

DIGEST OF STATE ISSUES

**FOR THE CPA ACCOUNTING PROFESSION
2011**





American Institute of Certified Public Accountants
State Regulation and Legislation
1455 Pennsylvania Avenue, N.W.
Washington D.C. 20004

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INTRODUCTION

The staff of the AICPA State Regulation and Legislation Team is responsible for monitoring and tracking key state legislative and regulatory issues that may affect the profession. Through these activities the team is able to detect trends that may be developing within the states and to provide the state CPA societies a forewarning of such issues. The Digest of State Issues is partly the product of this trend monitoring.

The Digest of State Issues is updated periodically, and is intended as an educational tool in helping state societies and other interested parties understand the significance of these important issues.

We hope that you will find the Digest of State Issues useful in your state activities. We encourage you to distribute this publication freely. Additionally, information on many of the issues contained in this publication is available through the AICPA's web site at www.aicpa.org.

If we can be of assistance, or if you have any comments or questions, please feel free to contact anyone in State Regulation & Legislation. We can be reached at the AICPA Washington office; Mat Young, 202/434-9273, Suzanne Jolicoeur, 919/402-4906, Michael Ochs, 202/434-9261 and Kelley Stevens, 202/434-9264. Also, additional resources on several issues are available from the AICPA's General Counsel Team. For more information, contact Virgil Webb, Assistant General Counsel, 202/434-9222.

CONSOLIDATION OF STATE BOARDS OF ACCOUNTANCY

ISSUE: Whether or not the State Board of Accountancy should be independent or part of an omnibus state agency.

BACKGROUND: Occasionally, in the name of economic efficiency, states have considered consolidating state administrative agencies. Under a decentralized structure, most independent boards and agencies access and control their own funds. However, under most consolidation laws these funds revert to the general state fund. Since boards of accountancy are sometimes among agencies affected by consolidation, CPAs have become increasingly aware of the implications for the accounting profession. Consolidation can reduce the independence, effectiveness and expertise of the licensing or regulatory body.

WHY IT'S IMPORTANT TO CPAs: There are several reasons why this issue is of concern to the regulation of the profession, as well as poor public policy.

1) **Need for Professional Experts.** It is important that professional expertise be applied to regulatory and disciplinary decisions. Likewise, peer review of professional practice standards needs to be maintained.

2) **Administrative Efficiency.** While centralization is generally proposed for economic efficiency, it can produce a larger bureaucracy and less effective licensing board.

3) **Insulation from Political Interference.** An autonomous board structure can be better insulated from political pressure and influence than a central agency. Autonomous boards are controlled by a dual checks and balances system - the legislature and the governor - while a centralized system is generally just accountable to the governor.

AICPA POSITION: The AICPA is concerned about consolidation of state boards of accountancy because of the threat to effective regulation of the profession. Consolidation can affect a board's ability to administer and oversee such critical functions as certification, licensing, enforcement and investigation.

STATE ACTION:

A. Several states have implemented a consolidated government structure, and proposals are occasionally introduced in state legislatures. Currently more than 20 state boards of accountancy operate under a consolidated structure. As states face budget difficulties, proposals to consolidate agencies are often presented including several that emerged during the recent 2010 legislative sessions. In Washington, the state society has opposed a legislative proposal over the past two years to move the state board of accountancy under the jurisdiction to the State Board of Licensing. In New Hampshire, the governor signed a budget bill which would eliminate the Office of the Director of the Board of Accountancy. In Connecticut, the budget bill placed the State Board of Accountancy within the Secretary of State's office for administrative purposes, but kept the Executive Director of the Board.

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COMMISSIONS AND CONTINGENT FEES

ISSUE: Under what condition should CPAs be allowed to accept commissions and contingent fees?

BACKGROUND: Historically, CPAs were not allowed to accept commissions and contingent fees. However, when the Federal Trade Commission (FTC) initiated a non-public investigation focusing on the AICPA's commission and contingent fee rules, it concluded that the Institute's rules violated Section 5 of the FTC Act. To end the investigation, AICPA signed a Final Order with the FTC in 1990 narrowing AICPA's ability to prohibit the acceptance of commissions and contingent fees. The AICPA rules, issued after the FTC Order became effective, prohibit the acceptance of commissions and contingent fees only with respect to clients for whom the AICPA member performs attest services (as specifically defined in the Order). The AICPA rule also prohibits members from preparing original or amended tax returns or claims for tax refunds for a contingent fee.

In 1997, the AICPA governing Council voted overwhelmingly to adopt all of the recommendations of the AICPA/NASBA Joint Committee on Regulation of the Profession, thereby eliminating the AICPA position on restrictions that had previously existed on fee arrangements. Under the AICPA/NASBA Joint recommendations CPAs can accept commissions with full disclosure, except in situations where the CPA performs certain attest services for a client. CPAs can accept contingent fees for services, except from clients for whom they perform certain attest services and for preparing an original tax return. Contingent fees for preparation of amended tax returns or refund claims are permitted as long as the CPA has a reasonable expectation the claim would be the subject of a substantive review by the taxing authority.

**WHY IT'S
IMPORTANT TO
CPAs:**

The public's image of the accounting profession is affected most by the quality of the services it receives, not by the fee arrangement for those services. As long as fee arrangements are disclosed, clients are free to choose the type of arrangement they want. In the eyes of many, prohibitions against such fee arrangements are viewed as self-serving, anti-competitive and not in the public's interest. In some cases, clients are not able to pay for services on an hourly basis, and actually prefer a contingent fee basis. In a free market system, the marketplace should dictate fee arrangements as long as they are disclosed to clients, unless there is an overriding public interest, which is the case for attest services.

**AICPA
POSITION:**

A provision permitting the acceptance of commissions and contingent fees, as outlined above, is now included in the Uniform Accountancy Act as Sections 14 (n-o). The language is taken from the AICPA's Code of Professional Conduct.

STATE ACTION: The trend has been for states to allow CPAs to accept commissions and contingent fees with 47 jurisdictions currently providing for the acceptance of commissions and/or contingent fees.

