensive enrolled agents examination), IRS stated, "Enrolled agent status is the highest credential the IRS awards. Individuals who obtain this elite status must pass a three-part exam, adhere to ethical standards and complete 72 hours of continuing education courses every three years."

We respectfully offer these comments on the Proposed Rule:

- **Basis of the Rule.** We were surprised to see the rule requiring such a significant change for enrolled agents, particularly given that the need for the rule is stated as "general housekeeping" and meeting "industry standards."

While the Board characterizes its proposed changes as "general housekeeping," we submit the Division 20 procedural change for enrolled agents is significant and does not fit within that parameter. We cannot easily divine a basis for the rule change and wonder whether the Board has any specific data driving this decision. Could it be that Oregon's EAs provided services that fall below the state's standards for tax service? Given the significant impact to enrolled agents, we ask whether there is any particular reason the state's enrolled agents were not consulted in advance.

In addition to our fundamental opposition to the rule, we also question how the Board chose a 360 hour minimum.

- **Burden of Compliance.** The Statement of Need and Fiscal Impact suggests that the cost of compliance to small businesses is nonexistent and estimates the number of small businesses subject to the rule is "none." ORSEA is largely composed of individuals who run small businesses, many of them sole proprietors. We are comfortable asserting that the burden about to be placed on the enrolled agents of Oregon is higher than "none."

The rule requires enrolled agents who are in good standing before the IRS (and therefore granted by the federal tax authority unlimited privilege to file federal tax returns) to "submit verification by the applicant's employer or employers...that the applicant has completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years."

ORSEA Comments on Proposed Regulations
December 17, 2012
Page 3 of 3

The practical hurdle here is that many tax practitioners do not have an employer. Are the self-employed to self-certify? Or must an enrolled agent spend two years working for someone else before (s)he is permitted to prepare returns IRS has already granted them the right to prepare?

In sum, we believe there are too many unanswered questions to move forward with the proposed rule as written. We ask to strike the section in question and allow for further time to consider the changes, take into account the burden they place on enrolled agents in Oregon, and to determine, what if any benefit accrues to anyone in Oregon as a result of the change.

ORSEA appreciates the opportunity to respond in writing to the Notice of Proposed Rulemaking and looks forward to the December 18th hearings at which time we will be pleased to further explain our positions.

Sincerely,



Ira Rosenberg, EA
President

cc: Francis X. Degen, President, National Association of Enrolled Agents
Carol Campbell, Director, IRS Return Preparer Office
Karen Hawkins, Director, IRS Office of Professional Responsibility

A-13:

ER 4

Name: Cindy R. Petersen, EA, LTC

-----Original Message-----

From: tcpete@bendbroadband.com [mailto:tcpete@bendbroadband.com]
Sent: Friday, December 14, 2012 3:27 PM
To: monica.j.walker@state.or.us
Cc: OrSEA President IRA Rosenberg
Subject: change is to OAR 800-020-0015

Cindy R Petersen EA, LTC
20240 Mountain View Drive
Bend, OR 97701
(541) 419-7346

ATTACHMENTS:



Monica J. Walker, Senior Compliance Specialist/Investigator & Rules Coordinator
Oregon State Board of Tax Practitioners
3219 SE Peirce Road, Suite #129,
Salem, Oregon 97302

December 14, 2012

As an Enrolled Agent for the last 17 years, and an Oregon Tax Consultant since 1996, I have a very difficult time with the Oregon State Board of Tax Practitioners placing such impractical regulations on Enrolled Agents who have proven their knowledge of Tax Law through the very stringent testing imposed on Enrolled Agents by the Internal Revenue Service's Office of Professional Responsibility and Circular 230. I am referring to specific changes to OAR 800-020-0015 - Application for Examination.

(5) An Enrolled Agent applicant who is enrolled in practice before the Internal Revenue Service, holding a valid treasury card, shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has completed a minimum of 260 hours work experience during at least two (2) of the last five (5) years.

I see several problems with the proposed amendments.

1. The Oregon Tax board is essentially saying that our treasury card is no good here in Oregon. Imagine if every state tried to restrict our practice; it would make the treasury card worthless.
2. The OARs conflict with circular 230, making practice here more problematic than other states. It is difficult to serve two different masters.
3. An EA moving here from another state may be self-employed, making it difficult for him to show something from his employer.

The Board stated that the proposed amendments are for general housekeeping and maintenance as well as to change language to better reflect industry standards.

The practical hurdle here is that many tax practitioners do not have an employer. Are the self-employed to self-certify? Or must an enrolled agent spend two years working for someone else before (s)he is permitted to prepare returns IRS has already granted them the right to prepare?

In sum, there are too many unanswered questions to move forward with the proposed rule as written. We, as Enrolled Agents, ask to strike the section in question and allow for further time to consider the changes, take into account the burden they place on enrolled agents in Oregon, and to determine what if any benefit accrues to anyone in Oregon as a result of the change.

I respectfully offer these comments on the Proposed Rule:

- Basis of the Rule. I was surprised to see the rule requiring such a significant change for enrolled agents, particularly given that the need for the rule is stated as "general housekeeping" and meeting "industry standards."

While the Board characterizes its proposed changes as "general housekeeping," I submit the Division 20 procedural change for enrolled agents is significant and does not fit within that parameter. I cannot easily divine a basis for the rule change and wonder whether the Board has any specific data driving this decision. Could it be that Oregon's EAs provided services that fell below the state's standards for tax service? Given the significant impact to enrolled agents, I ask whether there is any particular reason the state's enrolled agents were not consulted in advance.

In addition to my fundamental opposition to the rule, I also question how the Board chose a 260 hour minimum.

I appreciate the opportunity to respond in writing to the Notice of Proposed Rulemaking.

Sincerely,

Cindy R. Petersen
Cindy R. Petersen, EA, LTC

cc: Ira Rosenberg EA, President, Oregon Society of Enrolled Agents

A-14:

Name: Richard Martinez, RTRP, LTC, EA

-----Original Message-----

From: Richard Martinez [mailto:rmartineztaxllc@outlook.com]
Sent: Sunday, December 16, 2012 6:22 AM
To: monica.j.walker@state.or.us
Cc: Ira Rosenberg, EA
Subject: RE: OAR 800-020-0015

Monica,

Attached is a letter with my comments regarding OAR 800-020-0015 - Application for Examination.

Thank you,

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Page # 254

A-8:

ER 5

Name: Marie A. Linders, EA, LTC

-----Original Message-----

From: Marie Linders (<mailto:marie.linders@jmsolutionsllc.com>)

Sent: Monday, December 03, 2012 12:55 PM

To: Dorothy Hudson

Subject: Proposed Ruling regarding Enrolled Agents

Hi Dorothy,

I hope you had a nice Thanksgiving. Can you believe it's December already!

The reason I'm writing is that I'm the current Vice President of the Oregon Society of Enrolled Agents and some of our members are concerned about the proposed rule concerning EA's. I just finished reading the email sent from Monica of the proposed rule along with ORA 800-020-0020 and I was wondering if you would mind sharing with me the boards intention of the proposed rule and permission to share it with the OrSEA board.

It appears to me that as your mission statement states, ...Oregon tax professionals (*Enrolled Agents*) are competent.

It appears to me that proposed rule is trying to make sure that new EA's at least have a minimum amount of practical experience. So am I correct that there should be no worries of experienced tax practitioners or Enrolled Agents from other states having to work in Oregon under someone else?

Thanks for your time. Marie

Marie A. Linders, EA

JM Solutions, LLC

the employment and tax people

513 Main St, Suite 101, Klamath Falls, OR 97601

541.884.8822 office ~ 541.882.5468 fax

www.jmsolutionsllc.com

Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it. Ronald Reagan

The information in this message is confidential and may be legally privileged. It is intended solely for the addressee. Access to this message by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, or distribution of this message, or any action or omission taken by you or reliance on it, is prohibited and may be unlawful. Please immediately contact the sender if you have received this message in error and permanently delete this message and any attachments.

From: Dorothy Hudson (<mailto:dorothy@dorothyhudson.com>)

Sent: Monday, December 03, 2012 3:52 PM

To: 'Marie Linders'

Cc: 'WALKER Monica J * TAX'

Subject: RE: Proposed Ruling regarding Enrolled Agents

Marie,

I did have a nice holiday, I hope yours was also. I always look forward to the Christmas season, but not what follows!

