

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

KAREN L. HAWKINS, DIRECTOR,	)	Complaint No. IRS 2013-00002
OFFICE OF PROFESSIONAL	)	
RESPONSIBILITY,	)	DECISION BY DEFAULT AND
INTERNAL REVENUE SERVICE,	)	ORDER
	)	
Complainant	)	
	)	
v.	)	
	)	
(b)(3)/26 USC 6103,	)	
	)	
Respondent	)	
	)	

PROCEDURAL HISTORY

On February 13, 2013, under the authority of 31 C.F.R. part 10 (Circular 230),¹ the Complainant, Karen L. Hawkins, Director, Office of Professional Responsibility ("OPR"), U.S. Department of the Treasury, Internal Revenue Service ("IRS") initiated this proceeding by filing a Complaint against Respondent (b)(3)/26 USC 6103. The Complaint issued pursuant to 31 C.F.R. § 10.60 under the authority of 31 U.S.C. § 330. In 26 separate counts, the Complaint alleges that Respondent, a certified public accountant ("CPA") practicing before the IRS, engaged in disreputable conduct within the meaning of 31 C.F.R. §§ 10.20, 10.51. The Complaint seeks the sanction of disbarment from practice before the IRS.

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

On February 13, 2013, Complainant sent the Complaint, along with an attached cover letter, to Respondent via Certified Mail through the U.S. Postal Service to his last known address of record with the IRS: [Redacted], (b)(3)/26 USC 6103 [Redacted]. As shown by Exhibit 2 to the declaration of IRS attorney, Heather Southwell, the Complaint and attached cover letter were returned to the office of Complainant's attorney as "Unclaimed."

Thereafter, on March 11, 2013, Complainant sent a copy of the Complaint, along with an attached cover letter, to Respondent via First Class Mail through the U.S. Postal Service to his last known address with the IRS: [Redacted], (b)(3)/26 USC 6103 [Redacted]. According to Ms. Southwell's declaration, neither the Complaint nor the attached cover letter were returned. By operation of 31 C.F.R. § 10.63(a)(2)(ii), service of the Complaint was complete upon mailing.

The Complaint notified Respondent that he was required to file an answer with the undersigned and serve a copy on Complainant's representative within 30 calendar days from the date of service. The Complaint also advised that failure to file an answer may result in a decision by default under 31 C.F.R. § 10.64. To date, no answer has been filed nor has Respondent requested or received an extension of time.

On April 22, 2013, Complainant filed a Motion for Decision by Default, along with a supporting declaration and exhibits. Complainant also served a copy of that motion on Respondent at his last known address. After receiving the motion, this office issued an Order notifying Respondent that he had 30 days to respond pursuant to 31 C.F.R. § 10.68(b). That Order also informed Respondent that if no written response was filed, he would be deemed not to oppose the motion. To date, Respondent has not filed any response to the Motion for Decision by Default.

RULING ON MOTION FOR DECISION BY DEFAULT

Pursuant to 31 U.S.C. § 330, the Secretary of the Treasury may regulate the practice of representatives appearing before the Department of the Treasury. *See* 31 U.S.C. § 330(a). After notice and an opportunity for a proceeding, the Secretary may suspend, disbar, or censure, a representative who is shown to be incompetent or disreputable, who violates any applicable regulation, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. *See* 31 U.S.C. § 330(b); *see also* 31 C.F.R. § 10.50(a).

A review of the administrative record shows that Complainant properly completed service of the Complaint on March 11, 2013, by mailing the Complaint in accordance with 31 C.F.R. § 10.63(a)(2)(ii). *See Dir., Office of Prof'l Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2006-24 (Decision by Default, Mar. 9, 2007), *aff'd* (Decision on Appeal, Feb. 21, 2008).² Respondent failed to answer or request an extension of time. His failure to deny, or otherwise timely answer, constitutes an admission of the allegations in the Complaint and a waiver of hearing. *See* 31 C.F.R. § 10.64(c)-(d); *see also Dir., Office of Prof'l Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2008-02 at 1-2 (Decision by Default, July 14, 2008). Accordingly, the factual allegations and disreputable conduct described in Counts 1-26 of the Complaint (as well as the Aggravating Factors) are deemed admitted and considered proved. 31 C.F.R. § 10.64(c).

Following receipt of Complainant's Motion for Decision by Default, this office informed Respondent that he had 30 days within which to respond. To date, Respondent has not filed any document responsive to this motion. Therefore, he is deemed not to have any opposition. 30 C.F.R. § 10.68(b).

Inasmuch as the allegations in the Complaint are deemed admitted and no further proceedings are necessary, a Decision by Default is the appropriate method of resolving this Complaint. Findings of Fact and Conclusions of Law are set forth below.