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- ISSUE:** Whether CPAs should be required to participate in continuing professional education in order to maintain a license or certificate.
- BACKGROUND:** In order to assure continuing professional competence, nearly all states require licensees to complete continuing education.
- WHY IT'S IMPORTANT TO CPAs:** The purpose of the continuing professional education requirement is to increase the professional competence of each member of the profession. The environment within which the accounting professional functions is more demanding than ever before. Increasing specialization, a proliferation of regulations and the complex nature of business transactions require a renewed emphasis on continuing maintenance of competence. It is essential that CPAs maintain their professional knowledge by participating in CPE required by their states.
- AICPA POSITION:** The AICPA supports the position that all CPAs should be required to accomplish CPE within a given time frame. AICPA also encourages flexibility by state boards of accountancy in recognizing CPE credit which accommodates specialization in the profession.
- In 2002, the Joint AICPA/NASBA Statement on Standards for Continuing Professional Education Programs released CPE standards focusing on proficiency skills.
- To comply with the standards, CPAs should: (1) participate in learning activities that maintain or improve their professional competence; (2) comply with all applicable CPE standards, rules and regulations of state licensing bodies, other governmental entities, membership associations, and other professional organizations or bodies; (3) claim the recommended CPE credit only for CPE programs that comply with the standards; and (4) accurately report the appropriate number of CPE credits earned, and maintain documentation of their participation in learning activities giving rise to those credits.
- The standards also incorporate the concept of independent study learning, allowing a CPA to engage in a program of learning with a qualified sponsor on a one-on-one basis. These concepts have been included in the Uniform Accountancy Act as Appendix B.
- STATE ACTION:** While, requirements for CPE vary from state to state, many states have made changes in their statutes to reflect UAA-related CPE requirements and the 2002 standards.
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- ISSUE:** The Uniform CPA Examination is the only examination administered for candidates seeking initial licensure as a CPA.
- BACKGROUND:** Examinations to test the qualifications of public accountants were first used in New York state in 1896. As the country and profession grew, more states enacted accountancy laws that required individuals to pass an examination to qualify as a CPA. The AICPA has offered the Uniform CPA Examination as a tool for licensing CPAs since 1917. By the 1960s all jurisdictions required new CPAs to have passed the Uniform CPA Examination prepared by the AICPA and graded by its Advisory Grading Service.
- The current Uniform CPA Examination is delivered to candidates through agreements between the National Association of State Boards of Accountancy, Prometric and the AICPA. The Uniform CPA Examination is regarded as one of the premiere licensing examinations in the United States.
- Over the years, forces in the marketplace have changed the demand for CPAs and the skills required for becoming a CPA. In order for the licensing exam to continue to adequately protect the public, the skills tested must be assessed periodically. It was primarily for this reason that a joint group from AICPA and NASBA was put together to implement a computer-based examination that tests both technical knowledge and "real-world" skills that are essential for CPAs to practice competently. The first computer-based exam was offered in April 2004.
- WHY IT'S IMPORTANT TO CPAs:** The Uniform CPA Examination is the one and only common element for certification and licensure used by all states. Having a uniform examination administered to all U.S. CPAs is critical to the protection of the public. Regardless of the state, CPAs should have a requirement to demonstrate their mastery of a common base of material.
- AICPA POSITION:** The AICPA is committed to the future of the CPA examination and has recently invested substantial resources to ensure the reliability and validity of the exam. In addition, through the UAA, the practice of one uniform examination for the entire profession was reaffirmed through the concept of substantial equivalency (UAA Section 23), which contains basic criteria for initial licensure as a CPA, including 1) 150 semester hours of education, including a baccalaureate degree, 2) successfully passing the uniform CPA examination, and 3) a one year general experience requirement verified by a licensee, which is broadly defined to accommodate experience in all fields of employment (i.e., public accounting, industry, education, government, etc.).
- STATE ACTION** Prior to April 2004, states moved to modify their statutes and regulations to allow for a computer based exam. Since the move to a computerized exam in all jurisdictions in 2004, over one million exams have been delivered on a computer. A revised test will debut in 2011 with even greater emphasis on skills assessment.
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ISSUE: Regardless of where CPAs are employed, they should be able to use their title, in conjunction with their business activity, as long as they meet certain licensing criteria, meet continuing professional education (CPE) standards, and are subject to regulation by a state board of accountancy.

BACKGROUND: The concept of “CPA= CPA” was outlined in the Final Report of the AICPA/NASBA Joint Committee on Regulation of the Profession. In the report, the Joint Committee recommended that all CPAs, regardless of their particular field or place of employment, be subject to licensure and regulation by the state board of accountancy. Provisions in the Uniform Accountancy Act (UAA) accomplish this concept by requiring all individuals who wish to use the CPA title to hold a valid license. Individuals may obtain a CPA license once they demonstrate they have met appropriate education, examination and experience requirements. The license must be renewed by demonstrating compliance with a CPE requirement.

WHY IT’S IMPORTANT TO CPAs: Court decisions have supported that duly licensed CPAs may use their "CPA" designation while working in non-CPA firms. As a result, the definitions of "holding out" and "practice of public accountancy" have been removed from the UAA. Now, under the framework of the UAA, regardless of where CPAs are employed or what they do, all licensed CPAs are subject to regulation by the state board.

AICPA POSITION: As long as individuals hold a CPA license they are subject to the authority of the state board of accountancy, regardless of what they do for a living and regardless of whether they use their CPA title. All licensees must comply with the accountancy law and regulations.

To be consistent with the broad regulatory approach envisioned under this concept, the initial experience requirement in the UAA has changed. The “public accounting” experience requirement, contained in previous editions of the UAA, was restrictive and did not reflect today’s environment for CPA services. The UAA contains a broad experience requirement for initial licensure of one year of providing any type of professional service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills. As part of the application process for licensure, a licensed CPA must verify this experience. This experience (professional service or advice) can be gained through employment in government, industry, academia or public practice.

Likewise, to reflect the equality of this new regulatory framework, all licensees as a provision for re-licensure must complete CPE.

STATE ACTION As states have adopted the core provisions of the UAA, they are incorporating the concept of CPA= CPA by moving from a two-tier regulatory structure to a one-tier structure and requiring CPE for all licensees. Currently, 43 states have adopted this one-tier model.

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ISSUE: What type of experience requirement is necessary for a CPA to become licensed into the profession?

BACKGROUND: The amount and type of licensure experience varies greatly from state to state. The current state requirements range from no experience to more than two years, with very specific accounting and auditing hour provisions. It is often difficult for licensees to obtain reciprocity in other jurisdictions due to the diverse requirements. Additionally, because some states still mandate public accounting experience or specific attest work, the experience requirement may act as an obstacle for initial licensure in those states.

WHY IT'S IMPORTANT TO CPAs: Reciprocity for CPAs is an important issue that becomes even more critical in a global economy. Younger members of the profession will change jobs more frequently and in an increasingly global world, this will become more difficult if individuals need to meet the state's experience requirement each time they move to a new location, especially becomes even more difficult when the requirements vary so greatly from state to state.

AICPA POSITION: Experience for Initial Licensure:
With NASBA, the AICPA supports a one-year broad-based experience requirement for initial licensure. This requirement has been incorporated into the UAA and is included within the concept of substantial equivalency (UAA - Section 23). The concept contains basic criteria for initial licensure as a CPA, including 1) 150 semester hours of education, including a baccalaureate degree, 2) successfully passing the Uniform CPA Examination, and 3) at least a one year general experience requirement verified by a licensee, which is broadly defined to accommodate experience in all fields of employment (i.e., public accounting, industry, education, government, etc.).

