

**TAXATION LAW
SPECIALIZATION ADVISORY BOARD
STANDARDS AND PROCEDURES
FOR
CERTIFICATION, RECERTIFICATION, AND DECERTIFICATION**

By virtue of the authority vested in the Taxation Law Specialization Advisory Board (Board) and the Commission on Continuing Lawyer Competence (Commission) by the South Carolina Supreme Court (Court), the Board prescribes the following standards and procedures for certification, recertification, and decertification as a specialist in taxation law (see Rule 408, SCACR, and Commission Regulations).

I. GENERAL REQUIREMENTS AND DEFINITIONS

- A. Nothing herein shall in any manner limit the right of an attorney certified in taxation law to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though certified in taxation law.
- B. No lawyer shall be required to obtain a certificate in taxation law before practicing in that field. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in the field of taxation law, even though not certified therein.
- C. All applicants for certification or recertification in taxation law must be active members in good standing with the South Carolina Bar, entitled to practice before the Internal Revenue Service, and shall meet the requirements for certification or recertification prescribed by the Board.
- D. Certification in taxation law is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm, corporation, company, or other entity of which the certified lawyer is a member or employee.
- E. Forms, documents, applications, questionnaires, and examinations involved in the certification, recertification, or decertification process, as well as fees required of applicants and certified lawyers shall be as prescribed by the Board and/or Commission.
- F. Certification shall be for a period of five (5) years at the end of which time recertification shall be permitted as indicated in §IV, below.
- G. Taxation Law is defined as the practice of law dealing with all matters arising under the Internal Revenue Code and the taxation provisions of the Employee Retirement Income Security Act (ERISA), and state and local tax laws, including counseling and practice before federal and state courts and governmental agencies with respect thereto.
- H. Applicants for certification or recertification shall furnish satisfactory evidence of their good character and reputation. Unless otherwise prohibited by Rules for Lawyer

Disciplinary Enforcement, they shall also provide information in whatever form required by the Board as to whether they are now subject to an investigation, complaint, inquiry, or other disciplinary proceedings by any segment of the Bar, including but not limited to any local, state, or other grievance board, committee, or commission (hereinafter committee); and if so, the details of such investigation, complaint, inquiry, or proceedings including whether they have ever been reprimanded, suspended, disbarred, or otherwise disciplined by any court or grievance committee.

The Board may deny certification or recertification on a finding of a grievance committee, a court, or administrative agency or other governmental agency that an applicant has been guilty of professional misconduct, or defer certification or recertification based upon the pendency of such proceedings. However, the Board will consider the seriousness of the underlying fact of the grievance, the passage of time since such discipline, applicant's experience since that time, and any history of other disciplinary actions or pending actions. Failure to disclose such information is a material misrepresentation and may be cause for rejection.

- I. Applicants for certification or recertification will provide information in whatever form required by the Board as to whether they have ever been convicted, given probation, fined, or otherwise punished for any crime except a minor traffic offense, regardless of whether the conviction and/or punishment resulted from a plea of guilty, nolo contendere, or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The Board may deny certification or recertification if an applicant has been convicted, given probation, fined, or otherwise punished for any crime except a minor traffic offense.

- J. An applicant shall apply for certification or recertification as a specialist by completing and filing with the Board an application form furnished by the Board calling for information indicative of and relevant to the applicant's involvement, experience, competency, and practice in the field of taxation law. By completing and filing such application, the applicant shall be deemed to have authorized the Board to take all appropriate action to resolve any questions with respect to the applicant's involvement, experience, competency, and practice in the field of taxation law and to verify the information furnished by the applicant in making the application. In the appraisal of each applicant, the Board will take such steps as it deems advisable or necessary under the circumstances to assure that the applicant presented to the Court for certification as a specialist is a lawyer who is technically competent in the field and of whom the Board has no notice of any personal or ethical deficiencies that might impair his/her professional performance as a specialist. Accordingly, the Board shall require an applicant to disclose any information needed to determine whether to present his/her application to the Court for certification. The Board not only may verify information submitted by the applicant, but may, in its discretion, conduct its own investigation into the applicant's competency, experience, involvement, and reputation. Should the Board determine that an applicant's competency, character, experience, involvement, or reputation does not support his/her application for certification, the Board shall reject the application subject to such rights of hearing and appeal as may be promulgated by the Commission and the Supreme Court.

