

TAX LAW SECTION, STATE BAR OF NEVADA

THE STANDARDS FOR BOARD CERTIFIED SPECIALIZATION IN TAX LAW

1. DURATION OF BOARD CERTIFICATION OF SPECIALIZATION IN TAX LAW

- 1.1. Board Certification of Specialization in Tax Law (hereinafter "certification" or "recertification") shall be for a period of five (5) calendar years at the end of which time recertification shall be permitted upon the terms and conditions established in Section 10 below. Certification and recertification are both individual and voluntary. The requirements for benefits derived from certification may not be fulfilled by, or attributed to, a law firm of which the board-certified attorney is a member. This Board Certification of Specialization in Tax Law meets the requirements of Rule 7.4 of the Nevada Rules of Professional Conduct.

2. DEFINITION OF TAX LAW

- 2.1. Tax law is the practice of law dealing with those areas specified in Title 32 of the Nevada Revised Statutes, the Internal Revenue Code, and applicable regulations as now stated or as may be changed from time to time, including but not limited to: personal taxation obligations, business taxation obligations, tax resolution representation and representation before the U.S. Tax Court.

3. EXPERIENCE REQUIREMENTS FOR CERTIFICATION

- 3.1. All applicants and board-certified attorneys must be active members in good standing of the State Bar of Nevada and the Tax Law Section and must demonstrate substantial involvement and special competence in Nevada tax law practice as set forth herein.
- 3.2. Applicants whose residence and domicile is within fifty (50) miles of a county with a population is 100,000 or more, must during each of the five (5) years immediately preceding application, as measured on a time-spent basis, have devoted at least fifty percent (50%) of the total practice of a lawyer engaged in a normal full-time practice, to the practice of Nevada Tax law as defined in Section 2 above.
- 3.3. Applicants whose residence and domicile is fifty (50) miles or more away from a county with a population is 100,000 or more, must during each of the five (5) years immediately preceding application, as measured on a time-spent basis, have devoted at least thirty five percent (35%) of the total practice of a lawyer engaged in a normal full-time practice, to the practice of Nevada tax law as defined in paragraph 2.1 above.

3.4. Applicants must demonstrate their substantial involvement and special competence in Nevada tax law during the five (5) calendar years immediately preceding application by providing information to establish their involvement as:

- a. Principal counsel in at least thirty (30) tax-related matters (see section 2) each calendar year or a showing that an applicant can demonstrate substantial experience in complex Tax law matters each calendar year. If the applicant does not have 30 tax-related matters each year, the applicant must submit an affidavit detailing the number of tax-related cases, complexity of the matter, legal issues issued, and gross amount at issue or,
- b. Counsel for either the Internal Revenue Service or the Nevada Department of Taxation for the past five (5) years;

3.5. "Principal counsel" as used herein, is defined as the attorney who spends a majority of the time on a case in the activities of preparation, review, filing and representation of a client throughout the pendency of the case at interviews or hearings.

3.6. All sitting judges and masters in tax law divisions, or judges and masters in general jurisdiction divisions in which said judge' s or master' s caseload is at least thirty five percent (35%) tax law matters as defined in Section 2 above, shall be deemed to have met the requirements of Section 3 during those years of service.

4. REFERENCES REQUIREMENTS FOR CERTIFICATION

4.1. To attest to the applicant's expertise in tax law, applicants shall submit the confidential reference form, approved by the Board of Certified Tax Law Specialists, to the following individuals:

- a. Not more than five (5) Nevada or attorneys engaged in federal practice of tax law in good standing who are familiar with the competence of the applicant and have been opposing or co-counsel to the applicant either in litigation, hearing or negotiation of a Tax law matter, within the five (5) years immediately preceding application. At least three (3) of the five (5) attorneys must attest to the applicant's expertise and recommend certification of the applicant as a specialist before the application is approved. The applicant must identify in their application the attorneys to whom the confidential reference form was given.
- b. Applicant may be asked to supplement the record with additional names for Peer Review if necessary. The Board of Certified Tax Law Specialists may investigate, research, substantiate, and corroborate any information provided in Peer Review letters which may help them make a decision.