The "public accounting" experience requirement, contained in previous editions of the UAA, was restrictive and did not reflect today's environment for CPA services. This three-pronged approach to licensure assures that newly licensed CPAs are well educated and able to accommodate an expanding global economy.

Competency Requirement for Attest and Compilation Services:
While the UAA moves to a broader experience requirement for initial licensure, it also adds a provision requiring additional specific experience for appropriate individuals in firms that perform traditional attest and compilation services. This section, UAA 7(c)(3)-(4), is designed to provide protection to the public with respect to the most sensitive services provided by licensees – attest and compilation services. Any licensee who is responsible for supervising traditional attest and compilation services and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm must comply with the appropriate competency requirement for such services as dictated by the Statement on Quality Control Standards; the Personnel Management Element of a Firm's System of Quality Control – Competencies Required by a Practitioner-in-Charge of an Attest Engagement.

States are encouraged to rely on this competency standard instead of adding specificity to their experience requirements.

STATE ACTION: The majority of states have enacted proposals supporting a one-year experience requirement for initial licensure; however, there are vast differences on how the experience requirement must be met. In 2008, Florida became the most recent state to enact the one-year general experience requirement. With the new experience requirement in Florida, Puerto Rico is the only licensing jurisdiction that does not mandate at least some experience requirement for initial licensure.

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FORM OF PRACTICE

GENERAL CORPORATE FORM (GC), LIMITED LIABILITY COMPANIES (LLC), REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP) AND AMENDMENTS TO PROFESSIONAL CORPORATION (PC) LAWS

ISSUE:	Whether states should allow CPAs to organize in legal forms other than proprietorships, partnerships and PCs and whether states should amend PC laws in order to make PCs more attractive to a larger number of CPA firms.
BACKGROUND:	Because of the 1992 AICPA membership vote to change Rule 505, which allows members to practice under any legal form of organization, states have worked to enact legislation to create LLCs, LLPs and to allow CPAs to practice in general corporations. The purpose of the rule change was to allow for the creation of more organizational options for CPA firms, because practice in general corporate form or as an LLC or LLP may provide advantages to practitioners. A nation-wide effort to draft LLC legislation was spearheaded by the American Bar Association.
WHY IT'S IMPORTANT TO CPAs:	LLCs and general corporations may provide benefits in terms of increased protection from tort and contract claims and LLCs may also limit tax liability. Registered limited liability partnerships (LLPs) may limit liability of innocent partners for acts and omissions of other partners. In general, the members of an LLC are not personally liable for the debts of the LLC, and a state's LLC law may provide more liability protection than the state PC law. In addition, the IRS has ruled that LLCs may be treated as partnerships for federal income tax purposes. Important considerations in drafting LLC legislation include: 1) that the proposal authorize professionals to use LLCs; 2) that the bill limit liability of LLC members, managers, employees and agents; 3) that it provide for organizational flexibility for professional LLCs; and 4) that it include provisions that adequately allow for interstate practice for professional LLCs. Before CPA firms may operate as LLCs, LLPs or general corporations, it may be necessary to amend the state accountancy law and the state's accountancy regulations. In addition, many state PC laws contain provisions that limit their utility for CPAs, especially multi-state firms.
AICPA POSITION:	Since the 1992 membership vote that changed Rule 505, the Institute has strongly supported the efforts of state societies to work for passage of LLC and LLP legislation and to allow CPAs to form general corporations. In addition, the AICPA encourages states to modify accountancy statutes and regulations to allow practitioners to take advantage of the Rule 505 change.
STATE ACTION:	Fifty-one jurisdictions have passed LLC legislation. In addition, 53 jurisdictions have passed LLP legislation. At least two states have passed bills to allow CPAs to form general corporations. Forty-three states have amended their accountancy statute to provide for these forms of practice.
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INSURANCE COMPANY AUDITS

ISSUE: How the profession should respond to legislation that requires insurers to have annual audited statutory financial reports of insurance companies.

BACKGROUND: All states require domiciled insurance enterprises to submit to the state insurance commissioner an annual statement on forms developed by the National Association of Insurance Commissioners (NAIC). The states also require that audited statutory financial statements be provided as a supplement to the annual statements.

The insurance laws and regulations of most states require insurance companies domiciled in those states to comply with the guidance provided in the NAIC Accounting Practices and Procedures Manual except as prescribed or permitted by state law.

In 1999, the NAIC completed a process to codify statutory accounting practices for certain insurance enterprises, resulting in a revised Accounting Practices and Procedures Manual effective January 1, 2001 (the "revised Manual"). In 2006 the NAIC adopted changes to the Model Audit Rule related to Sarbanes-Oxley, with the majority of the changes effective for 2010. The key areas of focus for the NAIC were auditor independence, corporate responsibility, and enhanced financial disclosures.

Prescribed statutory accounting practices are those practices that are incorporated directly or by reference in state laws, regulations, and general administrative rules applicable to all insurance enterprises domiciled in a particular state. States may adopt the revised Manual in whole, or in part, as an element of prescribed statutory accounting practices in these states. Auditors of insurance enterprises should review state laws, regulations, and administrative rules to determine the specific prescribed statutory accounting practices applicable in each state.

Highlights of the significant changes made to the Model Audit Rule related to Sarbanes-Oxley include:

Section 7: The time allowed to serve in the capacity as the lead or coordinating audit partner was decreased from seven to five consecutive years with a new five year break in service (previously two years), effective beginning with year 2010 statutory audits.

Section 7: There is a list of non-audit services that cannot be performed by the auditor in conjunction with the audit (the prohibitions generally agree with those designated by the SEC) effective for the year 2010 statutory audits.

Section 9: To the extent required by AU 319, Consideration of Internal Control in a Financial Statement Audit, (AICPA, Professional Standard, vol.1) for those insurers required to file a Management's Report of Internal Control Over Financial Reporting pursuant to Section 16 (see below), the independent accountant should consider the most recently available report in planning and performing the audit of statutory financial statements.

Section 11: Auditors should prepare a written communication of any unremediated material weaknesses that the insurer will furnish the domiciliary commissioner,

effective beginning with year 2010 statutory audits. The current Model Audit Rule requires the auditor to prepare a report of significant deficiencies and material weaknesses in the insurer's internal control structure noted by the auditor during the audit. The AICPA NAIC Task Force has, for several years, undertaken efforts to confirm that states will accept the reporting of only those significant deficiencies and material weaknesses that are unremediated as of the balance sheet date, and it will continue to do so until the year 2010, the effective date of the revised Model Audit Rule.