- K. Each applicant shall submit the names and addresses of five (5) lawyers engaged in the "practice of law," as defined in §II A, who are familiar with the applicant's practice and who are not partners or associates or members of this Board or the Commission, to be contacted as references to attest to the applicant's experience, involvement, and competency in the practice of taxation law. At least two (2) of the five (5) lawyers must be currently certified taxation law specialists. The Board may, in its discretion and without notice to an applicant, secure information concerning any particular applicant's practice, involvement, experience, and competency in the specialty area from lawyers and judges other than those whose names are submitted by an applicant.
- L. In addition to any requirement heretofore or hereinafter listed, the Board may, in its sole discretion, require additional information from a particular applicant when in its judgment such additional information is necessary to a decision with respect to certification, recertification, or decertification.

II. MINIMUM STANDARDS FOR CERTIFICATION

A. REQUIRED PERIOD OF LAW PRACTICE

Applicants shall have been engaged in the practice of law for a period of five (5) years on a full-time basis. "Practice of law" means full-time legal work done primarily for the purpose of legal advice or representation. Service, after admission to the Bar of any state or the District of Columbia, as a judge of any court of record shall be considered practice of law. Corporate or government service, including military service, as an attorney, after admission to the Bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of giving legal advice to, or representation of, the corporation or government agency or individuals primarily connected with the corporation or government agency. Practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy the requirement if the balance of applicant's activity is work such as law teaching or legal writing which, although legal in nature, may not qualify as practice of law.

B. SUBSTANTIAL INVOLVEMENT

Applicants must show substantial involvement and special competency in taxation law practice during the five (5) years immediately preceding application by providing such information as may be required by the Board.

- 1. During each of the five (5) years immediately preceding application, applicants must show:
 - (a) that they have devoted a minimum of 50% of their time practicing taxation law as defined herein (see §I G) and
 - (b) that their time devoted to the practice of taxation law equals at least 50% of a full-time practice of law.

Thus, the test for substantial involvement has two parts. The first part is subjective, relating to the individual applicant's practice, and it requires that at least 50% of that practice be devoted to taxation law. The second part is objective and (considering an eight (8) hour work day, five (5) days per week as average or normal) requires an applicant to spend (on average) at least four (4) hours a day and twenty (20) hours per week involved in taxation law practice.

2. In satisfying the 50% requirement in §II B 1 (a), an applicant may count, as time devoted to the practice of taxation law, the entire time devoted to a matter involving both taxation and other fields or areas of law, provided that at least one-half of the applicant's time devoted to such mixed matters is spent on taxation law. However, an applicant may not satisfy more than one-half of the 50% requirement in §II B 1 (a) by the time devoted to practice in a mixed taxation and non-taxation field of law for which a certified specialty is available under Rule 408, SCACR. For example, if an applicant devotes 20% of his/her practice to income taxation, 60% to estate planning, and 20% to other areas or fields, he/she could satisfy no more than one-half of that 50% requirement by his/her estate planning practice since a certified specialty is available in estate planning and probate law. The applicant in this illustration would, therefore, fail the 50% requirement of §II B 1 (a) since he/she could count only 25% from estate planning (1/2 of 50%) and 20% from income taxation, giving a total of 45% of his/her time devoted to taxation practice (5% short of the 50% requirement).

C. CONTINUING LEGAL EDUCATION - MINIMUM REQUIREMENTS

During each of the five (5) annual reporting periods preceding application for initial certification (or appropriate lesser period if any of the practice or substantial involvement requirements of § II A & B are waived), applicants must have completed not less than fifteen (15) hours of continuing legal education in approved courses or programs dealing with taxation law. For this purpose "approved courses or programs" shall mean courses/programs accredited by the Board for the taxation law specialty or courses/programs that would qualify for such accreditation. Provided, however, that for applications for initial certification received prior to January 1, 2010, in the five (5) years preceding application, applicants must be completed at least seventy-five (75) hours of continuing legal education in approved courses or programs dealing with taxation law.

