

Tax Notes Today

OPR Secures First Sanction for Willful Tax Nonpayments

By Jeremiah Coder

The IRS Office of Professional Responsibility was granted its request to disbar a longtime CPA for willful nonpayment of taxes over nine years, marking the first time the office has succeeded in securing disciplinary action under Circular 230 based solely on the willful failure to timely pay taxes.

In a complaint, the OPR alleged that CPA Edgar H. Gee Jr. had not paid any federal taxes owed from tax years 1997 through 2005. The OPR said Gee had engaged in disreputable conduct by willfully evading his federal tax obligations. The total unpaid taxes claimed by the IRS were nearly \$ 340,000, including interest and penalties.

In a decision and order by an appellate law judge, Gee was determined to have willfully evaded tax payments for the years listed in the complaint. As an initial matter, the ALJ concluded that "evasion" was a serious term requiring the OPR to prove by clear and convincing evidence that Gee "engaged in conduct intended to conceal, mislead, or otherwise prevent the collection of the taxes." The applicable standard of proof was higher than the plain meaning the OPR advocated because evasion is "indicative of an intent to encompass only acts of malfeasance, not nonfeasance, thus requiring proof of an 'affirmative act' there," the ALJ wrote.

Upon appeal, review by the appellate authority (AA) agreed with the findings and conclusions of the ALJ, but the AA did stake out a different view of what constitutes evasion. Disagreeing with the ALJ that evasion requires a showing of affirmative acts for civil disciplinary proceedings under Circular 230, the AA noted that no previously reported Circular 230 decisions have "directly interpreted the meaning of 'evade' or 'evading' under [section] 10.51." The ALJ's affirmative acts threshold "sets too high a standard," the AA said. Instead, "a pattern of culpable omissions may be sufficient to establish an effort to circumvent the payment of tax sufficient to establish evasion."