Section 14: There are new specifications for the responsibilities of audit committees and the required qualifications of audit committee members, effective January 1, 2010. The premium threshold that triggers the requirement for independent audit committee members is \$300 million assumed and direct premiums. The premium range for a majority of independent audit committee members is \$300 to \$500 million. The requirement for a supermajority of independent audit committee members is \$500 million in premiums. Notwithstanding premium volume, all insurers are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Section 16: Every insurer required to file an audited financial report that has annual direct written and assumed premiums of \$500 million or more shall prepare a report of the insurers' or group of insurers' Internal Control Over Financial Reporting and file it with the Commissioner, effective December 31, 2010. The Model Audit Rule also includes a list of what should be included in Management's Report of Internal Control Over Financial Reporting. This report is prepared by management and is not audited. Section 9 (highlighted above) specifies the independent accountant's responsibilities as they pertain to this report.

**WHY IT'S
IMPORTANT TO
CPAs:**

The revised Manual and annual instruction statement requires insurers to engage an independent CPA to prepare specific reports and letters and, in certain instances, to report to state insurance commissioners, to make available and maintain working papers, and to conduct audits in accordance with statutory auditing standards.

**AICPA
POSITION:**

The AICPA supports the revised Manual as developed by the NAIC.

STATE ACTION:

It is expected that most states will require insurers to comply with the revised model rules. It may be necessary for some states to take legislative or regulatory action to adopt the revised Manual, while other states will not require legislative action to change the rules for this new compliance. As of June 1, 2010, only two states (Texas and the District of Columbia) had yet adopted the revised model rule. It is expected that Texas and the District of Columbia will adopt prior to the end of 2010.

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LICENSING OF PRIVATE INVESTIGATORS/EXEMPTION FOR CPAs PRACTICING FORENSIC ACCOUNTING

ISSUE: CPAs who perform forensic accounting services should be exempt from state laws licensing private investigators.

BACKGROUND: Over 40 states have enacted legislation requiring the licensing of private investigators or detectives. Some laws also require licensure or registration of private investigators' firms. Some of those activities could fall within the broad definitions in private investigator licensing laws, even though that is plainly not what is intended by those laws. These laws typically create boards to oversee licensing and discipline, or entrust those functions to specific agencies (usually law enforcement). The laws set minimum standards for licensure and renewal. They usually define the activities that constitute private investigation and provide that only licensed persons can engage in those activities. CPAs are frequently engaged to perform forensic analyses of financial data to determine whether fraud or other wrongdoing has occurred, to identify and assist in the recovery of missing funds, and for many other reasons. Such activities are a traditional part of CPA practice and are of great benefit to clients and to the public at large.

WHY IT'S IMPORTANT TO CPAs: Some CPA activities could fall within the broad definitions in private investigator licensing laws, even though that is plainly not what is intended by those laws. Therefore, the AICPA supports an exemption from state private investigator licensing laws for CPAs, CPA firms and their employees. CPAs are frequently engaged to perform forensic analyses of financial data to determine whether fraud or other wrongdoing has occurred, to identify and assist in the recovery of missing funds, and for many other reasons. Such activities are a traditional part of CPA practice and are of great benefit to clients and to the public at large.

AICPA POSITION: The AICPA supports an exemption from state private investigator licensing laws for CPAs, CPA firms and their employees. The purpose of private investigator laws is to protect the public by establishing licensing criteria for and regulatory oversight over investigators -- not to exclude CPAs and other professionals from activities that might have an investigatory component or to require such professionals to obtain an additional license. The public will be fully protected by the regulatory structures that govern the accounting profession.

CPAs are highly trained and must meet rigorous criteria to obtain their licenses, including (in almost all states) at least 150 hours of college-level education, a year of supervised experience, and passage of a difficult uniform examination. They are required to abide by detailed professional standards and are subject to multiple levels of regulation. Each of the 55 CPA licensing jurisdictions have boards of accountancy that are empowered to suspend or revoke CPA licenses -- or take other disciplinary action -- if CPAs violate applicable laws, regulations or professional standards.

STATE ACTION: In the past two years, several states have moved to regulate and license Private Investigators. Legislation was considered in 2011 in several states including Alabama, Michigan, Maine and Colorado. States are urged to consider an exemption for CPAs from these proposals.

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MULTIPLE CLASS LICENSING SYSTEM

ISSUE:	Whether or not states should recognize classes of licensed accountants in addition to certified public accountants.
BACKGROUND:	Several states recognize a class of licensed accountant in addition to CPAs. In some states these are a continuing class. In others, accountants who were registered before a given date are allowed to maintain their status.
WHY IT'S IMPORTANT TO CPAs:	Over the years, legislation has been enacted in the states to increase standards of the accounting profession to better serve the public. These increased standards for CPAs generally include a specified minimum amount of education, a requirement for passing the uniform CPA examination, meeting an experience requirement, and once licensed, participation in continuing professional education (CPE) to maintain that license. It is not in the public interest to permit persons who have not demonstrated the level of professional competence prescribed for licensure and who do not comply with these minimum standards to practice public accountancy.
AICPA POSITION:	The AICPA is strongly opposed to state laws that would allow a person who is not a CPA to perform public accounting services traditionally associated with CPAs, including the audit function and other attest services.
STATE ACTION:	Currently, nine states recognize a multi-class licensing system, with Illinois expected to move away from a multi-class system in 2011. The remaining states maintain a one-class system, which may include a dying or grandfathered class. Although there is limited activity expected in this area, the issue is important and will continue to be monitored.
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ISSUE: Should the education requirement for CPAs be increased to 150 semester hours of education, which includes a baccalaureate degree?

BACKGROUND: The AICPA has recognized the value of the 150-hour education requirement since 1959 and supports the UAA minimum education requirements to become a CPA to include a baccalaureate degree and accounting concentration. Since the inception of the initiative to increase the education requirement, nearly every jurisdiction has enacted 150-hours of minimum education for initial licensure.

WHY IT'S IMPORTANT TO CPAs: With the business environment becoming increasingly diverse, certified public accountants must meet new challenges when making critical business decisions. Prospective CPAs need to have a broad educational base that includes accounting and business knowledge and develops the skills needed for continued growth in a fast changing global economy. There are a number of reasons that an increase in the education requirement is needed:

1. **Improved Quality of Work.** A more educated group of graduates will produce a more educated group of accountants. The public will be able to continue to place its trust in the work performed by CPAs if the public knows the skills that have been obtained are the result of a comprehensive education.
2. **Increased Technical Competence.** The greater demands of business, as well as the continuing expansion of practice in an international environment, have further enhanced the need for highly technical accounting services.
3. **A Complete Education.** To function effectively, CPAs must have more than technical knowledge of their profession. They must also be educated in history, languages and the sciences.