D. EXAMINATION

Applicants for initial certification must pass an oral interview/examination and upon successful completion thereof, must take and pass a written examination to demonstrate sufficient knowledge, proficiency, competency, and experience in taxation law to justify the representation of special competency to the legal profession and to the public. The provision concerning waiver of the written examination when the applicant has an advanced degree (LL.M) in taxation no longer applies. It was eliminated by a change to the Commission's *Regulations for Legal Specialization in South Carolina* effective June 12, 2003. The written examination shall be administered only once during each calendar

year, provided applications are pending, at a time and place to be determined by the Board, giving due consideration to the convenience of such applicants. The requirement for a written examination shall apply to all applications received after March 1, 1992.

E. FEES

Applicants shall timely pay the fees established from time to time by the Board and/or Commission, including but not limited to application fees, filing fees, examination fees, and certification fees.

F. FAILURE TO FURNISH INFORMATION; MISREPRESENTATION

Certification or recertification may be denied because of an applicant's failure to furnish requested information or because of misrepresentation of any material fact requested by the Board.

III. REQUIREMENTS FOLLOWING CERTIFICATION

- A. During each annual reporting period all certified specialists in taxation law shall complete not less than fifteen (15) hours of approved specialty continuing legal education. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty (see §IV C concerning CLE credit required for recertification.)
- B. Certified specialists must report annually to the Commission his/her compliance with §III A and pay such filing fees, including late fees, as the Commission may from time to time prescribe. Failure to file and/or pay required fees may result in suspension from the practice of law in accordance with Commission Regulations in addition to revocation of certification.
- C. During the period of certification, all certified specialists must continue to practice law and to be substantially involved in the practice of taxation law (see §II, A & B, regarding the meaning of "practice of law" and "substantially involved in the practice of taxation law"). Should any certified specialist cease to practice law or to be substantially involved in the practice of taxation law, he/she shall promptly notify the Board for such action with respect to decertification as the Board shall deem to be appropriate. The failure of a certified specialist to notify the Board that he/she is no longer engaged in the practice of law or substantially involved in the practice of taxation law may constitute grounds for decertification of the individual concerned.
- D. During any period of initial or subsequent certification, all certified specialists shall report to the Commission any administrative action or malpractice claim in which settlement is made or suit is filed and unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, shall likewise report to the Commission any case in which he/she learns that he/she is the subject of an investigation, inquiry or other disciplinary proceedings by

any segment of the Bar, including but not limited to any local, state or other grievance board, committee or commission.

IV. RECERTIFICATION

- A. Renewal of certification under the program shall be required every five (5) years.
- B. Applicants must demonstrate their continuing substantial involvement and special competency in the practice of taxation law as may be required by the Board. Provided, however, that requirements for recertification shall not exceed the requirements for original certification except as noted in §IV C, below.
- C. To qualify for recertification, applicants must demonstrate the completion of a minimum of 120 hours of approved specialty continuing legal education in the five (5) years since their original or latest certification.

V. REVOCATION OF CERTIFICATION

The Board may revoke the certification of any lawyer if the certification program for this field is terminated or if it is determined after hearing, on appropriate notice, that:

- A. Certification was granted contrary to the Board's Standards and Procedures, Commission Regulations, or South Carolina Appellate Court Rules; or
- B. Certification was granted to a lawyer who was not eligible for certification or who made any false representation; or
- C. A certified lawyer has failed to abide by all Board standards and procedures, Commission regulations, and South Carolina Appellate Court Rules, as amended from time to time; or
- D. A certified lawyer has failed to meet the continuing legal education requirements of §III A or to file the annual report and/or pay the fees prescribed by §II E and §III B; or
- E. A certified lawyer no longer meets the minimum standards for certification established by the Board's standards and procedures, including practice of law and substantial involvement requirements (see §II A & B).

VI. WAIVERS

In cases of rare and unusual circumstances, the Board may waive compliance with any of the standards herein for the purpose of certifying or recertifying an individual as a specialist in taxation law except that a waiver may not be granted to certify an individual who has not practiced law for at least three (3) years and who has not been substantially involved in the specialty for at least three (3) years. In any case in which a waiver is granted pursuant to this section, notification to the Court recommending certification or recertification shall indicate that a waiver has been granted and will specify the reason(s) therefor.

VII. EFFECTIVE DATE

These Standards and Procedures shall be effective October 31, 1991, or whenever approved by the South Carolina Supreme Court, whichever date is later, and supersede all prior Taxation Law Specialization Advisory Board Standards and Procedures for Certification, Recertification, and Decertification.