It is my understanding that the proposed rule change was to ensure that all practitioners, even EAs, have a minimum amount of work experience before being allowed to take the LTC exam. I believe that your interpretation of the change is correct. Please be certain to post any public comment on this change that you feel the Board should consider prior to approval at the January meeting.

Thank you for all you do for our profession.

Have a great holiday season!

Dorothy

A-9:

Name: Steve Tollett, EA, LTC

-----Original Message-----

From: taxes@oregonfast.net (<mailto:taxes@oregonfast.net>)

Sent: Tuesday, December 04, 2012 1:17 PM

To: monica.j.walker@state.or.us

Subject: Proposed Changes to OAR's

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Page # 260

Hi Monica,

The proposal requiring an EA to have completed a minimum of 360 hours work experience.....should be substantiated with empirical data to substantiate this requirement. I am an EA, and find this quite incredible, considering the tax knowledge and tax skills an EA must demonstrate to get an EA license.

"(5) An Enrolled Agent applicant who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years."

Please advise of the data used to quantitatively determine Oregon consumers have been harmed by EA's not meeting the proposed change. I'm only interested in verifiable data. I find this request as reasonable as the state or the IRS requesting source documents for deductions taken on a tax return, which I'm always glad to provide. Shouldn't be a problem.

I'll reserve my final actions until I've seen the data.

Thank you,

Steve Tollett EA,LTC #31428-C

A-10:

Name: Ira Rosenberg, EA, LTC

-----Original Message-----

From: "IRA Rosenberg, OrSEA President" <iratax@frontier.com>

To: iclovato@netzero.net

Subject: Special Edition of the OrSEA Newsletter

Date: Mon, 10 Dec 2012 14:10:21 -0500 (EST)

Having trouble viewing this email? [Click here](#)

December 2012 **Special Edition** **Issue: 8**

ORSEA : POWERING AMERICA'S TAX EXPERTS
OREGON SOCIETY OF ENROLLED AGENTS



In This Issue
 Presidents Message

Presidents Message
 I am sending this special edition of the newsletter because we need your help. The Oregon Board of Tax Practitioners has proposed changes to the rules that we feel are detrimental to all Enrolled Agents. There is also a short time frame to respond since they have issued a deadline of 5 P.M. on December 18, 2012 to comments.

The specific change is to OAR 800-020-0015 - Application for Examination.

(5) An Enrolled Agent applicant who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years.

I see several problems with the proposed amendments:
 1. The Oregon Tax board is essentially saying that our



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Page # 259

Daniel O. Stearns, Tax Consulting

United States Tax Court Practitioner, EA, LTC

181 N Grant St Ste 202, Canby, OR 97013

(503) 428-1591 – Fax (503) 914-0433 – danielstearns@live.com

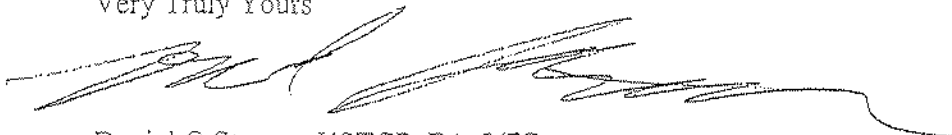
To the Oregon Tax Board

It has come to my attention that the Oregon Tax Board would like to modify the Oregon Administrative rules to further restrict the practice of Enrolled Agents in the state of Oregon. An amendment to OAR 800-020-0015 would require an Enrolled Agent to submit verification from an applicant's employers that he has 360 hours in two of the last five years before being allowed to practice in Oregon. This rule is burdensome and would discourage qualified Enrolled Agents from moving to the state. Most Enrolled agents are self employed and would not be able to provide verification from an "employer".

There is, however an even bigger concern. By passing these rules, the board is saying that a "valid treasury card", is not, in fact valid in the state of Oregon. As you are aware, the Internal Revenue Service is now regulating tax preparation. An Enrolled Agent is subject to circular 230 and is explicitly regulated by the Office of Professional Responsibility. By denying an Enrolled Agent the right to prepare tax returns, the Tax Board is attempting to disallow practice that is regulated by the federal government. The federal regulation of enrolled agents would preempt the Oregon Tax Board from restricting the practice. This is explicitly forbidden by the supremacy clause of the United States Constitution. The Supreme Court of the United States has also declared a states restriction of a federally authorized practitioner to be unconstitutional (see Sperry Vs Florida State Bar).

By attempting to deny the an Enrolled Agent the ability to practice in Oregon, the States risks having the entire Tax Board's authority revoked. I recommend that the State Tax Board allowed unrestricted rights to prepare tax return for those holding a valid Treasury Card.

Very Truly Yours



Daniel O Stearns, USTCP, EA, LTC

Reported he came from out-of-state and found it odd that he had to take an examination in order to provide tax preparation services in Oregon. Although he is not opposed to training, he is concerned about the Rules not applying to all entities as well as the additional restrictions on licensing.

Daniel Stearns submitted a written copy of his oral comments/presentation during the hearing. *(See written comments)*

Ira Rosenberg, EA, LTC – Representing OrSEA (President):

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
Provided a verbal summary of the written comments he had previously submitted. *(See written comments)*

Cletus Fernandez, EA, LTC – Representing OrSEA (Salem Chapter):

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
Reported that Circular 230 gives a registered EA unlimited power. Concerned that State of Oregon will now mandate 360 hours of work experience and out-of-state applicants that are self-employed will not qualify. Noted that CPA's do not have this requirement nor do Attorney's. Feels the proposed OAR is restricting. Tax practitioners have decreased nationally by 400,000 practitioners with these statistics he is worried about the future of the industry.

Cynthia Rawlinson, LTP – Representing Self:

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
Recently passed the IRS Special Enrollment Exam (SEE) and finds the proposed OAR too restrictive. She is worried about the effect on the industry.

Jean Andrews, LTC – Representing Self & OSTC:

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
Knows persons who have gained their EA license and has personally seen how EA's grasp tax concepts. It takes approximately 120 hours to study to become an EA. The consultant examination is difficult to pass now – why hurt the EA's and the numbers?

Jennifer O'Halloran, LTC – Representing Self:

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
I have been doing accounting for many years and have extensive knowledge in tax preparation for 12 to 14 years. As a preparer, one doesn't necessarily learn more. Has been self employed for many years and the passage of the proposed OAR would be a financial detriment. She questions what about persons that have test anxiety and has reviewed the tax consultant and state-only examination pass rates and asks "Who are we trying to weed out?"

Norma Barber, LTC – Representing Self / OATC & OSTC:

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
Self employed for several years. Sat for the IRS SEE and states the hours involved in studying for the examination was tremendous. Takes a lot of

knowledge and may take several times to be successful. The Licensed Tax Consultant (LTC) exam also requires a lot of knowledge. Feels the passage of the proposed OAR would be a financial burden. With what an individual has to do to keep-up the EA license – I would not be able to.

Daniel Stearns, EA, LTC – Representing Self:

800-030-0025(1) – Civil Penalty Matrix – Opponent to Rule Amendment
Feels requiring registration of a tax business has nothing to do with qualifications. Was not aware of the rule, anyway, during the first six months of being licensed in Oregon. Is opposed to the OARs regarding business registration and the regulation of tax businesses.

Ira Rosenberg, EA, LTC – Representing OrSEA (President):

800-020-0015(5) – Application for Examination – Opponent to Rule Amendment
Provided the additional point that, to his knowledge, he has never heard of an EA, who has not had at least 360 hours of work experience, being detrimental due to a lack of work experience hours.

Ira Rosenberg later submitted written comments of his oral presentation during the hearing regarding this point. (*See written comments*)

Hearing Adjournment

The hearing was adjourned at 10:49 a.m. on December 18, 2012.

Written Comment

The public comment period closed at 5:00 p.m. on December 18, 2012. An index of all written comments received during the public comment period is appended as Attachment A.

A-20:

Name: Ira Rosenberg, EA, LTC

-----Original Message-----

From: Ira Rosenberg [mailto:iratax@frontier.com]
 Sent: Tuesday, December 18, 2012 1:40 PM
 To: monica.j.walker@state.or.us
 Subject: monica.j.walker@state.or.us

I would like to comment on proposed rule changes to 800-020-0015 (5) Application for Examination.

