

**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,	)	<b>DECISION BY DEFAULT AND</b>
INTERNAL REVENUE SERVICE,	)	<b>ORDER</b>
	)	
Complainant	)	
	)	
v.	)	
	)	
JOHN J. PEZZO,	)	
	)	
Respondent	)	
	)	

**PROCEDURAL HISTORY**

On February 13, 2013, under the authority of 31 C.F.R. part 10 (Circular 230),<sup>1</sup> 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 John J. Pezzo. 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.

---

<sup>1</sup> 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], Highland, New York [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], Highland, New York [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. Blum*, Complaint No. 2006-24 (Decision by Default, Mar. 9, 2007), *aff'd* (Decision on Appeal, Feb. 21, 2008).<sup>2</sup> 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. Ellis*, 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], Highland, New York [Redacted].
4. From 2006 to 2012, Respondent was president and sole owner of John J. Pezzo & Associates CPAs PC, EIN [Redacted] ("John J. Pezzo & Associates" or "the corporation").

---

<sup>2</sup> 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 John J. Pezzo & Associates, Respondent exercised primary control over the corporation's financial matters.
6. As president and sole owner of John J. Pezzo & Associates, Respondent was responsible for making payments to the corporation's creditors, disbursing the corporation's funds, and making employment tax deposits and tax returns on behalf of the corporation.
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.

**S Corporation Federal Income Tax Returns - Counts 1, 5, 10, 15 & 24**

8. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to make S Corporation federal income tax returns (Form 1120S) on behalf of his firm, John J. Pezzo & Associates for:
  - a. tax year 2007 on or before the extension date of September 15, 2008;
  - b. tax year 2008 on or before March 15, 2009;
  - c. tax year 2009 on or before the extension date of September 15, 2010;
  - d. tax year 2010 on or before the extension date of September 15, 2011;
  - and
  - e. tax year 2011 on or before the extension date of September 15, 2012.
9. Respondent failed to make S Corporation federal income tax returns (Form 1120S) for tax years 2007, 2008, 2009, 2010, and 2011 on behalf of his firm, John J. Pezzo & Associates, by the required deadlines.

**Employer's Quarterly Tax Returns - Counts 2, 3, 7, 8, 9, 13, 14, 19, 20, 21 & 22**

10. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6071 to make employer's quarterly federal tax returns (Form 941) on behalf of his firm, John J. Pezzo & Associates, for:
  - a. the third quarter of 2008 on or before October 31, 2008;
  - b. the fourth quarter of 2008 on or before January 31, 2009;
  - c. the second quarter of 2009 on or before July 31, 2009;
  - d. the third quarter of 2009 on or before October 31, 2009;

- e. the fourth quarter of 2009 on or before January 31, 2010;
- f. the second quarter of 2010 on or before July 31, 2010;
- g. the third quarter of 2010 on or before October 31, 2010;
- h. the first quarter of 2011 on or before April 30, 2011;
- i. the second quarter of 2011 on or before July 31, 2011;
- j. the third quarter of 2011 on or before October 31, 2011; and
- k. the fourth quarter of 2011 on or before January 31, 2012.

11. Respondent failed to make the employer's quarterly federal tax returns (Form 941) for the 11 separate quarters referenced in paragraph 10 on behalf of his firm, John J. Pezzo & Associates, by the required deadlines.

**Federal Unemployment Tax Returns - Counts 4, 11, 16 & 23**

12. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6071 to make federal unemployment tax returns (Form 940) on behalf of his firm, John J. Pezzo & Associates, for:

- a. tax year 2008 on or before January 31, 2009;
- b. tax year 2009 on or before January 31, 2010;
- c. tax year 2010 on or before January 31, 2011; and
- d. tax year 2011 on or before January 31, 2012.

13. Respondent failed to make federal unemployment tax returns (Form 940) for tax years 2008, 2009, 2010, and 2011 on behalf of his firm, John J. Pezzo & Associates, by the required deadlines.

**Federal Individual Income Tax Returns - Counts 6, 12 & 17**

14. Respondent was required by 26 U.S.C. §§ 6011, 6012, and 6072 to make federal individual income tax returns (Form 1040) for:

- a. tax year 2008 on or before the extension date of October 15, 2009;
- b. tax year 2009 on or before April 15, 2010; and
- c. tax year 2010 on or before the extension date of October 15, 2011.

15. Respondent failed to make federal income tax returns for tax years 2008, 2009, and 2010 by the required deadlines.

**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 failed to make his federal individual tax returns (Form 1040) for tax years 2000 through 2006.
23. Between October 2007 and January 2009, Respondent issued 18 separate checks to the IRS toward payment of his tax obligations, with a combined total value of approximately \$58,000, each of which was returned due to insufficient funds.
24. Respondent's pattern of tax non-compliance led the IRS to expend additional resources by initiating two Collections investigations against Respondent on October 29, 2009, and January 3, 2011, in an attempt to collect his unpaid tax balances.

## 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. Ross*, Complaint No. 2011-01 at 7 (Order Granting Complainant’s Motion for Summary Judgment, June 7, 2011).
26. Respondent’s failure to make S Corporation Federal income tax returns (Form 1120S) by the required deadlines on behalf of his firm, John J. Pezzo & Associates, for tax years 2007, 2008, 2009, 2010, and 2011 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51(a)(6) (2008) & (2011) as set forth in Counts 1, 5, 10, 15, and 24 of the Complaint.
27. Respondent’s failure to make the employer’s quarterly Federal tax returns (Form 941) by the required deadlines on behalf of his firm, John J. Pezzo & Associates, for 11 separate quarters between 2008 and 2011 was willful and constitutes incompetence and disreputable conduct pursuant 31 C.F.R. § 10.51(a)(6) (2008) & (2011) as set forth in Counts 2, 3, 7, 8, 9, 13, 14, 19, 20, 21, and 22 of the Complaint.
28. Respondent’s failure to make federal unemployment tax returns (Form 940) by the required deadlines on behalf of his firm, John J. Pezzo & Associates, for tax years 2008, 2009, 2010, and 2011 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51(a)(6) (2008) & (2011) as set forth in Counts 4, 11, 16, and 23 of the Complaint.
29. Respondent’s failure to make Federal individual tax returns (Form 1040) for tax years 2008, 2009, and 2010 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51(a)(6) (2008) & (2011) 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. Kilduff*, 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 his pattern of tax non-compliance. The Complaint proposes the sanction of disbarment from practice with reinstatement conditioned upon Respondent becoming compliant with all tax filings and payments.
  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), 10.51(a)(6) (2008) & (2011), 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 pattern of willful noncompliance, 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 past failures to make tax returns constitute aggravating factors which further support the sanction of disbarment. *See, e.g., Dir., Office of Prof'l Responsibility v. Coston*, 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 John J. Pezzo. Respondent is disbarred from practice before the IRS with reinstatement thereafter conditioned upon Respondent: (1) becoming compliant with all tax filings and payments; 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]

John J. Pezzo  
[Redacted]  
Highland, New York [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