AICPA POSITION: In a 1988 vote, the membership agreed overwhelmingly to amend the by-laws of the Institute to require 150 hours of education for new members after the year 2000.

The position on the 150-hour requirement was reaffirmed through the concept of substantial equivalency, which was incorporated into the Uniform Accountancy Act as Section 23. The UAA contains basic criteria for initial licensure as a CPA, including: 1) 150 semester hours of education, including a baccalaureate degree; 2) successfully passing the uniform CPA examination, and 3) a one-year general experience requirement verified by a licensee, which is broadly defined to accommodate experience in all fields of employment (i.e., public accounting, industry, education, government, etc.).

STATE ACTION: In recent years several remaining states have moved to enact the 150-hour education requirement. Most recently legislators in California and Colorado passed a 150-hour requirement. A total of 54 of 55 U.S. jurisdictions have now enacted the requirement. Only the U.S. Virgin Islands has yet to pass the provision.

OTHER ACTION: In addition to the AICPA, the National Association of State Boards of Accountancy (NASBA), the American Accounting Association (AAA) and the Federation of Schools of Accountancy (FSA) all support the 150-hour education requirement.

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OWNERSHIP OF CPA FIRMS

ISSUE: Whether non-CPAs should be permitted to have ownership interests in CPA firms.

BACKGROUND: Rule 505 of the AICPA Code of Professional Conduct allows AICPA members to practice in forms of organization permitted by state law whose characteristics conform to resolutions of AICPA Council. In May 1994, Council approved a resolution allowing firms to include non-CPA owners. The AICPA/NASBA Joint Committee on Regulation of the Profession reviewed this issue and in its final report recommended that all entities that wish to call themselves CPA firms or use the designation CPAs in conjunction with their entity name must be owned by a simple majority of CPAs. The AICPA Council adopted the report in May 1997. This language was included in the Uniform Accountancy Act (UAA) as Section 7(c).

WHY IT'S IMPORTANT TO CPAs: There are legitimate professional reasons for CPA firms to have non-CPA owners. For instance, individuals are needed to perform related professional services and provide specialized expertise on complex audits. Firms have had non-CPA owners for decades without any demonstrated harm to the public. Also, some firms have created additional subsidiaries to accommodate the involvement of non-CPAs. In this case, the CPAs and non-CPAs own the business and work together. The CPAs do not use their title in this business, but in most communities it is widely known they are CPAs.

AICPA POSITION: The AICPA supports non-CPA ownership of CPA firms. The UAA section provides that:

- Licensed CPAs must hold a simple majority of the ownership.
- A licensed CPA or CPA with practice privileges must be responsible for registration of the firm.
- The partner/owner in charge of attest services must be a licensed CPA or CPA with practice privileges.
- And, all non-CPA owners must be actively engaged in working for the firm, or an affiliated entity.
- Passive ownership is not permitted.

Under the UAA provision, unless the firm complies with the ownership requirement, it cannot obtain a license. Only a licensed CPA firm may perform attest services and call itself a CPA firm.

STATE ACTION: Currently, 48 jurisdictions allow for non-CPA ownership via a provision similar to the UAA, which allows for simple majority ownership by licensed CPAs. Two other jurisdictions allow for non-CPA ownership via a supermajority formula which typically requires at least 60% of the firm owners to be licensed CPAs. Rhode Island and Oklahoma passed legislation in 2011 to allow for simple majority.

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ISSUE: Should CPAs be required to undergo periodic review of their accounting and auditing practices?

BACKGROUND: Originally approved in 1988 with subsequent revisions, the AICPA, through its bylaws, now requires members engaged in the practice of public accounting be associated with a firm that is enrolled in an Institute-approved practice-monitoring program, if the services performed by such a firm are within the scope of the AICPA's practice monitoring standards and the firm issues reports purporting to be in accordance with AICPA professional standards.

Firms that are required to be registered with and inspected by the PCAOB as well as certain firms that perform audits of non-SEC issuers pursuant to PCAOB standards are required to enroll in the Peer Review Program (PRP) administered by the AICPA's National Peer Review Committee. All other firms subject to peer review are required to enroll in a PRP administered by one of the 41 other administering entities.

Revisions to the Standards for Performing and Reporting on Peer Reviews (Standards) and Interpretations, applicable to all AICPA member firms subject to peer review, became effective for all peer reviews commencing on or after January 1, 2009.

The revisions include more principles-based standards, and other changes to system, engagement and report reviews. Also, the peer review reporting process has been reengineered to include a shorter and more concise peer review report, which enhances its clarity, comparability and understandability. A new peer review report rating model of "Pass, Pass with Deficiencies and Fail" replaces the previous model of "unmodified, modified and adverse" respectively.

The revisions were designed to meet stakeholders' needs, yet ensure the AICPA PRP's integrity and usefulness. The revisions recognize the public interest in the quality of the accounting, auditing and attestation services provided by CPA firms and also recognize the importance peer review plays in the state board of accountancy licensure process and that of other regulators, such as the Government Accountability Office. The revisions are expected to result in a more effective peer review process.

The Revised Standards and Interpretations document is available via:
http://www.aicpa.org/download/practmon/2009_stds.pdf.

A white paper, Navigating Through the Revised AICPA Standards for Performing and Reporting on Peer Reviews and Related Interpretations, was issued in June 2008 and serves as a bridge between the current and revised Standards. It is available via
http://www.aicpa.org/download/centerprp/White_Paper_final_6_23_08.pdf.

**WHY IT'S
IMPORTANT TO
CPAs:
AICPA
POSITION:**

Peer reviews are designed to improve the quality of accounting and auditing services provided by CPAs as well as providing public protection.

The AICPA promotes the concept of peer review and supports state boards that have enacted programs. The AICPA believes that states should recognize equivalent reviews, such as those performed as part of the AICPA programs, as sufficient to satisfy a state requirement

The AICPA/NASBA Uniform Accountancy Act (UAA) contains a peer review section that was modified based on the recommendations of the AICPA/NASBA Joint Committee on Regulation of the Profession. UAA section 7(h) requires that firms performing the attest function undergo a peer review every three years. For more information on this model requirement, consult section 7(h) of the UAA.

The UAA extends peer review to individuals performing compilation services outside of a licensed CPA firm. This requirement conforms to the UAA by removing compilations from the definition of "attest services," thereby allowing licensees to perform SSARS compilations outside of a CPA Firm. For more information on this model requirement, consult section 6(j) of the UAA.

