

**THE DEPARTMENT OF THE TREASURY  
OFFICE OF PROFESSIONAL RESPONSIBILITY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C.**

Director,	)	
	)	
Office of Professional Responsibility,	)	
	)	
Complainant,	)	Complaint No. 2009-26
	)	
v.	)	
	)	
Tim W. Kaskey,	)	
	)	
Respondent	)	
_____	)	

**DEFAULT DECISION AND ORDER**

On June 19, 2009, Karen L. Hawkins, acting in her official capacity as Director of the Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury (“Complainant”), filed a Complaint against Tim W. Kaskey (“Respondent”) pursuant to 31 U.S.C. § 330 and 31 C.F.R. §§ 10.60 and 10.91. The Complaint alleges that Respondent, a Certified Public Accountant (“CPA”) who has engaged in practice before the Internal Revenue Service (“IRS”), engaged in disreputable conduct as defined by 31 C.F.R. § 10.51, which reflects adversely on Respondent’s current fitness to practice. As a penalty for this alleged misconduct, Complainant seeks to have Respondent barred from practice before the IRS. The relief requested by Complainant would allow Respondent to be reinstated thereafter at the sole discretion of the Office of Professional Responsibility, and reinstatement at a minimum would require Respondent to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which he is responsible, or

to have entered into an installment agreement or offer of compromise which the IRS has accepted and with which Respondent has remained in compliance.

Complainant served the Complaint and a cover letter, both dated June 19, 2009, on Respondent by certified mail, return receipt requested and regular mail addressed to Respondent at his last known mailing address on file with the IRS: Address 1. According to the return receipt received by Complainant, the Complaint and cover letter were delivered to Respondent at the foregoing address on July 1, 2009.

The Complaint notified Respondent that he was required to file and serve an answer within thirty (30) calendar days from the date of service and that failure to file an answer could result in a decision by default being rendered against Respondent. To date, Respondent has not filed an answer.

Prompted by Respondent's failure to file a timely answer, Complainant filed a Motion for a Decision by Default on August 6, 2009. The Motion was served on Respondent by certified mail, return receipt requested, addressed to Respondent at his last known mailing address on file with the IRS: Address 1. To date, Respondent has not filed a response to the Motion.

### **FINDINGS OF FACT**

On the basis of the Complaint, the following Findings of Fact are made:

1. At all relevant times, Respondent has been a CPA who engaged in practice before the IRS within the meaning of 31 C.F.R. § 10.2(a)(4) and is subject to the disciplinary authority of the Secretary of the Treasury and the Director of the Office of Professional Responsibility and to the rules and regulations contained in 31 C.F.R. Part 10.

2. On June 19, 2009, Complainant filed a Complaint alleging that Respondent engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51 as set forth in Counts 1-7 below. Specifically, Counts 1-5 pertain to Respondent's failure to file his Federal individual income tax returns for five consecutive tax years. Counts 6 and 7 pertain to Respondent's failure to comply with certain regulations governing practice before the IRS that relate to actions taken on behalf of clients. Respondent never filed an answer.
3. On August 6, 2009, Complainant filed a Motion for a Decision by Default, citing Respondent's failure to file a timely answer. Respondent has not filed a response to this Motion.

#### **COUNT 1**

4. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to file a Federal individual income tax return (Form 1040) for tax year 2001, on or before April 15, 2002.
5. Respondent never filed a Federal individual income tax return (Form 1040) for tax year 2001.
6. Such failure to file was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of § 10.51(d) (Rev. 1994) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

#### **COUNT 2**

7. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to file a Federal individual income tax return (Form 1040) for tax year 2002, on or before April 15, 2003.

8. Respondent requested an extension to file his 2002 Federal individual income tax, and an extension was granted until August 15, 2003, and later until October 15, 2003. However, Respondent never filed a Federal individual income tax return for tax year 2002.
9. Such failure to file was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

### **COUNT 3**

10. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to file a Federal individual income tax return (Form 1040) for tax year 2003, on or before April 15, 2004.
11. Respondent requested an extension to file his 2003 Federal individual income tax return, and an extension was granted until August 15, 2004, and later until October 15, 2004. However, Respondent never filed a Federal individual income tax return for tax year 2003.
12. Such failure to file was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

### **COUNT 4**

13. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to file a Federal individual income tax return (Form 1040) for tax year 2004, on or before April 15, 2005.