FINDINGS OF FACT

1. At all times material, Respondent has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(4), as a CPA.
2. By virtue of his practice before the IRS, Respondent is subject to the disciplinary authority of the Secretary of the Treasury and OPR.
3. Respondent's last known address of record with the IRS is: [Redacted], (b)(3)/26 USC 6103 [Redacted].
4. From (b)(3)/26 USC 6103, Respondent was president and sole owner of (b)(3)/26 USC 6103, EIN [Redacted] (" (b)(3)/26 USC 6103 " or " (b)(3)/26 USC 6103 ").

² Final agency decisions in disciplinary cases are available on the internet at: <http://www.irs.gov/Tax-Professionals/Enrolled-Actuaries/Final-Agency-Decisions>.

5. As president and sole owner of (b)(3)/26 USC 6103, Respondent exercised primary control over the corporation's financial matters.
6. As president and sole owner of (b)(3)/26 USC 6103, Respondent was responsible for making payments to the corporation's creditors, disbursing the corporation's funds, and (b)(3)/26 USC 6103
7. Respondent has been previously advised in writing of the law and facts warranting the issuance of the Complaint, and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments to OPR regarding his conduct.

(b)(3)/26 USC 6103

- Counts 1, 5, 10, 15 & 24

8. Respondent (b)(3)/26 USC 6103
 - a. (b)(3)/26 USC 6103 ;
 - b. (b)(3)/26 USC 6103 ;
 - c. (b)(3)/26 USC 6103 ;
 - d. (b)(3)/26 USC 6103 ;
 - and
 - e. (b)(3)/26 USC 6103 .

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

(b)(3)/26 USC 6103

- Counts 2, 3, 7, 8, 9, 13, 14, 19, 20, 21 & 22

10. Respondent (b)(3)/26 USC 6103
 - a. (b)(3)/26 USC 6103 ;
 - b. (b)(3)/26 USC 6103 ;
 - c. (b)(3)/26 USC 6103 ;
 - d. (b)(3)/26 USC 6103 ;

- e. (b)(3)/26 USC 6103 ;
- f. (b)(3)/26 USC 6103 ;
- g. (b)(3)/26 USC 6103 ;
- h. (b)(3)/26 USC 6103 ;
- i. (b)(3)/26 USC 6103 ;
- j. (b)(3)/26 USC 6103 ; and
- k. (b)(3)/26 USC 6103 .

11. Respondent (b)(3)/26 USC 6103
 referenced in paragraph 10 (b)(3)/26 USC 6103 .

(b)(3)/26 USC 6103 - Counts 4, 11, 16 & 23

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

- a. (b)(3)/26 USC 6103 ;
- b. (b)(3)/26 USC 6103 ;
- c. (b)(3)/26 USC 6103 ; and
- d. (b)(3)/26 USC 6103 .

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

(b)(3)/26 USC 6103 - Counts 6, 12 & 17

14. Respondent (b)(3)/26 USC 6103
 :

- a. (b)(3)/26 USC 6103 ;
- b. (b)(3)/26 USC 6103 ; and
- c. (b)(3)/26 USC 6103 .

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

Failure to Respond - Counts 18 & 25

16. On October 13, 2010, OPR mailed a letter to Respondent, requesting information concerning his alleged violations of Circular 230.
17. On April 3, 2012, OPR mailed a letter to Respondent requesting information concerning his alleged violations of Circular 230.
18. Respondent failed to respond to OPR's October 13, 2010, and April 3, 2012, requests for information.

Preparer Tax Identification Number - Count 26

19. Respondent is required by 31 C.F.R. § 10.51(a)(17) (2011) to use a Preparer Tax Identification Number ("PTIN") on the return or claim for refund when preparing substantially all of a tax return or claim for refund.
20. As of the date of the Complaint, Respondent did not have a valid, current PTIN for tax year 2012.
21. Between January 1, 2012, and December 31, 2012, Respondent prepared and signed 460 federal individual tax returns (Form 1040) and 30 partnership tax returns (Form 1065) without possessing a PTIN.

**Aggravating Factors Reflecting on Respondent's
Current Fitness to Practice**

22. Respondent (b)(3)/26 USC 6103
.
23. Between (b)(3)/26 USC 6103
.
.
24. Respondent's (b)(3)/26 USC 6103 led the IRS to expend additional resources (b)(3)/26 USC 6103
.

CONCLUSIONS OF LAW

25. In a disciplinary proceeding, the issue is essentially whether the practitioner is fit to practice. *See Harary v. Blumenthal*, 555 F.2d 1113, 1116 (2d Cir. 1977).

“Practice before the IRS is a privilege, and one cannot partake of that privilege without also taking on the responsibilities of complying with the regulations that govern such practice.” *Dir., Office of Prof'l Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2011-01 at 7 (Order Granting Complainant’s Motion for Summary Judgment, June 7, 2011).