- c. If negative and/or adverse information concerning an Applicant is provided by a reference or any other source, the basis and the identity of the source of the information shall be retained in confidence and not be disclosed, an investigation will be conducted to attempt to substantiate or corroborate the accuracy of information. If the information is corroborated or substantiated, then it may be considered by the Board of Certified Tax Law Specialists. If the investigation is unable to substantiate or corroborate the adverse information provided by the source requesting confidentiality, then the information may not be considered by the Board of Certified Tax Law Specialists.
- d. An applicant, at a time and place set by the Board of Certified Tax Law Specialists, shall appear in person at a Peer Review where he or she will be inquired about their tax law and legal experience, inquired about tax law and inquired about anything required for certification to be a Tax Law Specialist.

4.2. The individuals offering the references must be members in good standing of the State Bar of Bar and be substantially involved in the practice of tax law in Nevada. The individuals offering the references may not be related to, or engaged in legal practice with, the lawyer seeking certification. Applicant may not submit reference forms to more than two (2) attorneys in the same firm. It is the applicant's responsibility to ensure their references submit the forms directly to the Board of Certified Tax Law Specialists for review. All reference forms shall be, and remain, confidential.

4.3. Attorneys having represented either the Internal Revenue Service or the Nevada Department of Taxation for the past five (5) years are deemed to have complied with the requirements of section 4.0.

5. CONTINUING LEGAL EDUCATION REQUIREMENTS FOR CERTIFICATION

5.1. Applicants must have completed an average of eighteen (18) hours of Continuing Legal Education in Tax Law (hereinafter "CLE") over the previous five (5) calendar years immediately preceding application, which shall include a minimum of not less than twelve (12) hours of CLE in Tax Law completed annually in each of the previous five (5) calendar years immediately preceding application, as demonstrated by:

5.2. Attendance at and completion of CLE courses sponsored by the State Bar of Nevada, any county bar association in the State of Nevada, the Nevada Trial Lawyers Association, the American Bar Association, or,

5.3. Sufficient other comparable legal education activity in tax law in lieu of CLE courses, to be determined on an individual and discretionary basis by the Board of Certified Tax Law Specialists, which activity may include but is not limited to:

- a. Teaching a CLE course for attorneys or legal assistants in Nevada or federal tax law;
- b. Participation as a panelist, presentation at a symposium, or other similar program with respect to Nevada or federal tax law;
- c. Participation in any complex CLE program regarding Nevada or federal tax law by any organization not recognized by 5.1.2 that the Nevada Board of CLE approves for CLE credit;
- d. Authorship of a book or articles on Nevada or federal tax law matters published in a professional publication or journal; or,
- e. Active participation in the work of a professional committee dealing specifically with issues or aspects of Nevada or federal tax law.
- f. Participation in seminars or webinars on tax matters lead by competent tax attorneys, CPAs or other tax professional.

5.4. CLE Activities that are claimed toward the annual requirement shall meet the following standards:

- a. **Significant Content.** The activities shall have significant intellectual and/or practical content and the primary objective shall be to increase the attendee's professional ability as a Tax Law Specialist. The content of activities may include a broad or narrow range of subjects dealing with the field of Tax Law.
- b. **Organized Program.** The activities shall be an organized program of learning, deal with matters directly related to the field of Tax Law, and follow the agenda defined by the written materials or exercises distributed as part of the activities. The level of instruction of CLE activities in the area of Tax Law Specialization field be directed toward the development of advanced skills in the area of Tax Law Specialization.
- c. **Appropriate Setting.** The activities shall be conducted in a setting physically suitable to the educational activity of the program.
- d. **Instructors.** The instructors of CLE activities shall be experts in the field in which they are teaching. The instructors' qualifications and appropriate background information shall be set forth in the activity's brochure or written materials.
- e. **Written Material.** Scholarly written materials or exercises shall be distributed to the attendees at, or before, the time the activity is presented.