I feel the requirement for Enrolled Agents (EA) to complete 360 hours of experience in two of the last five years prior to applying for the LTC examination is arbitrary and capricious.

There have been no cases published in the last two years that show an Enrolled Agents that had less than 360 hours of experience and then became an LTC and performed negligently.

What is the basis for picking 360 hours during two of the last five years? Is there any evidence to support how many hours if any will improve the quality of tax preparation?

Enrolled Agents have not only proven their competency to the Internal Revenue Service, they have done it to a level that the IRS considers as the "highest credential that the IRS issues". They should not have to do it again to the state.

-----Ira Rosenberg, EA -----
 -----iratax@frontier.com -----
 -----http://iratax.net -----
 -----Retirement is Taxing-----

ENROLLED AGENT | AMERICA'S TAX EXPERTS®
 NATIONAL ASSOCIATION OF ENROLLED AGENTS

No trees were killed in the sending of this message. However, a large number of electrons were terribly inconvenienced. Age is a very high price to pay for maturity.

A-21:

Name: Sally Beckfield, EA, LTC

-----Original Message-----

From: Sally Beckfield [mailto:sbeckfield@wvi.com] Sent: Tuesday, December 18, 2012 4:17 PM
 To: WALKER Monica J * TAX Cc: Jean@JeanAndrewstax.com; Ira Rosenberg
 Subject: Re: Oregon Board of Tax Practitioners 2012 Oregon Administrative Rules – Proposed Rulemaking Notice and Language

Dear Monica Walker:

Thank you for providing me with a copy of the proposed rules. I wish to direct my comments to the proposed change to OAR 800-020-0015, Application for Examination. This proposed rule seeks to require an Enrolled Agent, holding a valid treasury card to submit verification of the applicant's employer of evidence of 360 hours of work experience in at least two of the last five years.

I cannot support this change. It seems to me that this change completely disregards the strict testing standards that the EA has already met and passed to obtain EA standards, in addition to a background check. To require the work experience hours in addition to the EA having met, passed and adhered to the IRS's rigid standards is not necessary. This change to OAR 800-020-0015 is very significant to EA's who might be coming into to Oregon from another state where they have been self employed.

Why is the Board proposing this particular rule change? You cite "housekeeping" - this is quite more than "housekeeping", and meeting "industry standards". What does this mean?

Please give this matter further consideration before passing this rule. Please organize a focus group of EA's for input before passing this rule. Please work with Enrolled Agents not against them in this matter.

Thank you for the opportunity to comment.

Sally J. Beckfield, LTC, EA
 503-869-1664

A-17:

Name: Catherine Giovinco, EA, LTC

-----Original Message-----

From: Cathy Giovinco [mailto:asc5@qwestoffice.net]

Sent: Monday, December 17, 2012 12:18 PM

To: Monica Walker

Subject: Proposed Rules

Hello, Monica

Within the proposed rules changes for the meeting tomorrow, there is one additional change that should NOT be added.

That new addition is under Division 20- Procedures 800-020-0015 Application for Examination. There appears a new (5) requirement for Enrolled Agents. I propose that you totally delete this addition or change it to the following "(5) An Enrolled Agent applicant who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, shall NOT be required to submit employment hours to take the exam for tax consultant."

If the additional rule was to "protect Enrolled Agents from the additional employment hours required for a Licensed Tax Preparer to apply to take the Licensed Consultants exam, I thank you for the thought. However, Enrolled Agents are regulated by the Internal Revenue Service under Circular 230. Enrolled Agents do NOT need additional regulations imposed by any of the states. Where are the state regulations impositions on the other "legacy Circular 230" CPA's and tax attorneys?

Enrolled Agents are the most qualified individuals to do tax work across this nation. You do NOT want to discourage any Enrolled Agents from moving to or providing qualified tax preparation in this state or for its residents. You cannot protect this state's residents from unqualified unpaid preparers. You do not see all of the returns prepared by CPA's that are inaccurate, yet you apparently can do nothing about that either.

The most recent Tax Board Bulletin reports that the quantity of those of us in this business is declining and there are not enough applicants passing the exams to reduce the depletion in the numbers. So you want to discourage those who are the most qualified? So you want to keep those most likely to pass the test from taking the test? You want those of us already in the business to mentor and teach during the tax season and beyond? Please start to do your part and help those of us who are tired of being regulated more and more and more with additional costs. This new (5) addition to your excessive regulations is NOT needed nor appreciated.

Sincerely,
Catherine Giovinco
OBTP#LTC5064/EA2012-54288

A-18:

Name: Annette Saarinen, LTC

-----Original Message-----

From: Annette Saarinen [mailto:AnnetteS@accountaxoforegon.com]

Sent: Monday, December 17, 2012 1:41 PM

To: monica.j.walker@state.or.us

Subject: EA concern in proposed statute changes

December 17, 2012

Dear Monica, I have read with interest and heard discussion about the evidence of work done by EAs coming into our state with prior experience or by EAs in our state wishing to bypass the full Consultant exam. Here is my opinion. I think the Board's suggestions is a good proposal. So often people who are good at test-taking, have no common sense about application of the laws in a tax return. It would be unwise to turn these people loose on the unsuspecting people of Oregon. Experience is very important to a practitioner starting up his/her own business here in Oregon.

The main concern that I hear about is the evidence by an Employer of current experience. We can add that evidence of the self-employed can be a copy of their business portion of their tax return—Schedule C for Sole Proprietors or the F1065 for Partnerships or the F1120/(s) for the Corporations. The same 2 years of these Forms or Schedules would suffice as evidence of their self-employed tax experience. It wouldn't show the number of returns prepared or depth of experience, but would indicate that there was some experience there

APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON SOCIETY OF ENROLLED AGENTS,

Petitioner,

v.

STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,

Respondent.

Case No. _____

DECLARATION OF MARIE A. LINDERS

I, Marie Linders, hereby declare:

1.

My name is Marie A. Linders. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an Enrolled Agent, ("EA" hereafter) and have an active practice with JM Solutions LLC.

2.

I am the President of the Board of the Oregon Society of Enrolled Agents ("OrSEA" hereafter). I am charged with the upholding the mission of OrSEA which is to "Foster professionalism and growth of members, be an advocate of taxpayer rights, protect the interests of its members and enhance the role of Enrolled Agents among the government

Page 1

DECLARATION OF MARIE A. LINDERS

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590; Fax 503-212-6392

agencies, other professions, and the public at large". The Oregon Board of Tax Practitioners ("Board" hereafter) created OAR 800-020-0015(5). OAR 800-020-0015(5) creates an additional licensing requirement that does not exist outside of that administrative rule. This requirement does not exist in state statute, nor does any such requirement exist in federal statute, or the federal administrative rules governing our licensure. The Internal Revenue Service establishes and administers the licensing standards for individuals seeking to be a federally licensed tax practitioner (an EA). The State of Oregon added an additional qualification to utilize our license in Oregon, the rule now requires a minimum of 360 hours of work experience during two of the last five years (the "360 Hour Rule" hereafter) before EA's can legally practice on their own in Oregon. This has the potential to diminish the designation of the EA. For some EA's (primarily part time, or semi retired) the 360 hours of tax preparation could result in a delay of about three years, because the tax season runs primarily from January 15 through April 15. Thus, the 360 hour requirement, for an EA to run their own practice even after obtaining the designation of Licensed Tax Consultant (LTC hereafter) has the potential of reducing the number of qualified EA's relocating to our state as they may would have to first practice under another to gain their 360 hours of "experience". Another effect of diminishing the designation of the EA is, as an employer I am not allowed to have an EA prepare tax returns in my office without first requiring them to obtain the status of either Licensed Tax Preparer (LTP hereafter) or LTC. To obtain the designation of LTP, the examinee must pass a 100 question exam, which depending on the area in Oregon, may not be available year round,

or may require extensive travel or expense and further delays in waiting for the examination to be available. One of my colleagues reported having such an experience when relocating to Oregon, which resulted in a delay of 3 months in opening his practice in Oregon. We also have OrSEA members in Oregon who are EA's but are not "Oregon" LTC's. Even as an EA, these individuals must complete the extra step of becoming an LTC before they can utilize their existing federal license to practice on their own in Oregon. Essentially to be perfectly legal, an experienced EA relocating to Oregon, could potentially have to take a step down in pay and re-license as an LTC and then practice under another to obtain the required 360 hours of experience. Alternatively, in Oregon it makes no sense to pursue becoming an EA without first obtaining the designation of LTP, as that is the first step required in order to gain the necessary hours of experience to obtain the designation of LTC which is required for an EA to utilize their EA designation to operate a tax practitioner business in Oregon. These layers would potentially delay the ability of an EA candidate to operate in Oregon for years, thus creating a deterrent for an individual seeking the EA designation as a career choice. In summation, the 360 Hour Rule requirement, acts as a deterrent for a federally licensed EA practicing in another State, from relocating their practice to Oregon. Prior to this rule, a person could take the more extensive license route of extra study, and become much more knowledgeable about tax issues by becoming an EA and after obtaining their LTC license could then open a practice immediately. EA's can practice their profession in every other state of the United States without additional licensing; however if they come to Oregon they may not be able practice unless they are

willing to engage in additional on-the-job training for the minimum 360 hours, before re-starting their own practice. This 360 Hour rule harms our organization, members and and hinders me from being able to uphold the OrSEA mission of growing our membership, and recruiting new EA's to the state of Oregon.

