

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, DC

DIRECTOR, OFFICE OF PROFESSIONAL
RESPONSIBILITY,

Complainant,

v.

Complaint No. 2007-20

WAYNE N. GUTHRIE,

Respondent.

DECISION ON MOTION FOR SUMMARY JUDGMENT

On April 18, 2007, a Complaint was issued on behalf of the Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury, pursuant to 31 C.F.R. 10.60, issued under the authority of 31 U.S.C. 330, alleging that the Respondent, Wayne N. Guthrie, a certified public accountant who practices before the Internal Revenue Service, engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51. The complaint seeks to have the Respondent disbarred from such practice. Specifically, it is alleged that Respondent willfully failed to timely file income tax returns for the years 2000, 2001, 2002, 2003, 2004 and 2005. The Complaint was duly served upon Respondent. He subsequently submitted a letter addressed to Judge Richard Scully, who was at that point assigned this case, dated May 28, 2007. The case has subsequently been reassigned to me. I shall treat the May 28 letter as a timely filed answer to the Complaint. Respondent asserted that all of the returns were filed before the end of January 2007, within the extended amount of time granted by the Internal Revenue Service, and that all of the taxes owed were paid. But Respondent did not deny the allegation in paragraph 10 of the Complaint that he did not file any of the returns until after he was contacted about his alleged disreputable conduct in failing to file tax returns. Thus, he did not deny the allegations in the complaint alleging the willful failure to timely file his tax returns as set forth in the Complaint. Under 31 C.F.R. Section 10.64(c), every complaint allegation that is not denied in the answer is deemed admitted and will be considered proved, without the need for further evidence at a hearing.

On April 8, 2008, counsel for the Director filed a motion for summary judgment and supporting affidavit, which was served on Respondent by certified mail. The Director asserts that there are no genuine and material issues of fact in dispute in this matter and that thus no evidentiary hearing is necessary. In the motion the Director withdraws paragraph 9 of the Complaint and any other claims regarding the Respondent's 2005 tax returns. Respondent has failed to file a response to the motion for summary judgment.

Having carefully reviewed the pleadings and the affidavit in support of the motion for summary judgment, I find that there are no material issues of fact to be resolved and that the matter can appropriately be decided without a hearing. According to the affidavit of Carolyn H.

Gray, Deputy Director of the Office of Professional Responsibility (OPR) of the Internal Revenue Service (IRS), by letter dated April 7, 2006, OPR informed Respondent that he had failed to file his tax returns for the years 2000 through 2004. On or about May 8, 2006, Respondent telephoned an attorney at OPR and received a 30 day extension of time to respond to the April 7 letter. According to Gray, Respondent has had no further contact with OPR until after the Complaint was filed in this case. Gray also asserts that she has reviewed Respondent's IRS transcript file, which confirms that Respondent did not timely file tax returns for the years 2000 through 2004, although he has now filed for all of those years.

Gray's affidavit points out that Respondent was granted extensions for the tax returns in question, but he failed to file within the extended time limits. He filed his 2000 tax return on January 28, 2007, more than 5 years late; his 2001 tax return was filed on November 2, 2006, more than 4 years late; his 2002 tax return was filed on January 8, 2007, more than 3 years late; his 2003 return was file on January 19, 2007, more than 2 years late; and his 2004 return was filed on October 15, 2006, 1 year late. In these circumstances, Respondent has exhibited a pattern of failing to file tax returns in a timely manner. Willfully failing to file tax returns amounts to disreputable conduct. In this context, "willful" as used in the applicable regulations simply means the "voluntary intentional violation of a known legal duty." *United States v. Pomponio*, 429 U.S. 10, 12 (1976). Respondent is a CPA licensed to practice in Florida and engaged in practice before the IRS. His eligibility to practice before the IRS subjects him to suspension or disbarment by reason of engaging in disreputable conduct. As a CPA authorized to represent other taxpayers and practice before the IRS, Respondent knew that it was his responsibility to timely file his own tax returns. His failure to do so was thus willful. No other excuse appears on this record. And his willful failure to timely file returns for 5 years constitutes disreputable conduct within the meaning of 31 C.F.R. 10.51(f). Such disreputable conduct has been shown by clear and convincing evidence, as required under 31 C.F.R. Section 10.76(a).

In support of the requested penalty of disbarment, Gray's affidavit points out that Respondent has repeatedly failed to timely file tax returns and that there are no mitigating factors apparent in the record. The affidavit also mentions that allowing tax practitioners to fail to timely file their own tax returns seriously undermines the entire system of voluntary compliance.

It is true that Respondent has offered no evidence or circumstances in mitigation of his disreputable conduct. Nor has he responded to the motion for summary judgment and the supporting affidavit. However, I note that the Director has withdrawn the Complaint allegations involving the tax returns for 2005. I also note that, in my experience, similar cases of failing to file tax returns for successive years have been punished by a lengthy suspension rather than by disbarment. I also note that the Director does not dispute that all tax returns have now been filed and that no taxes are owed. In these circumstances, I find that a suspension of Respondent from practice before the IRS for 48 months is a more appropriate punishment than outright disbarment. Accordingly, it is

ORDERED that Respondent Wayne N. Guthrie is hereby suspended from practice before the Internal Revenue Service for a period of forty-eight (48) months from the date of this Order. ¹

Dated at Washington, D.C., May 9, 2008

Robert A. Giannasi
Administrative Law Judge

¹ Pursuant to 31 C.F.R. Section 10.77, either party may appeal this decision to the Secretary of the Treasury within thirty (30) days of issuance.

CERTIFICATION OF RECORD

I, Robert A. Giannasi, Administrative Law Judge, certify that the attached documents, consisting of the following:

Complaint No. 2007-20, *Director, Office of Professional Responsibility v. Wayne N. Guthrie*, dated April 18, 2007;

Motion for Summary Judgment and supporting affidavit, along with covering letter, dated April 8, 2008; and

Decision on Motion for Summary Judgment, dated May 9, 2008;

constitute the complete administrative record in the matter of *Director, Office of Professional Responsibility v. Wayne N. Guthrie*, Complaint 2007-20.

Dated at Washington, DC, May 9, 2008

Robert A. Giannasi
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Decision by Default were sent by first class mail on this 9th day of May 2008 to each of the following:

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