- f. **Records.** Course outlines, written materials, verification of attendance, and other evidence of a CLE activity identifying the course, sponsor and date and place of presentation and/or publication must be retained by the specialist for recertification.

5.5. Calculation of credit hours for Tax Law legal specialization shall be determined by dividing the total minutes of instruction by 60 and rounding to the nearest quarter hour. Breaks shall not be included as part of instructional time. For CLE activities in the Tax Law Specialization field, if the activity contains other subject matter not directly related to the specialty, credit shall be allowed for only the time spent in Tax Law.

- a. **Teaching Hours.** Credit may be earned for teaching at a CLE activity or at an ABA accredited law school or teaching a law course at any accredited Nevada university or any Nevada community college, provided the teaching is in a classroom and so long as the instruction meets the standards of Section 5.3(a), except that the instruction may be at a basic level.

- i. Speakers whose presentations are accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit, as follows:

For the original presentation:

First hour of presentation x 6 = total credit hours

Additional hours of presentation x 2 = total credit hours

Repeat live presentation hours x 1 = total credit hours

- ii. Speakers, including college of trial advocacy educators, whose presentations are not accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit as follows:

Each hour of presentation x 1 = total credit hours

- iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy a maximum of three (3) credit hours each year.

- b. **Writing Hours.** Credit may be earned for writing legal material in the area of Tax Law Specialization not used in conjunction with a CLE activity. Such material must address an attorney audience,

be at least 3,000 words in length, and be published by a recognized third-party publisher of legal material or a sponsor.

- i. For each 3,000 words of original material written, the author(s) may earn two (2) credit hours. Multiple authors may share credit for material written.
- ii. The first one (1) hour may be basic in nature, but beyond that it must be at an advanced level.
- iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy a maximum of three (3) credit hours each year.

5.6. If a lawyer is unable to complete the hours of accredited CLE required for the Tax Law Specialization during the preceding calendar year, the lawyer may apply to the Board of Certified Tax Law Specialization for an extension of time in which to complete the hours. For good cause, the Board of Certified Tax Law Specialization may extend the time not more than six (6) months. If the lawyer is granted the extension by the Board of Certified Tax Law Specialization, he/she must provide evidence of such extension to the Board of Certified Tax Law Specialization.

5.7. Failure to obtain the required 18 hours of continuing legal education credit by the December 31st deadline will result in the following late fees:

- a. If an extension has been provided by the Board of Certified Tax Law Specialization, then if CLE requirements are completed between January 1 and July 1, a delinquent compliance fee of (\$25) is assessed by the Board of Certified Tax Law Specialization and shall be payable to the State Bar of Nevada for the Board of Certified Tax Law Specialization.

6. DISCIPLINARY REVIEW REQUIREMENTS FOR CERTIFICATION

6.1. Applicants shall be required to furnish a statement to the Board of Certified Tax Law Specialists disclosing whether they are subject of any investigation, complaint, inquiry or other disciplinary proceedings by any organized bar, including any local, state or district grievance committee of an organized bar, together with the details of such investigation, complaint, inquiry or proceedings, and thereafter the results thereof. Said statement shall include an attestation as to whether they have ever been reprimanded, suspended, disbarred or otherwise disciplined by any court or grievance committee together with the details thereof.

6.2. Applicants throughout the certification process, and all board-certified attorneys, shall be subject to a continuing duty to promptly furnish a statement to the Board of Certified Tax Law Specialists disclosing if they become subject to an investigation, complaint, inquiry or other disciplinary

proceedings by any organized bar, including any local, state or district grievance committee of an organized bar, and be required to provide the details of such investigation, complaint, inquiry or proceedings. The requirement herein is on-going and requires prompt mandatory supplemental disclosure without delay.

