

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
OFFICE OF PROFESSIONAL RESPONSIBILITY  
WASHINGTON, D.C.

DIRECTOR, OFFICE OF  
PROFESSIONAL RESPONSIBILITY

Complainant

v.

Complaint No. 2007-33

DANIEL L. YODER,

Respondent

G. Roger Markley, Esq.,  
for the Complainant.  
Daniel L. Yoder, Esq.  
for the Respondent, pro se.

DECISION

MICHAEL A. ROSAS, Administrative Law Judge: This matter arises from a complaint issued on July 13, 2007, by the Director, Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service (OPR), pursuant to 31 C.F.R. § 10.60 (also referred to as Section 10.60 of the Treasury Department Circular No. 230).

The complaint seeks to have the Respondent, Daniel L. Yoder (the Respondent), an enrolled agent who practices before the Internal Revenue Service (IRS), disbarred from such practice, pursuant to 31 C.F.R. §§ 10.50 and 10.70, for having willfully engaged in disreputable conduct as set forth in 31 C.F.R. § 10.51. Specifically, it is alleged that the Respondent engaged in a pattern and practice of willfully failing to timely file his Federal individual income and employment tax returns for tax years 2002 through 2005 as required by 26 U.S.C. §§ 6011, 6012 and 6072. In his answer to the complaint, the Respondent denied the material allegations in the complaint. He contends that no federal income tax was due for the tax years in question and, thus, there is no basis for disbarment from the practice of representing taxpayers before the IRS.

On March 27, 2008, a hearing was held before me in Grand Rapids, Michigan, at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and arguments. Closing arguments were made at the conclusion of the hearing, and the parties submitted proposed findings and conclusions of law and supporting reasons.

Upon the entire record, and based on my observation of the demeanor of the witnesses, I make the following:

#### FINDINGS OF FACT<sup>1</sup>

The Respondent, Daniel L. Yoder, is an enrolled agent who practices before the Internal Revenue Service (IRS). His address of record is 7676 18 Mile Road, Marion, Michigan.<sup>2</sup> As an enrolled agent engaged in practice before the IRS, as defined by 31 CFR §10.2(d), the Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Director of the OPR.

During tax years 2002 through 2005, the Respondent was self-employed and engaged in a business. During that period, he earned the following self-employment income: \$43,453 in 2002; \$54,527 in 2003; \$50,000 in 2004; and \$35,320 in 2005. The Respondent also earned the following income during that period of time that was not derived from self-employment: \$11,620 in interest and \$10,175 in Schedule E income in 2003; \$4,000 in interest and \$21,049 in Schedule E income in 2004; and \$5,759 in interest and \$31,596 in Schedule E income in 2005. The Respondent's gross income was as follows: \$56,966 in 2002; \$76,322 in 2003; \$75,049 in 2004; and \$72,675 in 2005.<sup>3</sup>

For tax years 2002-2005, the minimum gross income amounts requiring the filing of a tax return pursuant to 26 USC 6012 were: \$13,850 in 2002; \$15,600 in 2003; \$15,900 in 2004; and \$16,400 in 2005.<sup>4</sup> Furthermore, self-employed individuals must file a return for self-employment income exceeding \$400.<sup>5</sup> The Respondent's self-employment income and gross income each exceeded those threshold amounts in each of those taxable years. As such, the Respondent was required to timely file Federal individual income tax returns (Form 1040) for tax years 2002 through 2005.

Recognizing his obligation to file income tax returns, the Respondent filed for extensions of time file for tax years 2002, 2003, 2004 and 2005. For tax year 2002, he filed for extensions of time on April 15 and August 15, 2003. For tax

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<sup>1</sup> "Tr." refers to transcript pages, "C. Exh." refers to Complainant's exhibits, and "R. Exh." refers to the Respondent's exhibits.

<sup>2</sup> C. Exh. 1A and 13-1 (para. 3).

