UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

KAREN L. HAWKINS, DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY, INTERNAL REVENUE SERVICE (IRS), Complainant v. (b)(3)/26 USC 6103, Respondent	)	Complaint No. IRS 2013-00001 **DECISION BY DEFAULT AND ORDER**

PROCEDURAL HISTORY

On November 21, 2012, by the authority of 31 C.F.R. Part 10 (Circular 230) and Internal Revenue Service (IRS) Delegation Order 25-16 (2012), Complainant, Karen L. Hawkins, in her official capacity as Director, Office of Professional Responsibility (OPR), United States Department of the Treasury, IRS, issued Complaint No. IRS 2013-00001 (Complaint) against Respondent, (b)(3)/26 USC 6103, pursuant to 31 C.F.R. § 10.60[1], issued under the authority of 31 U.S.C. § 330. The Complaint alleged that Respondent, a Certified Public Accountant (CPA) who has engaged in practice before the IRS, has engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51. The Complaint sought to have Respondent suspended from practice before the IRS for a period of not less than eighteen (18) months, with reinstatement thereafter conditioned upon Respondent: (1) (b)(3)/26 USC 6103

[1] The regulations governing practice before the IRS, found at 31 C.F.R., Part 10, were most recently revised August 2, 2011. The savings clause contained at 31 C.F.R. § 10.91 of the revised regulations provides that any proceeding under this part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, shall apply the procedural rules of the revised regulations contained in Subparts D and E, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred. 31 C.F.R. § 10.91 (Rev. 8-2011).

(b)(3)/26 USC 6103; and (2) in the period before reinstatement having not otherwise violated any other provisions contained in 31 C.F.R. Part 10.

On November 21, 2012, Complainant served the Complaint, with a cover letter, on Respondent by United States Parcel Service (USPS) Certified Mail, Return Receipt Requested, sent to Respondent's last known address of record with the IRS: [Redacted], (b)(3)/26 USC 6103, (b)(3)/26 USC 6103 [Redacted]. On December 7, 2012, the Complaint sent by USPS Certified Mail was returned to the offices of Complainant's representative as "Refused."

On December 10, 2012, pursuant to 31 C.F.R. § 10.63(a)(2)(ii), Complainant served a copy of the Complaint, with a cover letter, on Respondent by USPS First Class Mail sent to Respondent's last known address of record with the IRS: [Redacted], (b)(3)/26 USC 6103, (b)(3)/26 USC 6103 [Redacted]. By operation of 31 C.F.R. § 10.63(a)(2)(ii), service of the Complaint was complete upon mailing by USPS First Class Mail. On January 22, 2013, the Complaint sent by USPS First Class Mail was returned to the offices of Complainant's representative as "Undeliverable."

The Complaint notified Respondent that he was required to file and serve an answer within thirty (30) calendar days from date of service, and that a failure to file an answer may result in a decision by default being rendered against Respondent. On February 14, 2013, the presiding Administrative Law Judge assigned to adjudicate the Complaint, Robert G. Holt, issued an Order to Show Cause not later than Friday, March 29, 2013, why, under the authority of 31 C.F.R. § 10.64(d), Respondent's failure to file an answer should not constitute an admission of the allegations of the Complaint and a waiver of the hearing and why the presiding Administrative Law Judge should not make the decision by default without a hearing or further procedure. To date, no answer has been filed, nor has Respondent requested or received an extension of time to file an answer from the presiding Administrative Law Judge, nor has Respondent replied to the February 14, 2013 Order to Show Cause.

FINDINGS

1. At all times material to the allegations in the Complaint, Respondent has engaged in practice before the IRS as a CPA, as defined by 31 C.F.R. § 10.2(a).

2. By virtue of this practice before the IRS as described in ¶ 1, Respondent is subject to the disciplinary authority of the Secretary of the Treasury in accordance with 5 U.S.C. § 500 and 31 C.F.R. § 330, and of OPR in accordance with, *inter alia*, 31 C.F.R. §§ 10.2, 10.3 and 10.50.

3. Respondent's last known address of record with the IRS is [Redacted], (b)(3)/26 USC 6103, (b)(3)/26 USC 6103 [Redacted].

4. For (b)(3)/26 USC 6103 referenced in the Complaint, Respondent (b)(3)/26 USC 6103 .

5. Prior to the filing of the Complaint, Respondent had been previously advised in writing of the law and facts warranting the issuance of the Complaint, and had been accorded an opportunity to dispute facts, assert additional facts, and make arguments to OPR regarding his case.

Count 1

6. (b)(3)/26 USC 6103 .