- 6.3. The Board of Certified Tax Law Specialists may deny certification or recertification, revoke certification, or take other appropriate action on a finding of a grievance committee or court that an applicant or board-certified attorney has committed professional misconduct. However, the committee will consider the seriousness or the underlying facts of the grievance, the passage of time since such discipline, the applicant's or the board-certified attorney's experience since that time, and any other relevant factors. Failure to disclose such information shall constitute a material misrepresentation and may be cause for rejection, revocation, or other appropriate action.

7. PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS FOR CERTIFICATION

- 7.1. All applicants for certification and recertification must carry professional liability insurance as set forth in Nevada Rule of Professional Conduct 7.4(d)(2)(iii), unless the lawyer's practice is limited to public law.
- 7.2. Once an attorney is approved for certification, that attorney must Annually file a copy of his or her insurance declaration page demonstrating compliance with professional liability insurance. If evidence of current professional liability is not timely provided when required, the Board of Certified Tax Law Specialists may revoke a specialized certification for such failure of evidence of the required insurance.

8. EXAMINATION REQUIREMENTS FOR CERTIFICATION

- 8.1. Once an applicant has been deemed to have fulfilled all of the requirements above, and has been so notified by the Board of Certified Tax Law Specialists, the applicant shall be permitted to sit for the certification examination.
- 8.2. The grant of approval to sit for the examination shall entitle the applicant to sit for certification examinations offered within the subsequent three (3) year period, unless said period is otherwise shortened by the terms herein. If the applicant does not pass the certification examination within three (3) years of the date of approval, applicant must start the application process anew.
- 8.3. If an applicant has taken and failed the examination three (3) times during any period, the applicant shall be required to begin the application process anew before being entitled to take the certification examination again, and shall be ineligible to reapply for certification for a period of the three (3) years from the date of notification of the last failed exam.

- 8.4. The certification examination may test applicants on their knowledge of tax law, including each of the subjects set forth in Section 2 above, any related Nevada or federal tax law statutory authority, case law, topics or other issues related to the practice of tax law, and any relevant state or federal guidelines and/or legislation. The exam may also test applicants on ethical issues related to the practice of tax law and/or as set forth in the Bounds of Advocacy.
- 8.5. The test shall be objective in nature and be and shall include at least 50, but not more than 200 multiple choice questions, on which the applicant must receive a score of at least 85% to pass.
- 8.6. The exam must be taken by initial Applicants only.
- 8.7. Applicant must pay all applicable exam fees.
- 8.8. Written examinations will be offered at least once each year at a date, time, and location determined by the Board of Certified Tax Law Specialization.
- 8.9. If the Applicant does not pass the exam, an intent to deny notice will be mailed. The Applicant may elect to retake the exam and may request to appear before the Board of Certified Tax Law Specialization to discuss the results of the exam or may take no action.
 - a. If the Applicant elects to retake the exam, he/she must include the application fee and supplement his/her original application with information regarding his/her continued substantial involvement in tax law. The Board of Certified Tax Law Specialization may elect to conduct an additional peer review. This option is limited to one time only.
 - b. If the Applicant requests to appear before the Board of Certified Tax Law Specialization, the Applicant will be allowed to review the Applicant's exam questions and answers. Model answers will not be provided.
 - c. If the Applicant takes no action, the Board of Certified Tax Law Specialization will deny the applicant.
- 8.10. If the Board of Certified Tax Law Specialization determines at any time to use an outside exam testing service, the appeal process utilized by the outside testing agency will apply.
- 8.11. The State Bar of Nevada Board of Governors has the right to audit the specialization examination.
- 8.12. Examination developers shall take formal training, approved by the Board of Governors, every three years.