3.

As I mentioned previously the additional layers of regulation placed on the EA portion of the tax practitioner industry and in particular the 360 Hour Rule, has an additional affect, which discourages a potential tax practitioner candidate from seeking the designation of an EA. As an EA I am by statute restricted from soliciting a fellow EA to work in my office without first requiring them to gain the designation of LTP or LTC. I am also limited in my ability to recruit and train qualified individuals in the field of taxation unless they first sit for the state exam and obtain their license to prepare taxes (LTP). This is accomplished by paying to sit for 80 hours of tax education and passing a 100 question exam, all with essentially no prior tax experience (the course costs are approximately \$500.00 to \$1,000.00 depending on the educator and the exam could be an additional cost). The state of Oregon's LTP exam pass rate has had a steady decline since before this rule has been in place and is down to about 50 percent from a 68 percent pass rate in 2009. So as this additional restriction is placed on the EA industry only, it in essence shuts the door on the best option we EA's as an industry have for finding and training employees. This harms my firm, the tax practitioner industry, and reduces the ability of EA's to recruit and train new employees. I recently had an acquaintance's son

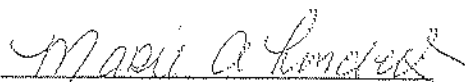
who graduated with an accounting degree from OIT (Oregon Institute of Technology). He told me he went to work for an accounting firm locally, because he was told that EA's don't hire accounting graduates. I concurred and told him it is not by choice, Oregon law does not allow me to hire an accounting graduate to do this work unless the graduate has a tax preparer's license. You see unlike EA's, CPA's and Attorneys are allowed to have mentoring programs which allow unlicensed individuals, graduate or not to input information onto a taxpayer's tax return, thus giving them an unfair advantage over EA's and elevating them to some kind of higher status in the realm of tax preparation, on no legitimate basis. *EA's are the only federally licensed and regulated tax practitioners who have unlimited rights to represent taxpayers before the IRS and the only tax practitioners who by definition specialize in taxation.* The 360 Hour Rule attempts to change that and limit our rights to represent taxpayers before the IRS if we live in Oregon by imposing additional requirements. Many OrSEA members have expressed to me that it appears that the Board (70% practicing EA's) views its mission to be protecting the exclusivity of the profession and affirmatively blocking EA's from being Tax Practitioners in Oregon, rather than ensuring the professional excellence of the profession they oversee. The Board continues to increase regulation on the EA industry in Oregon (i.e. the 360 Hour Rule) to right a problem which does not exist, when in fact the Tax Practitioner industry in Oregon they regulate, to include EA's are the model for the nation and exhibit professionalism which is the envy of many states.

4.

In May of 2013 the Oregon Legislature rejected proposed legislation which would have created statutory authority for OAR 800-020-0015(5), yet the Board has refused to remove the 360 Hour Rule, burdening our association and industry, making it more difficult to recruit new employees decreasing our revenue and profit. This rule is having the effect of driving EA's out of the state, preventing existing EA's from selling their businesses, and preventing more from even becoming EA's. This reduction in EA's decreases our membership pool and harms our organization. The rule makes it harder to find new members to join OrSEA as new or retired EA's, or part-time EA's from other states choose not to take the additional steps now required to relocate to Oregon. The 360 Hour Rule makes licensure of an EA in Oregon more complicated and burdensome than the federal license and the resulting reduction in members reduces the OrSEA organization's revenue and ability to accomplish its mission. The rule likewise without statutory authority prevents some of our members from practicing their trade in the state of Oregon, thus preempting and nullifying the Federal License obtained by the authority of the IRS.

I hereby Declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 14th day of February, 2014.


Marie A. Linders EA
OrSEA President

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON SOCIETY OF ENROLLED AGENTS,

Petitioner,

v.

STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,

Respondent.

Case No. _____

DECLARATION OF CANDI DAWN HAMILTON

I, Candi Dawn Hamilton, hereby declare:

1.

My name is Candi Dawn Hamilton. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration.

2.

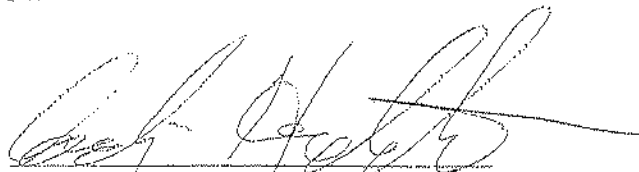
I wanted to work in a tax practice, and would have joined OrSEA. To that end I began to prepare for the Enrolled Agent exam. I also paid for and began a preparation course for passing the Enrolled Agent exam.

3.

After the enactment of the new regulations, which meant additional onerous requirements beyond passing the Enrolled Agents exam, I decided to quit the program. The number of work hours required for my Enrolled Agents license in the state of Oregon is now 360 hours. Unfortunately, it is not practical for me to work out of state. I still wish to become an enrolled agent but have more classes, which are not cheap, and a year or two of internship or volunteer work to get the hours needed before I can begin getting paid. With two young kids I just can't afford to work for free.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury

DATED this 28th day of February, 2014.



Candi Dawn Hamilton

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON SOCIETY OF ENROLLED AGENTS,

Petitioner.

v.

STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,

Respondent.

Case No. _____

DECLARATION OF CATHERINE GIOVINCO

I, Catherine Giovinco, hereby declare:

1.

My name is Catherine Giovinco. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an enrolled agent # 2012-54288 and Oregon licensed tax consultant OBTP#LTC5064 and I have an active practice at my company Associated Services Corporation. My firm is in Lane County Oregon. I am a member of OrSEA.

2.

I moved to Oregon in August of 1990. I took a required 80 hour course in Coos Bay which I passed in order to sit for the LTP licensing exam which I passed, and was

issued an LTP license by the state board in December 1990. I worked for H&R Block in Florence, OR as an employee for the tax season in 1991. I had previously worked four tax seasons as an employee of H&R Block in Florida prior to "coming home" to Oregon. I took a course at Lane Community College in Eugene the Summer of 1991 to prepare for the LTC and EA exams. I passed the LTC exam and was able to open my practice here in Oregon. I also passed two of the then four parts of the EA exam. I passed the other two in 1992 and became an EA. That is what it took under the rules at that time in order to legally operate a tax business here in Oregon. It felt like jumping through flaming hoops that got higher and higher.

3.

Five years into my business my co-owner and I began to look for possible buyers for his shares in the business. Over a two year period, I interviewed four interested EA's, all from out of state. Three were from CA and one was from CO. When I told them about the Oregon Licensing requirements to pass the Oregon portion of the LTC exam, all of them quickly disappeared. I was unable to find a qualified individual who was willing to follow the additional Oregon requirements for an EA to be able to practice in this state. Because of these additional Oregon requirements we were unable to sell his share of the business.

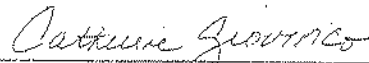
4.

I am now in my 23rd year of owning the business and at 66 years of age am considering retiring. However, if I sell this business it must be to someone who I feel is

qualified to take care of my clientele as well as I have. I would prefer for that person to be an EA. The additional requirements for hours worked is an additional serious limitation on my chance of finding a qualified out of state buyer.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury

DATED this 11th day of February, 2014.