14. Respondent requested an extension to file his 2004 Federal individual income tax return, and an extension was granted until August 15, 2005. However, Respondent never filed a Federal individual income tax return for tax year 2004.
15. Such failure to file was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

**COUNT 5**

16. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to file a Federal individual income tax return (Form 1040) for tax year 2005, on or before April 15, 2006.
17. Respondent never filed a Federal individual income tax return for tax year 2005.
18. Such failure to file was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

**COUNT 6**

19. Respondent was required by 31 U.S.C. § 330 and 31 C.F.R. § 10.22(a)(1)-(3) (Rev. 2002) to exercise due diligence when he prepared the tax returns of corporate client Corporation 1 and the tax returns of his individual clients Taxpayers 1 and 2 for tax years 1 and 2.

20. Respondent was required to exercise due diligence in determining the correctness of the written representations he made to the Department of the Treasury when, under authority of a power of attorney, he prepared and submitted to the IRS the tax returns of the above stated corporate and individual taxpayers for tax years 1 and 2.
21. Respondent failed to exercise due diligence when he did not determine the correctness of the representations he made to the IRS concerning the tax matters of the above named taxpayers for tax years 1 and 2, as required by IRS Revenue Agent 1 during the examination of said returns.
22. Respondent's failure to exercise due diligence is a violation of the regulations governing practice before the IRS for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

**COUNT 7**

23. Respondent was required by 31 U.S.C. § 330 and 31 C.F.R. § 10.34(b) (Rev. 2002) to disclose and avoid penalties likely to apply with respect to the tax position he submitted to the IRS on behalf of corporate and individual taxpayers Corporation 1 and Taxpayers 1 and 2 for tax years 1 and 2.
24. Respondent failed to avoid such penalties when he stopped cooperating with his clients and with the IRS and could not produce corporate records and books to support his clients' tax position on returns filed for tax years 1 and 2.
25. Respondent's failure to disclose and avoid penalties likely to apply with respect to the tax position he submitted to the IRS for tax years 1 and 2 on behalf of the above identified tax payers is a violation of the

regulations governing practice before the IRS for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

### **CONCLUSIONS OF LAW**

26. Pursuant to 31 C.F.R. § 10.64(d), a respondent's failure to file an answer within the time prescribed constitutes an admission of the allegations of the complaint and a waiver of hearing. Under such circumstances, the Administrative Law Judge may make a decision by default without a hearing or further procedure. Respondent's failure to file an answer by the established deadline in the instant proceeding, therefore, constitutes an admission of the allegations of the Complaint and waives Respondent's right to a hearing, and a decision by default is appropriate.
27. Pursuant to 31 C.F.R. § 10.50(a), an Administrative Law Judge may censure, suspend, or disbar a practitioner from practice before the IRS as a sanction for incompetence or disreputable conduct. Under 31 C.F.R. § 10.51, disreputable conduct for which a practitioner may be sanctioned under 31 C.F.R. § 10.50(a) includes, but is not limited to, willfully failing to make a Federal tax return in violation of the revenue laws of the United States. Thus, Respondent's actions, as set forth in Counts 1-5 above, constitute disreputable conduct as defined by 31 C.F.R. § 10.51 and reflect adversely on his current fitness to practice, for which Respondent may be censured, suspended, or disbarred from practice before the IRS pursuant to 31 C.F.R. § 10.50(a).
28. Pursuant to 31 C.F.R. §§ 10.50(a) and 10.52, an Administrative Law Judge may censure, suspend, or disbar a practitioner from practice before the IRS

as a sanction for willfully failing to comply with any of the regulations governing practice before the IRS or recklessly or through gross incompetence violating 31 C.F.R. §§ 10.33 or 10.34. Under 31 C.F.R. § 10.22(a), a practitioner is required to exercise due diligence in (1) preparing, approving, and filing tax returns and (2) determining the correctness of oral or written representations made to the Department of the Treasury.