9. BOARD OF CERTIFIED TAX LAW SPECIALISTS

- 9.1. The Executive Committee of the Tax Law Section of the State Bar of Nevada shall appoint the members of the Board of Certified Tax Law Specialists for the purpose of maintaining compliance with the requirements of the Nevada Board of Bar Governors Rules for Attorney Specialization and any applicable Supreme Court Rules, and for administering the certification and recertification process on a reasonable and objective basis, including the review of each application for compliance with the requirements herein, and the preparation, administration and objective grading of the certification examination.
- 9.2. Initially appointed members of the Board of Certified Tax Law Specialists are required to comply with the experience requirements as defined in paragraph 3; however, do not have to meet the references or examination requirements. After the Tax Law Specialization has been operating for three (3) years, then at least three (3) of the five (5) members shall be certified Tax Law Specialists. Five (5) years after the Board of Certified Tax Law Specialization has been operating, all five (5) members shall be Tax Law Specialists. The term of office for Tax Law Board members shall be as follows: of the five (5) members appointed by the Tax Law Section and approved by the Board of Governors, one (1) such member shall be appointed for a three-year term, three (3) such members shall be appointed for two-year terms, and one (1) such member shall be appointed for a one-year term. After the expiration of the individual terms of the five (5) members, such vacant positions must be appointed as outlined above, and each appointment shall consist of a three-year term thereafter. Each member shall hold office for no more than four (4) consecutive terms.
- 9.3. The Tax Law Board members shall elect a Chair and Vice Chair from among the Board of Certified Tax Law Specialization members, with each to serve one (1) year terms. The Nevada Board of Certified Tax Law Specialists shall have the authority and duty:
- a. To administer the program for the certification of Tax Law Specialization;
 - b. To establish, in cooperation with the Board of Governors, reasonable and non-discriminatory standards concerning education experience, and other relevant matters, for the certification of lawyers as Tax Law Specialists, which may from time to time be amended or altered with the approval of the Board of Governors of the State Bar of Nevada;
 - c. To approve or deny Applicants for certification;
 - d. To provide procedures for the investigation of the qualifications of Applicants;
 - e. To issue appropriate certificates to certified Tax Law Specialists;

- f. To cooperate with the Board of Governors in establishing and enforcing standards of professional conduct for Tax Law specialized lawyers;
- g. To test and establish grading criteria. The Tax Law Board may consult on the testing and grading with the Nevada Board of Bar Examiners; and
- h. To report as required by the Board of Governors, and to provide the required Annual Report by March 1 of each year to the Executive Director of the State Bar of Nevada, and all reports required by the Governing Rules for Attorney Specialization established by the Board of Governors of the State Bar of Nevada.

9.4. The power of the Board of Certified Tax Law Specialization shall be limited in the following ways:

- a. The Board of Certified Tax Law Specialization shall not collect or receive funds, as all funds payable related directly or indirectly to the Tax Law Specialization, including fees paid for the application, are payable directly to the Tax Law Section of the State Bar of Nevada.
 - i. The Tax Law Section shall pay to the State Bar of Nevada the non-refundable application fee (\$2,500) and certification fee (\$100.00) required by the Governing Rules for Attorney Specialization established by the Board of Governors of the State Bar of Nevada.
 - ii. The Tax Law Section shall be responsible for all the costs and expenses of the Board of Certified Tax Law Specialization. The Board of Certified Tax Law Specialization shall be subject to the financial supervision of the State Bar of Nevada.
- b. No rule, regulation or standard shall be approved which shall in any way limit the right of a certificate holder to practice in all fields of law. Any lawyer, alone or in association with another lawyer, shall have the right to practice in all fields of law, even though they are a certified Tax Law Specialist.
- c. No lawyer shall be required to obtain a specialty certificate in Tax Law before they can practice law in such specialty field. Any lawyer, alone or in association with any other lawyer, has the right to practice in the field of tax law, even though they are not certified as a specialist in the field of tax law.