<sup>3</sup> C. Exh. 11-1, 11-4, 11-7, 11-10, 11-15, 12-14 and 12-15.

<sup>4</sup> C. Exh. 11-1 through 11-4, 11-10, 11-15 through 11-18, and 12-14 through 12-15; Tr. 27-28.

<sup>5</sup> C. Exh. 7; Tr. 31.

year 2003, he filed for an extension of time on April 15, 2004. For tax year 2004, he filed for an extension of time on April 15, 2005. For tax year 2005, the Respondent filed for an extension of time on April 15, 2006.<sup>6</sup>

The Respondent did not, however, file income tax returns by the extended dates. Accordingly, in a letter, dated March 28, 2005, the OPR notified the Respondent of his failure to file returns for tax years 2002, 2003 and 2004. The Respondent responded by attempting to obtain Social Security numbers for his children. The Respondent, an enrolled agent, was well aware of the fact that he could have filed the income tax returns with missing Social Security numbers and subsequently amended them, but did not do so prior to receiving the 2005 OPR correspondence. This was not, however, the reason that the Respondent failed to file the returns prior to that time. The real reason was his belief that Form 4029, which he filed with the IRS on April 22, 1981, exempted him from filing federal income tax returns.<sup>7</sup>

Neither the effectiveness nor the basis for the Respondent's claimed Form 4029 exemption – his religion – has ever been challenged by the IRS. As such, the Respondent was exempted from the payment of self-employment tax on self-employment earnings for tax years 2002-2005. However, the filing of a return was still required, as Form 4029's instructions direct taxpayers to note the exemption by writing "Exempt-Form 4029" on the "self-employment tax line of form 1040."<sup>8</sup>

Whether any of the Respondent's 2002-2005 self-employment income was taxable, and whether the Respondent was covered under IRS Form 4029 regarding the taxability of self-employment income, is not relevant to whether the Respondent was required to file an income tax return and report that income as gross income. The requirement to file a return is based upon gross income levels, not taxability of the income.<sup>9</sup>

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<sup>6</sup> C. Exh. 10-2, 10-5, 10-8, 10-11.

<sup>7</sup> The Respondent's contention, at trial and in his June 30, 2007 letter to Judge Giannasi – that he could not file returns because he needed to get Social Security numbers for his children – was not credible. First, it was inconsistent with his contention at trial that he was exempted from filing a return because of his Form 4029 status. Second, he knew that he could still file a tax return without listing the social security numbers of his children. (C. Exh. 12-1; Tr. 62-70, 77-79.)

<sup>8</sup> Cheryl Seidel, an IRS revenue agent, was unaware that the Respondent had filed Form 4029 in 1981. As the document had not been produced prior to trial, Complainant's counsel was also unfamiliar with the document and initially objected to its receipt in evidence. I afforded the Complainant an opportunity during trial to authenticate or disprove the document. Ultimately, there was no dispute as to its authenticity and it was received in evidence. (R. Exh. 1; Tr. 38-41, 74-76.)

<sup>9</sup> I found Seidel credible as to the interrelation between applicable tax filing requirements and tax exempt status pursuant to Form 4029. (Tr. 33-34, 42-43.)

In a letter to Chief Administrative Law Judge Robert Giannasi, dated June 30, 2007, the Respondent explained that he did not file his 2002-2005 returns because of the difficulty in getting Social Security numbers for his three youngest children, for whom he wanted to claim a child tax credit. He added that “no federal income tax was owed for the years in question.” The Respondent also attached drafts of his 2002-2005 federal income tax returns. Although joint returns, they were not signed by his wife and had not yet been filed.<sup>10</sup> On each of those drafts, in the section for “self-employment tax” due, the Respondent wrote the notation, “Exempt-Form 4029.”