The AICPA has implemented a process called Facilitated State Board Access (FSBA) to achieve greater transparency of peer review results that is responsive to all stakeholders. The process involves a mechanism whereby firms subject to peer review may voluntarily allow the entity administering their peer reviews to make available the results of the firms' peer reviews on a secure state board access only web site. Access to the results would only apply to state boards of accountancy that require peer review for licensure (and are not prohibited by law from access to peer review results). All 42 of the AICPA PRP's administering entities have adopted the process and several state boards have already mandated FSBA through statute. Other state boards have started to recognize FSBA through regulation or allow the process to satisfy existing peer review document submission requirements.

STATE ACTION:

Currently, 45 licensing jurisdictions have peer review requirements in effect. In addition, four additional jurisdictions have passed peer review requirements that take effect at a future date – Colorado (passed in 2010 and effective in 2011), Hawaii (passed in 2010 with effective date to be determined by rulemaking), Illinois (effective in 2012), and New York (effective in 2012).

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RIGHT TO PRACTICE

ISSUE: In the past, there have been attempts to propose rules and advisory opinions promulgated by state bar associations and branches of state government, often regarding unauthorized practice of law restrictions that impact CPAs.

BACKGROUND: It is widely recognized that an overlap of the accounting and legal professions exists. The areas of tax practice, estate planning and pension planning are so interrelated that it is difficult to distinguish professional jurisdictions. For more than forty years the American Bar Association (ABA) and the AICPA have worked together through the National Conference of Lawyers and Certified Public Accountants to promote understanding between the professions and their clients.

The subject of unauthorized practice of law occasionally emerges in the states. Although in some cases CPAs are not the specific targets of these actions, the proposed rules are often drafted so broadly that they would seriously impact the normal practice of CPAs.

WHY IT'S IMPORTANT TO CPAs: As activity by state bar associations increases in the area of unauthorized practice of law, it threatens the ability of CPAs to practice in traditional and customary areas of public accounting.

AICPA POSITION: Through the State Regulation and Legislation Team, the General Counsel Team, and the Taxation Team, the AICPA has worked, and continues to work with, state CPA societies in each of the jurisdictions in which proposals arise and require assistance.

State societies are urged to monitor this issue and to determine if the bar associations in their respective states are considering any new proposals dealing with the unauthorized practice of law.

STATE ACTION: South Carolina (1991) - A major decision was rendered when a redefinition of practice of law in the form of proposed rules by the South Carolina Bar Association, to include all tax work except the actual preparation of tax returns, was proposed. The South Carolina Association of CPAs, the AICPA and the larger firms filed a brief before the Supreme Court of South Carolina, on behalf of the profession. In September of 1992, the South Carolina Supreme Court issued an Order rejecting the proposed rules submitted by the state bar association. In its order, the court recognized the "unique status" of CPAs and acknowledged respect for the training and procedures under which CPAs operate. The court rejected the proposed rules as "neither practicable nor wise"; and instead will decide the unauthorized practice of law on a case-by-case basis.

Other action by state bar associations and branches of state government have included the following significant proposed rules and advisory opinions:

Tennessee (1993) - A favorable decision by the Supreme Court of Tennessee was issued in late 1995. The decision resulted from a petition from the state's Attorney General requesting a determination of whether representation of taxpayers by registered appraisers and other non-attorneys before the state and local boards of equalization constitute the practice of law. The Tennessee Society of CPAs, the

AICPA and the larger firms filed a brief before the Supreme Court on behalf of the profession.

New Hampshire (1994) - A State Supreme Court decision, which narrowly defined the practice of law before state agencies, has the potential to affect CPAs representing taxpayers before the New Hampshire Board of Tax and Land Appeals. Comments on whether non-lawyer agents who represent taxpayers before this Board are engaged in the unauthorized practice of law were submitted on behalf of the profession by the New Hampshire Society of CPAs, the AICPA and the larger firms.

District of Columbia (1995 - 1997) - Proposed rules on the unauthorized practice of law were drafted by a D.C. Bar Association committee. Because of the broad definition that was being proposed, it was possible that if this definition were approved, traditional accounting services could be affected. The Greater Washington Society of CPAs and the AICPA forwarded comments on the impact of these proposals to the appropriate Bar Committee in 1995. A comment letter on the proposed rules was transmitted to the D.C. Court of Appeals in February 1997.

In the past few years, several states had active issues. Some of these actions included legislative attempts to redefine the unauthorized practice of law or efforts to adopt state Supreme Court rules on the unauthorized practice of law. The AICPA has worked with the state CPA societies to resolve these issues.

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REGULATION OF NON-CPA TAX PREPARERS

ISSUE: Should states move to register or license non-CPA tax preparers?

BACKGROUND: Taxpayers have become concerned in recent years about unscrupulous tax return preparers, persons they often associate with high-interest, short-term refund anticipation loans (RALs) and high error rates for earned income tax credit (EITC) claims and other tax return positions. For this reason, several states, Congress and the Internal Revenue Service (IRS) have looked at ways to regulate tax preparers. While many of these proposals were initially born from a desire to address problems with refund anticipation loans, they have developed into full licensure proposals.

Over the last several years, proposals have emerged in several states to create a system for full licensure of tax preparers including the establishment of new regulatory bodies to oversee tax preparer licensure, and the proposed implementation of educational and exam requirements including continuing education. CPAs have not been the target of these proposals, because it is recognized that they are already regulated by state boards of accountancy and therefore, have been generally exempted from these state proposals.

Meanwhile, Congress has also considered federal legislation with similar registration provisions. And, in January 2010, the IRS announced the agency would start phasing in, beginning with the 2011 filing season, a process to regulate all paid tax return preparers. The proposal that will be implemented through IRS regulations will mandate that all paid tax return preparers both register with the IRS and obtain a Preparer Tax Identification Number (PTIN), to be used in signing all tax returns.

As a part of this plan the IRS also will subject paid tax return preparers to an annual CPE requirement as well as an entry competency test.

Like the state proposals, which generally exempt CPA's from both the testing and CPE requirements as they have already passed a licensing examination and are subject to continuing professional education requirements, the IRS proposal also provides an exemption for CPAs. Finally, the IRS plans to require that all preparers be subject to the ethics requirements under Circular 230.

The AICPA has been actively involved in the process, since it was first announced by the IRS Commissioner and will continue to work with the IRS as the many details of these proposals are disclosed.

**WHY IT'S
IMPORTANT TO
CPAs:**

AICPA supports the implementation of high professional standards for tax practitioners, and has a long track record regarding professional standards for CPAs, including the AICPA Code of Professional Conduct and enforceable Statements on Standards for Tax Services.

**AICPA
POSITION:**

While AICPA supports initiatives designed to ensure high professional standards among tax professionals, state legislative and regulatory proposals calling for the regulation of unlicensed tax practitioners may not accomplish their intended goals. Additionally, the AICPA believes that adequate time should be given to the IRS to fully implement the registration of tax preparers at the Federal level before states move forward to register paid preparers at the state level.