Furthermore, a practitioner is required by 31 C.F.R. § 10.34(b) to inform a client of any penalties reasonably likely to apply to the client, as well as opportunities to avoid such penalties, with respect to a tax position the practitioner submits to the IRS on the client's behalf. In the instant proceeding, Respondent's actions, as set forth in Counts 6 and 7, violate the foregoing regulations, for which Respondent may be censured, suspended, or disbarred from practice before the IRS pursuant to 31 C.F.R. § 10.50(a).

Moreover, these actions appear to correspond with the examples of disreputable conduct prohibited by 31 C.F.R. § 10.51. See *Joslin v. Secretary of Dep't of the Treasury*, 832 F.2d 132, 134 (10<sup>th</sup> Cir. 1987) (observing that 31 C.F.R. § 10.51 defines "disreputable conduct" in part and only by way of illustration); *Poole v. U.S.*, Docket No. 84-0300, 1984 U.S. Dist. LEXIS 15351, at \*7 (D.D.C. June 29, 1984) (stating that "disreputable conduct" generally includes "any conduct that is violative of the ordinary standard of professional obligation and honor").

29. As a sanction for this misconduct, Complainant requests that Respondent be disbarred from practice before the IRS. The proposed sanction is reasonable. The willful failure to file Federal individual income tax returns has been found

to constitute sufficient grounds for disbarment. *E.g. Poole*, 1984 U.S. Dist. LEXIS 15351, at \*1-2 (upholding the disbarment of a CPA who failed to file his tax returns for three consecutive tax years). Here, Respondent failed to file his Federal individual income tax returns for tax years 2001 through 2005.<sup>1</sup> Given Respondent's repeated failure to file his Federal individual income tax returns, his violations of the regulations governing practice before the IRS, his effective admission of the allegations in the Complaint, and the absence of any information indicating that disbarment is unwarranted, the penalty of disbarment from practice before the IRS is appropriate in this matter.

### **ORDER**

Upon the foregoing findings of fact and conclusions of law and the entire record, the Court grants Complainant's Motion for a Decision by Default, and accordingly, finds Respondent, Tim W. Kaskey, to have engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51 as alleged in the Complaint. From the date of this Default Decision and Order, the Court orders that Tim W. Kaskey is disbarred from practice before the IRS, reinstatement thereafter being at the sole discretion of the Office of Professional Responsibility and at a minimum requiring Respondent to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which he is responsible, or to have entered into an installment

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<sup>1</sup> Complainant asserts in the Complaint that Respondent also failed to file his Federal individual income tax returns for tax years 2006 and 2007. While Complainant does not set forth these assertions as Counts in the Complaint, Complainant argues that Respondent's failure to file in those tax years is an aggravating factor that, when considered in conjunction with Respondent's failure to file during the previous five consecutive tax years, suggests that Respondent has engaged in a pattern and practice of willfully failing to file his personal income tax returns. As these failures to file were not included within the Counts, the Court did not consider them in determining the appropriate sanction to be imposed. The Court concludes that the demonstrated violations, as set forth in Counts 1 through 7, amply warrant the sanction imposed here.

agreement or offer of compromise which has been accepted by the IRS and with which Respondent has remained in compliance.

This Default Order constitutes a Decision as provided in 31 C.F.R. § 10.64(d). Pursuant to 31 C.F.R. § 10.76(d), a decision by an Administrative Law Judge becomes, without further proceedings, the decision of the Department of the Treasury thirty (30) days after the date of the Administrative Law Judge's decision unless a party files an appeal pursuant to 31 C.F.R. § 10.77 within thirty (30) days of the date on which the decision is served on the parties.

**So ordered.**

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William B. Moran  
United States Administrative Law Judge

Dated: September 9, 2009  
Washington, D.C.