Catherine Giovinco

EA#2012-54288

Oregon LTC OBTP#LTC5064

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON SOCIETY OF ENROLLED AGENTS,

Plaintiff,

v.

STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,

Defendant.

DECLARATION OF SUSAN BLADORN

I, Susan Bladorn, hereby declare:

1.

My name is Susan Bladorn. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an enrolled agent # 33138 and Oregon licensed tax consultant #1677C and I have an active practice at my company Oregon Tax Specialists, Inc. My firm is in Douglas County Oregon. I am a member of OrSEA.

2.

OAR 800-020-0015(5), specifically the new 360 hour rule is preventing my firm from being able to find employees. I recently had a long time employee retire and I cannot find a licensed tax preparer or enrolled agent to fill that position. I have advertised statewide and cannot even get an applicant. I cannot employ any enrolled agent that cannot meet the new experience

Page 1

DECLARATION OF SUSAN BLADORN

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590; Fax 503-212-6392

requirement. I would like to hire an enrolled agent, even if they don't have that 360 hour experience requirement because the enrolled agent card is almost proof they are qualified for the job. I can't recruit an enrolled agent as a trainee, no enrolled agent would take that step backward. I am currently seeking to hire. The state of Oregon has, by rule, added an additional qualification to utilize a enrolled agent license in Oregon, the rule now requires a minimum of 360 hours of work experience during two of the last five years (the "360 hour rule") before a new or out of state enrolled agent can be legal in Oregon. 360 hours of tax preparation could take at least two years in many areas of Oregon because the tax season runs primarily from February to April 15, and most do not find full-time work since many tax firms can only support part-time hours. There are many small firms that need part-time preparers which restricts the ability for the average seasonal tax preparer to accomplish this new administrative rule. I am in Douglas County, I do not expect to find anyone for this job opening and I will lose business by not being able to have the help I need. I contacted one of the local training facilities and they told me they had ten people start the 80 hour course where the goal is to pass that course, then pass the difficult Oregon Licensed Tax Preparer exam, just in order to legally work as a tax preparer. They told me sixty percent of those have left the program and the instructor expects only two of those remaining four to pass the LTP exam. If not for this rule, I could seek to recruit and probably hire a highly qualified enrolled agent from out of state, or have someone that lives nearby become an enrolled agent. However, the 360 hour requirement before someone could be a licensed tax preparer (LTP) or licensed tax consultant (LTC) even when they are already an enrolled agent reduces the amount of people who would want to make that kind of time commitment before they could be fully employed on a year round basis.

3.

The 360 hour rule also discourages LTP's from becoming Enrolled Agents. The enrolled agent is difficult to obtain as it is, now an LTP would have to have worked almost full time for two straight years through the tax season of February 1 to April 15 in order to obtain 360 hours in 2 of the last 5 years. Most tax preparers do not work all year round nor do they find work at firms that they can get that many hours; and especially a new licensee. The job is really only during tax season. Thus, any new person to the industry would now have to wait somewhere close to two full years to practice in Oregon as an enrolled agent, even though they could already be and enrolled agent and practicing that entire time if they lived in other states.

I hereby Declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 12th day of February, 2014.



Susan Bladorn, EA#33138; Oregon LTC #1677C

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON SOCIETY OF ENROLLED AGENTS,

Petitioner,

v.

STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,

Respondent.

Case No. _____

DECLARATION OF JEFFREY LINDERS

I, Jeffrey Linders, hereby declare:

1.

My name is Jeffrey Linders. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am the co-owner of JM Solutions LLC in Klamath Falls, Oregon and I hold the designation of Enrolled Agent.

2.

I am writing with regard to the OAR 800-020-0015 (360 Hour Rule) which has been put in place by the Oregon Board of Tax Practitioners and the harm it causes my tax business and small tax businesses like mine.

Page 1

DECLARATION OF JEFFREY LINDERS

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590, Fax 503-212-6392

3.

My business consists of two full time Enrolled Agents, one part time Enrolled Agent and one Licensed Tax Preparer/ Bookkeeper. Our office has a client base of around 2500 and an active client base of around 1500 annually. We do tax preparation and audit representation and during tax season we are always in the position to bring aboard additional help. As our business deals with a wide variety of tax and representation issues our goal has been to recruit individuals who can not only prepare tax returns but also assist in the representation process, thus the ideal candidate would be that of an Enrolled Agent.

4.

Our work load is excessive during the months of January through April as the tax season is in full swing. We are looking for part time or semi-retired Enrolled Agents to fill this gap; however due to the regulations placed on our industry by the Oregon Board of Tax Practitioners this process has always been extremely difficult. Now with the introduction of the "360 Hour Rule" this process has become nearly impossible as the Board through this action has further degraded the designation of the Enrolled Agent in Oregon to that of a mere Registered Tax Preparer.

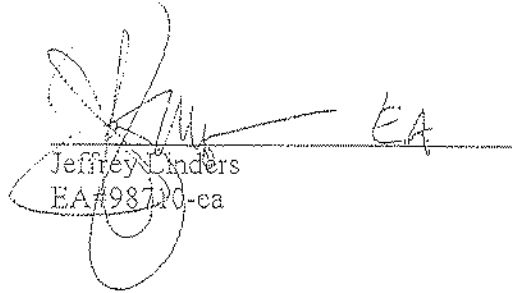
5.

My efforts to recruit individuals who are not currently in the Oregon system has been ground to a halt as I do not have the year around work to keep an individual on staff and without the required 360 hours of work experience an individual coming from

outside of Oregon would not be able to work on their own to make the potential move cost effective in the off season. This places me in a catch 22; I need the help in order to grow my business; however without being able to recruit the help needed I am unable to grow my business to support the help I need. Unless I can give someone guarantees of potential earnings there is no incentive to relocate.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury

DATED this 18th day of February, 2014.


Jeffrey Linders
EA#98710-ca

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON SOCIETY OF ENROLLED AGENTS,

Petitioner,

v.

STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,

Respondent.

Case No. _____

DECLARATION OF DEBRA SHEEHAN

I, Debra Sheehan, hereby declare:

1.

My name is Debra Sheehan. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an enrolled agent # 69797 and Oregon licensed tax consultant #5884C and I have an active practice at my company Beaver Creek Tax Service. My firm is in Clackamas County Oregon. I am a member of OrSEA.

2.

Part of my business is teaching a class for people studying to be Enrolled Agents

3.

Since the passage of the Oregon Rule OAR 800-020-0015 by the Oregon Board of Tax

Page 1

DECLARATION OF DEBRA SHEEHAN

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590; Fax 503-212-6392

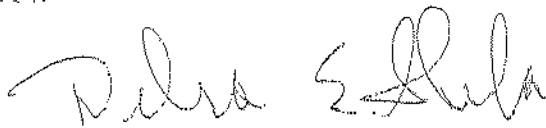
Practitioners I have seen enrollment in my class drop.

4.

I have, and likely will continue, to lose revenues because of that rule.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 3 day of ~~February~~ ^{March}, 2014.



Debra Sheehan
EA#69797
Oregon LTC #5884C

House Committee, Business & Labor

Oregon State Board of Tax Practitioners

On HB 2214

Issue no. 1: Employees of attorneys at law are subject to licensure by the board.

Background: The board currently exempts from licensure Certified Public Accountant, Public Accountants and Public accounting firms registered in Oregon. We also exclude the employees of CPAs, PAs, or registered public accounting firms. The board also exempts any attorney at law rendering services in the performance of the duties of an attorney at law.

Requested change: The Board seeks to add to this list of those exempt from licensure the employees of an attorney at law.

Stakeholders: The Oregon State Bar has submitted to this committee their support of this bill.

Issue no. 2: Enrolled Agents with little or no actual experience preparing income tax returns are allowed, after passing the Board's exam, to become licensed as a Tax Consultant and work without any supervision and, in fact, supervise Licensed Tax Preparers.