- d. All requirements for, and all benefits to be derived from, certification as a Tax Law specialist are individual and may not be fulfilled by nor attributed to, the law firm of which the specialist may be a member.
 - i. A lawyer registered as a specialist under Rule 7.4 of the Nevada Rules of Professional Conduct may advertise the certification during such time as the lawyer is certified as a Tax Law Specialist.
 - ii. A law firm in which a certified and registered Tax Law Specialist is a partner or shareholder may advertise that it has an Attorney Specialist certified in Tax Law.
 - iii. No other attorney in such law firm, other than the certified specialist, may hold themselves out as being a Specialist in Tax Law.
 - iv. Advertising by a lawyer regarding the lawyer's certification as a Tax Law Specialist shall comply with the Nevada Rules of Professional Conduct.
- e. Participation in the program shall be on a completely voluntary basis.
- f. No rules, regulations or standards shall be adopted in contravention of the Nevada Rules of Professional Conduct.

10. REQUIREMENTS FOR RECERTIFICATION

- 10.1. An applicant for recertification, who has not retired from the practice of law, must show that during the immediately preceding five (5) year certification period he or she has participated in a total of fifty (50) of the following proceedings in any combination:
 - a. Contested hearings proceedings or negotiations before the US Tax Court.
 - b. Obtained approval for an offer in compromise;
 - c. Abated state and/or federal tax penalties
 - d. Obtained a discharge in bankruptcy court for a tax debt
- 10.2. Compliance with paragraph 10.1 above may be demonstrated by sworn statement that the applicant has engaged in the practice of Tax law substantially to the same extent as described in the application for original certification.

- 10.3. Recertification applicants must also complete eighteen (18) hours of CLE in tax law, as defined in paragraph 5.1.2 above, by time of the application for recertification prior to the end of the fifth year of certification.
- 10.4. Recertification applicants must also certify their compliance with the provisions of Sections 6 and 7 herein.
- 10.5. The failure to apply for recertification in a timely fashion will cause a lapse in certification. Following such a lapse, recertification will require compliance with all conditions for certification as described herein, including the examination.
- 10.6. If certification has been revoked at any time, then recertification may only be obtained by completing the process for initial certification.

11. FEES

- 11.1. Applicants and Board Certified Tax Law Specialists shall timely pay the fees established from time to time by the State Bar of Nevada, the Board of Governors and, on the terms set forth below, the Board of Certified Tax Law Specialists, including but not limited to application fees, filing fees, examination fees, certification fees, recertification fees and any maintenance fees.
- 11.2. In addition to any fees of the State Bar of Nevada related to said certification or recertification as described above, the Executive Council of the Tax Law Section of the State Bar of Nevada may, with the approval of the State Bar of Nevada Board of Bar Governors, establish reasonable additional fees in such amounts deemed appropriate but not to exceed \$200 for the application, examination, and certification process, as well as a fee not to exceed \$200 annually for Board of Certified Tax Law Specialists. Said fees shall be designated for use in the administration and implementation of the provisions herein and so that the process for certification and/or recertification may be accomplished without any expenditure in excess of the fees described in this subsection. Said fees may be adjusted from time to time by the Executive Council of the Tax Law Section, subject to the approval of the State Bar of Nevada Board of Bar Governors.

12. FAILURE, TO FURNISH INFORMATION; MISREPRESENTATION

- 12.1. Certification or recertification may be denied because of applicant's failure to furnish requested information or documentation, or because of misrepresentation of any material fact.

13. WAIVER OF APPEAL

- 13.1. Any applicant who is not permitted to sit for the examination shall be provided prompt notification in writing of the same, including a specific written statement defining why said applicant was not permitted to take the examination. Any individual who has been denied certification or recertification shall be provided prompt notification in writing of the same, including a specific written statement defining why said certification or recertification was denied.
- 13.2. Any individual who has been denied certification or recertification, or whose certification is revoked, may not apply for certification or recertification until one year after the date of such denial or revocation.
- 13.3. Decisions of the Board of Certified Tax Law Specialists are final and not subject to further review or appeal, other than as required or specifically permitted by the State Bar of Nevada Board of Governors.