7. (b)(3)/26 USC 6103 as described in ¶ 6 above (b)(3)/26 USC 6103 .

8. Respondent (b)(3)/26 USC 6103 . (b)(3)/26 USC 6103 .

9. (b)(3)/26 USC 6103 as set forth in the paragraphs above (b)(3)/26 USC 6103 , for which Respondent may be censured, suspended or disbarred from practice before the IRS.

Count 2

10. (b)(3)/26 USC 6103 .

11. (b)(3)/26 USC 6103 as described in ¶ 10 above (b)(3)/26 USC 6103 .

12. Respondent (b)(3)/26 USC 6103 . (b)(3)/26 USC 6103 .

13. (b)(3)/26 USC 6103 as set forth in the paragraphs above (b)(3)/26 USC 6103 , for which Respondent may be censured, suspended or disbarred from practice before the IRS.

Count 3

14. On March 7, 2011, OPR mailed an allegation letter to the Respondent, which set out the allegations of (b)(3)/26 USC 6103 against Respondent for (b)(3)/26 USC 6103 as described in §§ II-III of the Complaint. The March 7, 2011 allegation letter urged Respondent to respond to the allegation letter, and warned him that a failure to respond to the allegation letter might constitute a violation of 31 C.F.R. § 10.20(b) (Rev. 4-2008).

15. On April 20, 2011, Respondent responded to the March 7, 2011 allegation letter via e-mail message. In that response, Respondent stated it was his "intention to (b)(3)/26 USC 6103 ."

16. On May 5, 2011, OPR confirmed by e-mail message Respondent's commitment, extended the deadline for Respondent (b)(3)/26 USC 6103 until July 8, 2011. Respondent was also requested by that e-mail message to notify OPR as soon as (b)(3)/26 USC 6103 .

17. (b)(3)/26 USC 6103 , nor has he responded to OPR's e-mail message of May 5, 2011.

18. Such failures to make a response to the May 5, 2011 e-mail message and (b)(3)/26 USC 6103 as promised were willful and constitute incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and willful violations of 31 C.F.R. § 10.20(b) (Rev. 4-2008) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.

AGGRAVATING FACTORS REFLECTING ON RESPONDENT'S CURRENT FITNESS TO PRACTICE

19. (b)(3)/26 USC 6103 .

20. (b)(3)/26 USC 6103

21. (b)(3)/26 USC 6103 .

22. (b)(3)/26 USC 6103 .

23. (b)(3)/26 USC 6103 .

24. (b)(3)/26 USC 6103 .

CONCLUSIONS

25. By operation of 31 C.F.R. § 10.63(a)(2)(ii), Complainant completed service of the Complaint on December 10, 2012, upon mailing the same by USPS First Class Mail to Respondent's last known address of record with the IRS: [Redacted], (b)(3)/26 USC 6103, (b)(3)/26 USC 6103 [Redacted]. Pursuant to 31 C.F.R. § 10.63(a)(2)(ii), service is completed upon mailing of the Complaint via USPS First Class Mail, without regard to whether or not the Complaint was returned as undeliverable. See 31 C.F.R. § 10.63(a)(2)(ii); see also *Dir. Office of Prof'l Responsibility v.* (b)(3)/26 USC 6103, Complaint No. 2008-05 (Default Decision and Order, dated July 10, 2009), available at http://www.irs.gov/Tax-Professionals/Entrolled-Actuaries/Final-Agency-Decisions (last visited March 18, 2013).

26. Respondent's failure to deny or otherwise answer any of the material allegations in the Complaint must be deemed an admission by Respondent of the conduct described in Counts 1, 2, and 3 of the Complaint, as well as the Aggravating Factors Reflecting on his Current Fitness to Practice described in the Complaint, as provided by 31 C.F.R. § 10.64(c). Accordingly, the material set-forth in ¶¶ 1-24 above is deemed admitted and considered proved by operation of 31 C.F.R. § 10.64(c)-(d). Further, failure to file an answer within the time prescribed constitutes an admission of the allegations in the Complaint and a waiver of hearing pursuant to 31 C.F.R. § 10.64(d).

27. The Respondent's actions, as set-forth in Counts 1-3 and the Aggravating Factors Reflecting on his Current Fitness to Practice described in the Complaint as detailed in ¶¶ 1-24 above, constitute incompetence and disreputable conduct under 31 C.F.R. § 10.51, and reflect adversely on his current fitness to practice before the IRS, for which the Respondent may be subject to sanction (censured, suspended or disbarred from practice before the IRS) pursuant to 31 C.F.R §§ 10.50, 10.52.