Background: The normal route to becoming a Licensed Tax Consultant requires an individual to work a minimum of 1,100 hours in preparing, advising or assisting in the preparation of personal income tax return under the supervision of more experienced tax practitioners and pass a 200 question board administered exam. An alternate route to become a Licensed Tax Consultant is to pass the federal Enrolled Agent Exam and pass the 50 question consultant state only exam administered by the board. Currently there are no statutory requirements to have any experience preparing income tax returns if one has passed the Enrolled Agent exam.

Requested change: The board seeks to require Enrolled Agents to verify they have at least 360 hours of experience preparing, advising or assisting in the preparation of personal income tax returns to qualify to take the Oregon Consultant State Only exam. The board believes this change is in the best interest to consumers in Oregon. There is no substitute for real life experience. Although a person may be book smart and able to pass both the federal and state exams, their lack of actual experience poses a risk to consumers.

Although this will affect a small number of Enrolled Agents taking the Consultant State Only exam the additional requirement ensures consumers the Licensed Tax Consultant has not only the basic knowledge of tax law by having passed 2 tests by has acquired a minimal level of actual experience preparing income tax returns.

Oregon State Board of Tax Practitioners

Board Meeting Minutes

Meeting Date: May 9, 2013

Time: 9:07 a.m. – 4:00 p.m.

Location: Morrow Crane Building, Salem, Oregon

<p>Attendees: Janis Salisbury (Board Chair) Jess Gutierrez (Vice-Chair) Dorothy Hudson (Board Member) Toni Ellsworth (Excused) Michael Addington (Board Member) Nutan Arora (Board Member) Kelly Gabliks (DOJ)</p>	<p>Guests: Nancy Hubbard, OSTC Ira Rosenberg, ORSEA Susan Parks, OAIA Linda Thomas</p>
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Staff: Ron Wagner, Executive Director
 Monica J. Walker, Senior Compliance Specialist
 Jane Billings, Exam & Education Coordinator
 Marika Garvey, Licensing Specialist

ITEM	ACTION / DISCUSSION
	Salisbury called the meeting to order at 9:07 a.m.
New Board Members	Salisbury swore in the two new Board Members, Michael Addington and Nutan Arora.
Roll called	Board members present: Hudson, Addington, Gutierrez, Arora, Lovato, and Salisbury. Excused: Ellsworth.
Executive Session Review of Case Files	
<small>To discuss information exempt from public disclosure under ORS 673.730(3). Pursuant to 192.660(2)(f), this Executive Session is closed to members of the public.</small>	
Executive Session 9:09 a.m. - 11:48 a.m.	
Chair Comments	Judith Wilkins long-time representative of the OATC sustained a minor stroke and will no longer be representing her association at Board meetings. Twyla Lawson from HR and Pete Fairhurst from NIC will be attending our meeting later today.
Compliance Report	
Reported by Monica J. Walker	Complaints reported from January 1, 2013 through May 2, 2013. General statistics: <i>22 Cases reported on during Executive Session</i> <i>10 Cases needing Board action/vote</i> General statistics <u>82 Total complaints as follows:</u> 25 Open investigations 13 Pending investigations 6 Mediated

Oregon State Board of Tax Practitioners Board Meeting Minutes

	<p>38 Closed</p> <p><i>Out of these totals</i> <i>14 Complaints in which licensees were educated into compliance</i></p> <p>Waivers to be voted on <i>2 DC/RC Waivers needing Board action/vote</i></p> <p>General counts/information on complaints 30 Unlicensed/unregistered activity 17 Advertising 5 Other entities 15 Competency/Services 7 Return of records 8 DC/RC/supervision requirements 2 Fraudulent activity 2 Failure to notify of changes to information 3 Failure to file a return 2 Confidentiality 2 CE audit requirements 1 Signature requirements 0 Posting of fee schedules</p> <p>Settlement Agreement Update/Status <i>Accounts paid in full: Bumblebee Same Day Tax Service, Steven Townsend, and Jamasa Sattler.</i> <i>On payment plan with the Board: Tirsia Villanueva Fong-Guien, Albert Bentley, Damon Mayer, Daria Nelson, Fausta O. Garcia, Pamela Miles, and William Baumeister.</i></p> <p>Other Compliance Business Brainstorm scenario: A practitioner calls regarding errors on a return he prepared. He questions if there is a procedure for reporting errors, or requirements or regulations regarding this. How should the Board characterize this oversight? What should be the proper response? Walker noted that up until now she asks for self reporting to be written and added to licensee's file for future information. Wagner stated his perspective and voiced concerns. After some discussion, it was the Board's consensus that licensees generate errors throughout the course of their career and no additional action or response from the Board should be exercised. The Board felt that staff could add a note in the comment field of the individual's record, and have the licensee make a copy and correction/amendment for client. Walker can suggest including deficient subject matter in the licensee's continuing education plans. Lovato suggested this be a topic for the newsletter.</p>
Notices of Intent	
Abdikadir Mohamud Portland, OR	Motion: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Abdikadir R. Mohamud of Portland, Oregon for:

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	<p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1) for failing to register a tax preparation business at \$100; and</p> <p>Four (4) violations of ORS 673.700(7) and OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$100 per violation.</p> <p>Motion passed. Ayes: Lovato, Salisbury, Arora, Hudson, Gutierrez, and Addington. Ellsworth excused.</p>
Dorothy Hernandez Salem, OR	<p>Motion: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Dorothy "Dottie" Hernandez of Salem, Oregon for:</p> <p>Five (5) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$5,000 per violation; and</p> <p>Six (6) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$5,000 per violation.</p> <p>Motion passed. Ayes: Arora, Addington, Hudson, Gutierrez, Lovato, and Salisbury. Ellsworth excused.</p>
Ekaterina Bodunov Mt. Angel, OR	<p>Motion: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Ekaterina Bodunov of Mt. Angel, Oregon for:</p> <p>Ten (10) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$500 per violation; and</p> <p>Two (2) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.</p> <p>Motion passed. Ayes: Arora, Addington, Hudson, Lovato, and Gutierrez. Nays: Salisbury. Ellsworth excused.</p>
Jay Jones Woodburn, OR	<p>Motion: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Jay R. Jones of Woodburn, Oregon for:</p> <p>Thirty-seven (37) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$500 per violation; and</p> <p>Three (3) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.</p> <p>Motion passed. Ayes: Lovato, Addington, Salisbury, Arora, Gutierrez, and Hudson. Ellsworth excused.</p>
Riverbend Tax Service, LLC/	<p>Motion: Gutierrez moved that that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Riverbend Tax Services LLC dba H & R</p>

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Robert McAllister Bend, OR	<p>Block/Owner: Robert Alan McAllister of Bend, Oregon for:</p> <p>Two (2) violations of ORS 673.643 and OAR 800-025-0030(5), for failing to report changes to a branch office within 15 business days of the change at \$100 per violation.</p> <p>Motion passed. Ayes: Hudson, Salisbury, Gutierrez, Arora, and Addington. Nays: Lovato. Ellsworth excused.</p>
LeMarcia Nelson Bend, OR	<p>Motion: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to LeMarcia A. Nelson of Bend, Oregon for:</p> <p>Two (2) violations of ORS 673.643 and OAR 800-025-0030(5), for failing to report changes to a branch office within 15 business days of the change at \$100 per violation.</p> <p>Motion passed. Ayes: Gutierrez, Salisbury, Hudson, Addington, Arora, and Lovato. Ellsworth excused.</p>
Jerry Schmidt Sherwood, OR	<p>Motion: Gutierrez moved that that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Jerri G. Schmidt of Sherwood, Oregon for:</p> <p>Five (5) violations of ORS 673.700(7) and OAR 800-010-0050(6) and (7) for advertising in the form of printed, broadcast or electronic material without including the Board issued business registration number, the designated licensed tax consultant number or the LTC/LTP license number at \$250 per violation.</p> <p>Motion passed. Ayes: Hudson, Lovato, Addington, Arora, Gutierrez, and Salisbury. Ellsworth excused.</p>
Liza Kaganov Portland, OR	<p>Motion: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Liza S. Kaganov of Portland, Oregon for:</p> <p>Two (2) violations of ORS 673.700(7) and OAR 800-010-0050(6) and (7) for advertising in the form of printed, broadcast or electronic material without including the Board issued business registration number, the designated licensed tax consultant number or the LTC/LTP license number at \$250 per violation.</p> <p>Motion passed. Ayes: Salisbury, Gutierrez, Hudson, Arora, Lovato, and Addington. Ellsworth excused.</p>
Marisela Rodelo Boardman, OR	<p>Motion: Gutierrez moved that that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Marisela Rodelo of Boardman, Oregon for:</p> <p>All violations of ORS 673.615(1), found for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$500 per violation; and</p> <p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.</p> <p>Motion passed. Ayes: Addington, Gutierrez, Hudson, Arora, Salisbury, and Lovato.</p>