However, if such proposals are considered at the state level, AICPA urges that they:

1. Recognize the Federal registration process with the IRS and not duplicate or replicate any of the registration procedures.
2. Recognize the varying competency levels of tax return preparers and not create marketplace confusions. The title assigned to any new licensed or regulated preparers should be clearly distinguishable from titles associated with CPAs, attorneys, and enrolled agents. New regulation of tax preparers could lead to marketplace confusion by using terms such as “regulated,” “licensed,” or “certified.”
3. Provide an exemption for CPAs, attorneys, and enrolled agents. CPAs, attorneys, and enrolled agents, are already subject to a regulatory process imposed on them by state boards of accountancy, state bars, court systems, and Circular 230. It is also important that exemptions for out-of-state CPAs are recognized within any proposal so the impact on CPA mobility is minimized.
4. Address funding for regulatory oversight. If proposals create a new state board or regulatory body, they should adequately address funding for this enforcement without detracting from the enforcement resources of existing state agencies or boards, including state boards of accountancy.

STATE ACTION:

Only three states require the regulation or licensure of paid preparers at the state level – California, Maryland and Oregon.

In 2011, several states were considering legislation or regulations to require tax preparers to be registered or licensed. However, to date, no states have acted while waiting to see if a federal requirement would be established.

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ISSUE: How to promote greater ease of mobility across state lines for CPAs and CPA firms both in person and electronically.

BACKGROUND: For many years, the issue of cross-border practice (or mobility) of CPAs and CPA firms has been a concern to the profession.

In 1997 the American Institute of CPAs, working with the National Association of State Boards of Accountancy (NASBA) added the concept of substantial equivalency to the joint Uniform Accountancy Act (UAA). Under the concept of substantial equivalency in Section 23 of the UAA, if a CPA has a license in good standing from a state that utilizes CPA certification criteria that are essentially those outlined in the UAA (i.e. 150-hours of education, the Uniform CPA Examination and at least one year of experience), then the CPA would be qualified to practice in another state that is not the CPA's principal place of business. The original provision included a requirement that the out-of-state CPA provide the practice privilege state with notification of practice in the state.

In order for substantial equivalency to effectively impact mobility and the ability of CPAs to serve clients across state lines, as well as give state boards the ability to protect the public, each state needed to enact and implement the provision in a manner similar to what appeared in Section 23.

What occurred was anything but uniform, with many states enacting a substantial equivalency provision with complicated and varying notification requirements that did little to protect the public interest and the result was a patchwork system of individual state requirements that was inefficient and increasingly difficult to navigate.

After further study, the AICPA and NASBA concluded that the original concept of substantial equivalency was not working. In July 2007, the two organizations agreed upon revisions to the UAA to facilitate CPA practice mobility. The UAA Fifth Edition removed the notification requirement previously within Section 23, and added language to give Boards of Accountancy automatic jurisdiction over out-of-state CPAs and firms practicing in their state.

**WHY IT'S
IMPORTANT TO
CPAs:**

Because the electronic age makes conducting business across state borders an everyday occurrence, there is a critical need for states to adopt a uniform mobility system that will allow licensed CPAs to provide services across state lines without unnecessary burdens that do not protect the public interest. Compliance and enforcement of the system prior to no-notification mobility was almost impossible, with multiple, cumbersome processes and disparities in requirements. Business realities, including an increase in interstate commerce and virtual technologies require a uniform system that allows fluid practice across state lines.

Businesses today are often located in multiple states and have compliance responsibilities in multiple jurisdictions and a uniform process will give CPAs the flexibility to better serve these clients.

Implementation of a uniform provision would allow consumers to receive timely services from the CPA best suited to the job, regardless of location, without the hindrances of unnecessary filings, forms and increased costs that do not protect the public interest.

AICPA

POSITION:

The AICPA supports uniform adoption of the substantial equivalency provisions included in the Uniform Accountancy Act to create a national uniform system that will provide CPAs with mobility while retaining and strengthening state boards' ability to protect the public interest.

STATE ACTION:

The momentum continues toward interstate practice privileges across the nation, ridding the profession of the patchwork system of state rules, regulations and requirements that was inefficient and increasingly difficult to navigate. During recent legislative sessions there has been a great deal of activity on this issue. Since 2007, 47 states have enacted a uniform mobility provision, and legislation is pending in 2011 in New York and the District of Columbia.

With a critical mass of states that have enacted a uniform mobility provision, focus now turns to implementation of a no-notification mobility system. As mobility rules are written, states are encouraged to thoroughly review their existing regulations and administrative procedures to ensure that unintended consequences do not impede the spirit of the legislative provisions that were enacted.

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TAXING ACCOUNTING SERVICES

- ISSUE:** As states face financial difficulty, they are increasingly looking to sales and use taxes on professional services as a means of increasing state revenues.
- BACKGROUND:** In 1987 Florida became the first state in decades to extend broad-based sales and use tax on services. Although the tax was repealed after six months, other states have aggressively pursued similar legislation. Similarly, a sales tax on consulting services in Iowa was signed into law in April of 1992, and was repealed one month later. The need to maintain an adequate revenue flow and at the same time improve public services has resulted in many state legislatures adding taxes in a piecemeal fashion, without a comprehensive review of the entire tax structure. As state governments continue to struggle with a projected declines in revenues, the issue is expected to re-emerge.
- WHY IT'S IMPORTANT TO CPAs:** There are several reasons why sales and use taxes are not only a bad idea for CPAs, but for all services.
- 1) Discrimination against small and emerging businesses. Small firms are forced to use outside services. The compliance costs can be very high. Most importantly, siphoning monies into additional taxes limits the growth of small companies.
 - 2) Pyramiding taxes on services and final goods. Under this kind of system, the potential for goods and services being taxed several times exists and this results in higher consumer costs.
 - 3) States with service taxes are at a competitive disadvantage compared to states that do not tax services. Not only does it discourage the use of services, but it also discourages companies seeking to relocate or expand.
- AICPA POSITION:** The AICPA works with state CPA societies to oppose the imposition of a sales tax on services. The AICPA does recognize that revenue raising to support government programs is an ongoing process that constantly requires reassessment of current taxing structures. Because of the administrative and technical difficulties associated with the enactment of a service tax, we believe states should seek other alternatives.
- The AICPA's Tax Team provides technical guidance in this area and can provide materials that states can use that address key points to consider when discussing this issue with state legislators.
- STATE ACTION:** Currently there are five states that impose some form of tax on accounting services. These states are Delaware, Hawaii, Nevada, New Mexico and South Dakota. Several other state societies report that such legislation is a possibility in their state, including Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Minnesota, Missouri, Nevada, New Jersey, North Carolina, Pennsylvania, Utah, Washington, and Wisconsin.
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1. PRIVACY OF CONTRACT