28. Pursuant to 31 C.F.R. §§ 10.50, 10.70, 10.76, after notice and an opportunity for a proceeding, an Administrative Law Judge assigned to adjudicate a complaint filed by the Director, OPR under 31 C.F.R § 10.60 may sanction (censure, suspend or disbar from practice before the IRS) any practitioner if the practitioner is shown to be incompetent or disreputable (within the meaning of 31 C.F.R § 10.51). In determining the appropriate sanction, an Administrative Law Judge assigned to adjudicate a complaint filed by the Director, OPR under 31 C.F.R. § 10.60 shall take into account "all relevant facts and circumstances." 31 C.F.R. § 10.50(e).

29. The Director of OPR is the Treasury Department official who has primary, day-to-day responsibility to investigate allegations of misconduct by practitioners and to bring proceedings to enforce regulations governing practice before the IRS. The Director thus possesses substantial expertise in weighing the seriousness of alleged misconduct in the context of the practitioner's profession and industry and familiarity with prior decisions rendered in other disciplinary proceedings brought by OPR; therefore, the Director's proposed sanction in a particular case is entitled to deference. *See Dir., Office of Prof'l Responsibility v.* (b)(3)/26 USC 6103, Complaint No. 2008-12 (Decision and Order, dated November 18, 2008), p. 6 (recognizing deference, but imposing lesser penalty than requested); *Dir, Office of Prof'l Responsibility v.* (b)(3)/26 USC 6103, Complaint No. 2008-12 (Decision on Appeal, dated January 20, 2010), p. 6 (increasing penalty from 24 month suspension imposed by Administrative Law Judge to requested 48-month suspension), available at http://www.irs.gov/Tax-Professionals/Enrolled-Actuaries/Final-Agency-Decisions (last visited March 18, 2013).

30. In the Complaint, Complainant stated that it weighed the factors relevant to Respondent's current fitness to practice in light of the conduct set-forth in Counts 1-3 and the Aggravating Factors Reflecting on his Current Fitness to Practice described in the Complaint as detailed in ¶¶ 1-24 above, and determined the appropriate sanction to seek in this case to be a suspension for a period of no less than 18 months, reinstatement thereafter being conditioned upon Respondent (b)(3)/26 USC 6103, and in the period before reinstatement, having not otherwise violated any other provisions contained in 31 C.F.R. Part 10. Based on the Conclusions set-forth in ¶ 29 above, this determination warrants deference.

31. The Respondent's actions, as set-forth in Counts 1-3 and the Aggravating Factors Reflecting on his Current Fitness to Practice described in the Complaint as detailed in ¶¶ 1-24 above, constitute incompetence and disreputable conduct in the form of willful violations of the regulations governing practice before the IRS, reflect adversely on his current fitness to practice, and warrant his suspension from practice before the IRS. As Respondent has failed to deny or otherwise answer any of the allegations set forth in Counts 1-3 and the Aggravating Factors Reflecting on his Current Fitness to Practice described in the Complaint as detailed in ¶¶ 1-24 above, those allegations are deemed admitted and considered proved by operation of 31 C.F.R. § 10.64(c)–(d), and Complainant has proved those allegations by clear and convincing evidence pursuant to 31 C.F.R. § 10.76(b). Upon such proof, I find that an 18 month suspension is an appropriate and reasonable sanction in this case.

Based on the foregoing findings and conclusions under 31 C.F.R. §§ 10.64(d), 10.76, I hereby enter the following:

DECISION BY DEFAULT AND ORDER

Pursuant to 31 C.F.R. § 10.64(d), a decision by default is entered and I hereby order Respondent (b)(3)/26 USC 6103 suspended from practice before the IRS for a period of 18 months from the date of this Decision by Default and Order. This constitutes a decision under 31 U.S.C. § 10.76. Any reinstatement of Respondent after the period of suspension shall be conditioned upon Respondent: (1) (b)(3)/ 26 USC 6103; and (2) in the period before reinstatement, have not otherwise violated any other provisions contained in 31 C.F.R. Part 10.

_/s/ Robert G. Holt_____
Robert G. Holt
Administrative Law Judge

Dated: April 2, 2013
Salt Lake City, Utah.

Pursuant to 31 C.F.R. § 10.77, this Decision may be appealed to the Secretary of the Treasury within thirty (30) days from the date of service of this Decision on the parties. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

See page 9 for Distribution

Distributed
By First Class and Certified Mail:

(b)(3)/26 USC 6103
[Redacted]
(b)(3)/26 USC 6103 [Redacted]
(Respondent)

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