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	Ellsworth excused.
Possible Withdrawal of Action	
Paula Dougharity Baker City, OR	<p>Motion: Due to her passing on November 18, 2012, Gutierrez moved that the Board withdraw their motion to impose Discipline upon Paula J. Dougharity of Baker City, Oregon for:</p> <p>Three (3) violations of ORS 673.615(1), found for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$250 per violation;</p> <p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1) for failing to register a tax preparation business at \$100; and</p> <p>One (1) violation of ORS 673.700(7) and OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$50.</p> <p>Motion passed. Ayes: Lovato, Hudson, Addington, Arora, Gutierrez, and Salisbury. Ellsworth excused.</p>
Possible Settlement Agreement	
Robert Dooley Cove, OR	<p>Motion: Gutierrez moved that the Board enter into a Settlement Agreement and Stipulated Final Order with Robert G. Dooley of Cove, Oregon to assess civil penalties in the amount of \$250, pursuant to 673.700(1)(7) and 673.735(1) for:</p> <p>One (1) violation of ORS 673.705(1), for obtaining or attempting to obtain his initial tax preparer license by fraudulent representation; and</p> <p>One (1) violation of ORS 673.700(7) and OAR 800-010-0042, for failure to respond in writing to communications from the Board within 15 business days.</p> <p>Motion passed. Ayes: Addington, Gutierrez, Salisbury, Hudson, Lovato, and Arora. Ellsworth excused.</p>
Board Meeting Lunch 12:15 p.m. – 12:47 p.m.	
Monica J. Walker	LeMarcia Nelson was not on the list supplied to the representatives and the public.
Minutes	<p>Motion: Hudson moved that the Board accept the January 10, 2013 minutes as drafted.</p> <p>Motion passed. Ayes: Arora, Addington, Hudson, Gutierrez, Salisbury, and Lovato. Ellsworth excused.</p> <p>Board meeting minutes are located on the Tax Board Web site at: http://www.oregon.gov/OBTP/Meeting_Minutes.shtml</p>
Administration Report	

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<p>Reported by Ron Wagner</p>	<p>The projected revenue for the biennium to date, July 1, 2011 through March 31, 2013 is \$867,000. The actual revenue to date \$862,297. Our actual revenue to date is \$4,703 less than the projected revenue to date. The projected expenses for the biennium to date, July 1, 2011 through March 31, 2013 are \$974,000. The actual expenses to date are \$904,967. Our actual expenses to date are \$69,033 less than the projected expenses.</p> <p>The building lease has been renegotiated. Morrow has put in new carpet and painted. New cabinets will be purchased for the back wall. Some items will be surplus and a set of three height adjustable tables will be purchased. Total expenditures will be around \$9,000.</p> <p>The Board's legislative work session on Monday was cancelled because there wasn't a quorum of senators. One piece of legislation the Board pre-session filed was to include employees of attorneys to the list of those excluded from our licensing laws. Also added as an amendment was the minimum 360 hour work experience requirement to take the enrolled agent exam. The bill with these provisions did not make it out of committee, thus will not become law. The Board members would like to retain the 360 hour requirement regardless of the absence of the requirement in the statutes. The Board has the requirement included in the Oregon Administrative Rule. The Board was simply wanting to add the requirement to the Oregon statutes. But the lack of wording in the statutes does not negate the authority of the rule.</p> <p>The office computers have been upgraded to Windows 7 and the software to Microsoft Office 2013.</p>
<p>Reducing Fees</p>	<p>Wagner talked about reducing the Board's ending balance by reducing fees, and since this would take effect in the new biennium this decision could be made at any time. The Board discussed the impact of reducing fees and where the reductions could be made.</p> <p>Motion: Hudson moved that the Board reduce the license fees for the LTC, LTP, business registration and the combo registration each by \$10 per year for license renewals effective August 1, 2013.</p> <p>Motion passed. Ayes: Hudson, Addington, Lovato, Arora, Gutierrez, and Salisbury. Ellsworth excused.</p>
<p>Executive Recruitment</p>	
<p>Twyla Lawson</p>	<p>Twyla Lawson is a senior recruiting specialist for the state. Our current Executive Director, Ron Wagner, has announced his retirement effective June 30, 2013. Lawson attended the meeting to discuss with the Board members the process to recruit and hire a new Executive Director. Lawson described the documents for Board members; standards and criteria that will be used to do the recruitment, state policies and guidelines, and a document about public meeting law and how the process needs to be transparent, and why things need to be done the way they do. An announcement is required, which has been already drafted, including the desired attributes and the required state minimum qualifications. She shared a recruitment plan which gives a timeline of everything that will happen. Lawson reviewed the documents and</p>

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	<p>explained more about how the process typically works, including checking references, the interview process, and taking public comment. She asked that any questions or comments go to her.</p> <p>Motion: Addington moved that the Board adopt the plan as presented.</p> <p>Motion passed. Ayes: Salisbury, Arora, Gutierrez, Hudson, Lovato, and Addington. Ellsworth excused.</p> <p>Wagner shared that he would be available through August when the new Executive Director takes over.</p> <p>Addington, Salisbury and Hudson volunteered to be on the hiring panel.</p>
Public Comment	
There were no public comments.	
NIC	
Pete Fairhurst	Fairhurst provided the Board members with background information about NIC and the proposed work related to setting up online registration for renewals and exam applications.
Board Meeting Break 2:20 p.m. - 2:30 p.m.	
Administration Report (continued)	
Reported by Ron Wagner	<p>Wagner publicly welcomed the new Board members Michael Addington and Nutan Arora. A name was forwarded for the public member, and he expects to have that position filled by the next Board meeting.</p> <p>He also provided a wonderful example of what staff would like from licensees, by sharing a letter notifying the Board that the licensee would be traveling outside of the United States and would not be able to be reached for a limited time period.</p>
Licensing Report	
Statistics reported by Marika Dwyer	There is an increase in consultant licenses, initial consultant licenses, and business registrations opened compared with the same time period last year. Hudson commented that the numbers are relative because of the comparison, and that it looks like there are 100 less preparers than last year. She speculated whether the numbers were down because the preparers became consultants.
Exam and Education Report	
Exam Update by Jane Billings	<p>Wagner and Billings realized that the query the database was using to provide exam statistics was not accurately calculating exam pass rates, and asked the contractor to do some adjustments. It was calculating retake exams as first time test takers. Billings went back to 2008 and adjusted all the records, and now the corrected version is out on the Web. The year-to-date pass rate percentages are: preparers 53%, consultants 35%, consultant-state-only 64%.</p> <p>In 2012 a total of 568 took the preparer exam with a 58% pass rate for the year,</p>

