August 1, 2016

Via Electronic Mail
Dr. Karen Murphy, Secretary
Pennsylvania Department of Health
Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120

Re: Pennsylvania Regulations for Medical Marijuana – Involvement of CPAs

Dear Secretary Murphy,

The Pennsylvania Institute of Certified Public Accountants (PICPA) is a professional association of more than 22,000 members working to improve the CPA profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry.

In my capacity at the PICPA, I oversee the CPA profession’s peer review and ethics programs, and work to promote compliance with the highest professional and ethical standards. Noncompliance with professional and ethical standards could result in deficiencies with regulatory authorities, including state boards of accountancy.

While Gov. Tom Wolf signed on April 17, 2016, Senate Bill 3, now Act 16 of 2016, legalizing medical marijuana in Pennsylvania for patients who are under a physician’s care for the treatment of a serious medical condition, marijuana is still a Schedule 1 controlled substance under the Federal Controlled Substances Act of 1970.

The illegal status of cannabis at the federal level creates numerous challenges for CPAs who are called upon to provide professional services to businesses operating in the cannabis industry. The American Institute of CPAs and the Colorado and Washington state CPA societies have issued a primer, An Issue Brief on State Marijuana Laws and the CPA Profession. The brief highlights many different industry risks and related practitioner considerations, such as the potential for future prosecution by the U.S. Drug Enforcement Administration or Department of Justice (DOJ) actions. Additional examples of risks that stem from marijuana’s illegality and its inherent nature follow.

- Capital Investment, Lending, and Depository – Banks, which operate in a highly regulated environment, are deterred from working with the cannabis industry due to Department of Treasury compliance requirements and the potential for prosecution from the DOJ. The inability to use traditional financial institutions for cash deposits and lending create heightened challenges for controls over cash. The Securities and Exchange Commission has
also issued an investor alert on marijuana-related investments being susceptible to fraudsters and other illegal activity.

- Taxation and Business Model Uncertainty – Expenses for illegal businesses are not deductible for federal purposes, creating business model uncertainty for particular segments of the cannabis industry and incentives to under-report cash.
- Inventory – Due to the products inherent nature, inventory safeguarding and controls over dispensing, inventory quality, valuation, and compliance with state regulatory agencies pose unique industry risks.

Our primary concern is to ensure that any regulations involving the professional services of a CPA take these challenges into consideration, so that CPAs can comply with relevant laws and professional and ethical standards. For example, given the unique risks, CPAs may be challenged to provide attestation services (e.g., audits or review engagements) on entities operating within the marijuana industry without modifying the opinion (e.g., disclaimers of an opinion, or emphasis-of-matter or other-matter reports). CPAs are also precluded from providing any attestation regarding the solvency of a business. There may be other types of services that CPAs can provide, such as agreed-upon procedures engagements.

We appreciate the opportunity to discuss our concerns with you and provide you with input as to ways that CPAs can meet the needs of the DHS. We also have several successful joint working groups with regulatory agencies in Pennsylvania, and it may be beneficial to establish another to address the issues posed by Act 16. I can be reached at (215) 972-6187 or ahenry@picpa.org.

Sincerely,

Allison M. Henry, CPA, CGMA
Vice President – Professional & Technical Standards

cc: Sen. Mike Folmer
    Sen. Daylin Leach