26. Respondent’s (b)(3)/26 USC 6103
 as set forth in Counts 1, 5, 10, 15, and 24 of the Complaint.

27. Respondent’s (b)(3)/26 USC 6103
 as set forth in Counts 2, 3, 7, 8, 9, 13, 14, 19, 20, 21, and 22 of the Complaint.

28. Respondent’s (b)(3)/26 USC 6103
 as set forth in Counts 4, 11, 16, and 23 of the Complaint.

29. Respondent’s (b)(3)/26 USC 6103
 as set forth in Counts 6, 12, and 17 of the Complaint.

30. Respondent’s failure to respond to OPR’s October 13, 2010, and April 3, 2012, letters requesting information concerning his alleged violations of Circular 230 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. §

- 10.51 generally and a willful violation of 31 C.F.R. § 10.20(b) (2008) & 31 C.F.R. § 10.20(a)(3) (2011) as set forth in Counts 18 and 25 of the Complaint.
31. Respondent's preparation and signature on tax returns without possessing a PTIN constitutes a willful violation of 31 C.F.R. § 10.51(a)(17) (2011) as set forth in Count 26.
 32. Pursuant to 31 C.F.R. §§ 10.50, 10.70, an Administrative Law Judge, after notice and an opportunity for a proceeding, may sanction a practitioner who is shown to be incompetent or disreputable within the meaning of 31 C.F.R. § 10.51 or who fails to comply with any regulation under the prohibited conduct standards of 31 C.F.R. § 10.52. In determining the appropriate sanction (censure, suspension, or disbarment) an Administrative Law Judge shall take into account "all relevant facts and circumstances." 31 C.F.R. § 10.50(e).
 33. 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 has familiarity with prior decisions rendered in other disciplinary proceedings. Therefore, the Director's proposed sanction in a particular case is entitled to some deference. *See Dir., Office of Prof'l Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2008-12 at 6 (Decision and Order, dated Nov. 18, 2008) (recognizing deference, but imposing a lesser penalty than requested), *sanction modified by* (Decision on Appeal, Jan. 20, 2010) (increasing penalty from 24-month suspension imposed by Administrative Law Judge to requested 48-month suspension).
 34. According to the Complaint, the proposed sanction is based upon consideration of the factors relevant to Respondent's current fitness to practice as well as (b)(3)/26 USC 6103. The Complaint proposes the sanction of disbarment from practice with reinstatement conditioned upon Respondent (b)(3)/26 USC 6103.
 35. Respondent's actions, as set forth in Counts 1-26, constitute incompetence and disreputable conduct as set forth in 31 C.F.R. §§ 10.20(b) (2008), 10.20(a)(3) (2011), (b)(3)/26 USC 6103, 10.51(a)(17) (2011). Because

Respondent failed to deny any of the allegations in the Complaint, those allegations are deemed admitted and considered proved as a matter of law under 31 C.F.R. § 10.64(c)-(d) and by clear and convincing evidence pursuant to 31 C.F.R. § 10.76(b). These willful violations reflect adversely on Respondent's fitness to practice. Given the serious nature of Respondent's conduct as well as the established (b)(3)/26 USC 6103, Respondent's actions, as set forth in Counts 1-26, warrant disbarment from practice before the IRS as proposed.

36. The Aggravating Factors discussed in the Complaint are also deemed admitted and considered proved as a matter of law. Respondent's (b)(3)/26 USC 6103 constitute aggravating factors which further support the sanction of disbarment. *See, e.g., Dir., Office of Prof'l Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2010-19 at 6-7 (Decision on Appeal, Oct. 14, 2011) (finding that time-barred conduct could be considered as a relevant factor when imposing a sanction). The record contains no evidence of any extenuating or mitigating circumstances that would justify reducing this penalty. Consequently, disbarment of Respondent is an appropriate and reasonable sanction.

Based upon the foregoing Findings of Fact and Conclusions of Law made in accordance with 31 C.F.R. §§ 10.64(d), 10.76, it is hereby Ordered as follows:

ORDER

Pursuant to 31 C.F.R. § 10.64(d), a Decision by Default is entered against Respondent (b)(3)/26 USC 6103. Respondent is disbarred from practice before the IRS with reinstatement thereafter conditioned upon Respondent: (1) (b)(3)/26 USC 6103; and (2) having not otherwise violated any other provision contained in 31 C.F.R. part 10 during the period before reinstatement.

_____/s/
Harvey C. Sweitzer
Administrative Law Judge

Dated: August 16, 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 11 for distribution.

Certificate of Service

I hereby certify that I have served the foregoing **Decision by Default and Order** (Complaint No. IRS 2013-00002) upon the following parties to this proceeding at the addresses indicated below:

By First Class and Certified Mail:

Heather A. Southwell, Esq.
Office of Chief Counsel
Internal Revenue Service
[Redacted]
New York, New York [Redacted]

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

By First Class Mail:

Director, Office of Professional Responsibility
[Redacted]
[Redacted]
Washington, D.C. [Redacted]

| Dated: August [16](#), 2013,
at Salt Lake City, Utah.

_____/s/
Brooke Gordon
Legal Assistant