ISSUE:	Whether states should limit the extent of certified public accountants' liability to third parties for negligence.
BACKGROUND:	Two parties who have a direct contractual relationship, such as a CPA and a client, are said to be in privity. As a result of this relationship, the client has the right to bring a lawsuit for negligent or fraudulent actions. Although injured third parties may sue an accountant for fraudulent conduct, how far an accountant's liability for negligence should extend to third parties is often in question.
WHY IT'S IMPORTANT TO CPAs:	The privity issue is extremely important to CPAs since the number of third parties who may ultimately utilize an accountant's work is exponentially greater than the number of clients. Case law or legislation that renders CPAs liable for negligence to large numbers of these third persons has dramatically increased the number of suits and the potential liability of CPAs. The growing burden of liability threatens the ability of CPAs to fully serve the public's need for objective and reliable financial information.
AICPA POSITION:	The AICPA favors limitations on the extent of CPAs' third party liability and recommends the following elements in legislation: <ol style="list-style-type: none"> 1) The accountant must have known, at the time the engagement was undertaken, that the financial statements were intended for use by the plaintiff who was specifically identified to the defendant; 2) The accountant must have known that the plaintiff intended to rely upon the financial statements in connection with the specified transaction; and 3) The accountant had direct contact and communication with the plaintiff and expressed by word or conduct the defendant accountant's understanding of the reliance on such financial statements or other information. <p>In addition, the AICPA/NASBA <i>Uniform Accountancy Act</i> (UAA) contains a privity provision. For more information on this section consult Section 20 of the Act.</p>
STATE ACTION:	Arkansas, Guam, Illinois, Kansas, Louisiana, New Jersey, Utah and Wyoming have enacted privity standards within their accountancy statutes. In addition, several state courts have handed down favorable decisions.
	The AICPA staff actively assists state CPA societies by providing information on developments in tort reform and assistance in crafting favorable legislation. Also, other information regarding liability reform efforts is available to state societies and interested parties.
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2. PROPORTIONATE LIABILITY

ISSUE:	Whether joint and several liability provisions for accountants should be abolished and replaced with state rules that provide for proportionate liability.
BACKGROUND:	Accountants are increasingly finding themselves the subject of civil litigation involving multiple parties. Under joint and several liability, multiple defendants found to be liable share in the burden of paying damages to the plaintiff without regard to the proportion of damage caused by any one defendant.
WHY IT'S IMPORTANT TO CPAs:	By abolishing joint and several liability and replacing it with proportionate liability, defendants will be liable to pay only that portion of the damages for which they are directly responsible. This will eliminate the specter of one or two defendants, who may have been minimally at fault, being required to pay entire damage awards.
AICPA POSITION:	<p>The AICPA believes that each defendant should be severally liable and should not be compelled to pay more than each defendant's own proportionate share of the plaintiff's loss. The AICPA has actively promoted statutes that eliminate or modify joint and several liability.</p> <p>In addition, the AICPA/NASBA Uniform Accountancy Act (UAA) contains a proportionate liability provision. For more information on this provision, consult Section 22 of the Act.</p>
STATE ACTION:	<p>Nineteen states have abolished joint and several liability. Twenty-two states have modified joint and several liability and several other state courts have handed down favorable decisions.</p> <p>AICPA staff actively assists state CPA societies by providing information on developments in tort reform and in crafting favorable legislation. Other information regarding liability reform efforts is available to state societies and interested parties.</p>
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3. UNIFORM STATUTE OF LIMITATIONS

ISSUE:	Whether a uniform statute of limitations should be established for suits involving negligent performance of accounting services and breach of contract actions.
BACKGROUND:	The statute of limitations for breach of contract and negligent performance of accounting services vary from state to state. Accountants face uncertainty over potential liability exposure under these different state limitation periods.
WHY IT'S IMPORTANT TO CPAs:	A uniform statute of limitations would reduce the uncertainty over potential liability under the different state limitation periods.
AICPA POSITION:	<p>The AICPA supports enactment of a uniform statute of limitations for accountants without regard to whether the action is brought as a negligence or breach of contract. The AICPA developed language envisioning a limitation of one year from the date the alleged act or omission is discovered or should have been discovered in the exercise of reasonable diligence, or three years after the service for which the suit is brought has been performed or the date of the initial issuance of the accountant's report on the financial statements or other information, whichever comes first.</p> <p>In addition, the AICPA/NASBA Uniform Accountancy Act (UAA) contains a statute of limitations provision. For more information on this provision consult Section 21 of the Act.</p>
STATE ACTION:	<p>No significant activity has occurred in recent legislative sessions; however, the issue will continue to be monitored.</p> <p>The AICPA staff actively assists state CPA societies by providing information on developments in tort reform and assistance in crafting favorable legislation. Other information is available to state societies and interested parties.</p>
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4. PUNITIVE DAMAGES

ISSUE:	Whether punitive damage awards should be limited in suits involving civil actions against CPAs.
BACKGROUND:	<p>Punitive damage awards are an increasingly visible phenomenon in contemporary litigation. Both the number and size of such awards have increased markedly in the past several years. These awards have been justified under the same rationale that is used in the criminal justice system in imposing penal sanctions - to punish a defendant who has engaged in reprehensible conduct and to deter the defendant and other persons from engaging in such conduct in the future. By definition, punitive damage awards are not intended to compensate the injured party. Unfortunately, actual punitive damage awards often bear no relation to deterrence. Furthermore, despite the close analogy to criminal sanctions, punitive damages have been awarded without the procedural safeguards and heightened burden of proof that apply in the criminal context.</p>
WHY IT'S IMPORTANT TO CPAs:	<p>Excessive punitive damage awards based on the actions of their employees especially threaten accounting firms. An individual, often discrete, error of one accounting professional may subject the firm to the threat of vicarious punitive liability for conduct in which the firm, as an institution, has neither participated nor condoned. Moreover, accounting firms are often the only "deep pockets" left after a company, for which it performed an audit, suffers financial losses. As a result, accounting firms are frequently looked to for damages that far exceed the extent of their responsibility for the loss suffered.</p>
AICPA POSITION:	<p>The AICPA supports all legislative reforms to rectify the present imbalance that exists in our legal system regarding the awarding of punitive damages. Specifically, the AICPA supports language that includes procedural safeguards and requires a jury to determine the percentage of a particular defendant's responsibility for the compensatory awards. A limit or "cap" is then placed on the punitive damage award based on the amount of compensatory damages for which a defendant is responsible. The punitive damages award is then limited by this determination.</p> <p>The AICPA staff actively assists state CPA societies by providing information on developments in tort reform and assistance in crafting favorable legislation.</p>
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