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	<p>decreasing from 64% in 2011. There were 103 who took the consultant exam with a 30% pass rate, increasing from 23% in 2011. And 85 took the consultant-state-only exam with a final pass rate for the year of 58%, down from 67% in 2011.</p> <p>Billings included handouts for the annual period between March 1, 2012 to February 28, 2013, reflecting pass rates of 60% for preparers, 35% for consultants, and 60% for consultant-state-only exams. There were 697 total examinees, including retakes, with a total overall pass rate of 56%. The highest score received on each exam for exams taken in November 2012 to February 2013 was 97%.</p> <p>The Board members were also provided instructor pass rates calculated between March 1, 2011 and February 29, 2012 along with a cumulative listing of instructor pass rates reflecting the current year along with the past 3 years. Pass rate letters were mailed out to individual instructors in early March.</p> <p>While reviewing the issues with prior statistical reports, it generated discussion about the time frame that the results are calculated. Wagner questioned why the exam final reports, which include the instructor pass rates, general pass rates and highest scores, are calculated from the period of March 1 to February 28, and not by the actual exam period. He thought it would be more meaningful if the reports covered the period when everyone took the same exam. Consultant exam release date is August 1st, and preparer exam release is September 1st (gap of new/old for first few weeks). The alternate calculations period to consider: Consultant – August 1st to July 31st/Preparer – September 1st to August 31st. The Board would like to see both time frames calculated next year to better make a determination of their preference.</p> <p>The Board's review of the question and comment forms resulted in three people passing and 69 other scores being positively affected.</p>
Proctor Sites	<p>Proctor site inter-agency agreements were mailed at the end of March. Billings included notification of the proctor site fee increase to \$60 that the Board approved, along with information regarding the change or reduction in allowable source documents for the preparer exams effective September 1, 2013. There are a number of proctor sites that have increased fees based on this.</p> <p>Billings was able to make two proctor site visits to LBCC and CCC. There is a possible new proctor site in McMinnville (CCC Campus), but PCC-SE will no longer be a proctor site. PSU, Phoenix, and Warner Pacific were suggested substitutes that Billings will contact. She considered private franchises, such as Sylvan Learning Centers, but they were very expensive.</p> <p>Walker suggested renting the rooms and having staff administer the exam at PSU, if needed. Gabliks suggested using the Portland State Building as well because it has rooms available and examinees could ride the MAX, and not have to worry about parking.</p>
Sponsor Renewals	<p>The CE sponsor renewals and 80-Hour Basic Tax Course sponsor applications were mailed out at the end of March. These were sent out early with the hope they would take care of DOE requirements in plenty of time to get approval through them since</p>

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	<p>DOE turn-around time is longer than the Board's.</p> <p>The two continuing education sponsors of self-study/correspondence courses currently on the Board's list (since they are not currently approved through CTEC, NASBA or IRS) have been sent renewal applications to complete.</p>
CE Audits	<p>Billings would like to officially close the consultant and preparer 2012 CE audits. The consultant audit consisted of 209 consultants, and notification was sent at the beginning of August. There were three licensees pulled for audit whose license had not been renewed by March 1st and remained in lapsed status. There were also two licensees who retired their licenses. The preparer audit consisted of 192 preparers, and notification was sent out on October 26, 2012 to licensees who had renewed. Licensees who had not yet renewed their licenses were notified as they renewed. At the conclusion of the audit there were 18 individuals whose licenses remained in lapsed status and two that had retired their licenses.</p>
Item Writing Committee and Board Work Session	<p>Twenty volunteers came and worked together to review and update the LTC exam questions. They were a fun and hard-working group of individuals with a mix of new and experienced volunteers. Thank you to those who volunteered. Volunteer comment sheets were included in the Board binders. What comes up every year for the Consultant Item Writing Committee is whether the CE earned from volunteering on the Committee could be acceptable for the following year's renewal, even though the hours were accumulated prior to May 1st. Most volunteers already have their CE for the current renewal period.</p> <p>Thank you to the two volunteers for the Board's work session, Laurie Miles and Shigeyo Kikuchi. Twenty-two new questions were approved, and Board members wrote 13 additional new questions, and added Form 8801 and instructions to the list of source documents.</p> <p>Motion: Lovato moved that the Board accept the changes and additions made to the consultant exam pool of questions discussed at the Board's work sessions held on May 7th and 8th 2013, and to include Form 8801 and instructions to the list of source documents effective September 1, 2013.</p> <p>Motion passed. Ayes: Addington, Gutierrez, Salisbury, Lovato, Hudson, and Arora. Ellsworth excused.</p> <p>The Preparer Item Writing Committee will meet for two days on June 12th and 13th. Twenty enthusiastic volunteers have already been recruited and are ready to get down to work reviewing all the questions in the preparer exam pool.</p>
Compiling the Consultant Exam	<p>Barb Jenkins, the Board's Exam Consultant, will come to the Board office on May 22nd and 23rd to pull questions for four versions of the consultant exam, which Billings will then compile. Then on June 20th four volunteers that have already been selected will come to the Board office to take a version of the consultant exam and meet with Barb.</p>
Instructor Workshop	<p>The location selected is Clackamas Community College in Wilsonville, and the date confirmed Wednesday, August 14, 2013.</p>

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	<p>Billings has contacted the members of the Exam & Education Committee with some ideas the Board has thrown around since the last Workshop, and has been hoping to get some interest from instructors or graduate students at Portland State University, Willamette University, and Western Oregon in Monmouth. E-mails were also sent to speakers affiliated with Brown Bag CPE, Oregon Society of Certified Public Accountants, OATC, OSTC, OSE, and 80-Hour Basic Income Tax Course sponsors.</p> <p>Walker had recommended contacting Lucy Gardner from Leadership Oregon who unfortunately is unable to help because of prior commitments, but provided the names of 3 other possible speakers: Rich Galvez (previous speaker -unavailable), Sue Wilson and Mike Marsh. Billings initially received a response back from last year's speaker, Robin Gilley, expressing interest; however she has since realized she is unavailable.</p> <p>In anticipation of the Board expanding on last year's segment where current instructors shared their own personal teaching techniques and methods for motivating their students, Billings has sent e-mails to 24 instructors of the 80-Hour Basic Course with higher pass rates.</p> <p>Kirkwood Donavin, a licensee and instructor at Lane Community College, is considering doing a 2-3 hour segment in the afternoon. He is working on a proposal for the Board to review. Jennifer Webster, PhD, recommended by Sue Wilson, has shown an interest. Her resume and proposed outline was shared with the Board members.</p> <p>Billings will personally ask some of the instructors with higher pass rates to speak for ten minutes about what they feel makes their class successful and students more apt to pass the exam. She clarified that the Board would like a Board panel for questions at the end.</p> <p>The members agreed to pursue Jennifer Webster for a half a day, and will firm up the plans for the afternoon at the next Board meeting.</p>
Waiver Requests	
Judd Conway Hillsboro, OR	<p>Motion: Hudson moved to accept the designated consultant waiver request for Judd Conway of Hillsboro, Oregon through May 31, 2013, per the Business Practices Committee's temporary approval issued on January 29, 2013.</p> <p>Motion passed. Ayes: Hudson, Addington, Gutierrez, Arora, Lovato, and Salisbury. Ellsworth excused.</p>
Teresa Noe Gresham, OR	<p>Motion: Hudson moved to accept the designated consultant waiver request for Teresa L. Noe of Gresham, Oregon through May 31, 2013, per the Business Practices Committee's temporary approval issued on February 6, 2013.</p> <p>Motion passed. Ayes: Gutierrez, Arora, Lovato, Salisbury, and Hudson. Nays: Addington. Ellsworth excused.</p>
Chair Elections	

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Board Chair	<p>Motion: Gutierrez made a motion to nominate Janis Salisbury to remain as Board Chair.</p> <p>Motion passed. Ayes: Gutierrez, Arora, Lovato, Hudson, and Addington. Ellsworth excused. Salisbury abstained from the vote.</p>			
Board Vice-Chair	<p>Motion: Gutierrez made a motion to nominate Joe Lovato as Board Vice-Chair.</p> <p>Motion passed. Ayes: Gutierrez, Arora, Salisbury, Hudson, and Addington. Ellsworth excused. Lovato abstained from the vote.</p>			
Other Business				
Committees Assignments	Administration	Janis Salisbury* Joe Lovato Public Member	Complaint	Jess Gutierrez* Dorothy Hudson Michael Addington
	Business Practices	Dorothy Hudson* Michael Addington Public Member	Exam & Education	Joe Lovato* Janis Salisbury Nutan Arora
Roster Updates	Salisbury will update her address to Oregon City, and Addington would like NTPI Fellow added after his name on the Board roster.			
Hiring Panel	Janis Salisbury, Dorothy Hudson, Michael Addington			
Tax Board Bulletin Newsletter	<p>Newsletter articles assignments:</p> <p>Joe - Military subtractions; good CE choices</p> <p>Dorothy - Be a whistle blower/turning in the bad guys</p> <p>Jane - CE hours accumulation if in lapsed or ineligible status</p> <p>Monica - From the compliance desk</p> <p>Ron - From the director's desk</p> <p>Janis - If you discover errors on returns, what are you required to do?</p> <p>Nutan - Not relying on your software; need to review Oregon sections for CE; five things your software doesn't do</p> <p>Jess - DC responsibility for business</p>			
Adjournment	Salisbury adjourned the Board meeting at 4:00 p.m.			

Next meeting:

July 11, 2013

Morrow Crane Building, Salem, Oregon