The Respondent did, eventually, file individual income tax returns for tax years 2002, 2003 and 2005 on October 26, 2007, while still failing to file an income tax return for 2004.<sup>11</sup> On all of the filed returns, as instructed by Form 4029, the Respondent indicated his exemption by writing “Exempt-Form 4029” as follows: for 2002, line 56; for 2003, line 55; and for 2005, line 58.<sup>12</sup>

## ANALYSIS AND DISCUSSION

The Respondent is an enrolled agent who has engaged in practice before the Internal Revenue Service. As such, he is subject to the disciplinary authority of the Secretary of the Treasury and the Director or Acting Director of OPR. 31 U.S.C. § 330(a)(1). The Respondent’s gross income during the 2002-2005 tax years, which included self-employment and other income, was sufficient to require the timely filing of federal income tax returns for each of those years. Although he is exempted from paying tax on his self-employment income pursuant to Form 4029, the Respondent was still required to file a Federal income tax return for tax years 2002 through 2005 reporting income from all sources. Based upon filed extensions of time, those returns were due on or before August 15 or October 15 of the following calendar year. He did not, however, file his Form 1040 returns for 2002, 2003 and 2005 until October 26, 2007, and still has not filed a Form 1040 return for 2004.

In conclusion, the clear and convincing evidence establishes that the Respondent’s aforementioned failures were willful. The Respondent’s assertions that his failures to file and timely file were justified because of his Form 4029 status or the need to obtain social security numbers for his children were inconsistent and incredible. The record established that he recognized his filing obligation by filing for extensions of time to file. Moreover, he conceded at trial that the lack of social security number for a dependent does not prevent the filing of an income tax return. Accordingly, the Respondent’s willful failure to file and timely file tax his 2002-2005 income tax returns constitutes disreputable conduct

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<sup>10</sup> The Respondent does not contend that, other than attaching them to his letter to Judge Giannasi, that he filed the returns with the IRS. (C. Exh. 12-1 through 12-27.)

<sup>11</sup> C. Exh. 10-6 through 10-9 and 11-1 through 11-22.

<sup>12</sup> C. Exh. 11-2, 11-8, 11-16.

for which he may be suspended from practice before the Internal Revenue Service pursuant to 31 C.F.R. § 10.51(f) (2002) and 31 C.F.R. § 10.51(f) (2005).

## SANCTION

The complaint seeks to have the Respondent disbarred from practice before the IRS because of his failure to comply with his Federal income tax obligations from 2002 through 2005. The Director's decision is entitled to substantial deference, but I believe that such an extreme sanction is not warranted under the circumstances.

The relevant issue in this case is legal in nature – whether a taxpayer's exemption from self-employment tax pursuant to Form 4029 obviates the need to file an income tax return on self-employment income. I found that they do not. The Respondent, an enrolled agent, filed for extensions of time in each of the stated years, but did not follow-up by filing his returns until after he was contacted by OPR, and still has not filed his 2004 return. Based on his 4029 exemption, child tax credits and deductions, it is undisputed that the Respondent had no tax liability for the 2002 to 2005 tax years. The allegations against the Respondent are serious in nature, but it is questionable whether similar situations involving enrolled agents with Form 4029 exemptions would be likely to arise again. Under the circumstances, a two-year suspension from practicing before the IRS is more appropriate.

I find that the allegations against the Respondent have been proven by clear and convincing evidence in the record, the standard provided in 31 C.F.R. § 10.50 to support the sanction of a two-year suspension from practicing before the IRS.

## CONCLUSIONS OF LAW

1. The Respondent, Daniel L. Yoder, is an enrolled agent who has practiced before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility.
2. 31 C.F.R. §10.51 (f) (2002) provides that willfully failing to make a Federal income tax return is grounds for discipline.
3. The Respondent violated the provisions of 31 C.F.R. §10.51 (f) (2002) and §10.51(f) (2005) by engaging in a pattern and practice of willfully failing to file and timely file his Federal individual income tax returns for tax years 2002 through 2005. That violation has been proven by clear and convincing evidence in the record.

4. Upon the foregoing findings of fact and conclusions of law, and the entire record, pursuant to 31 C.F.R. §10.76, I issue the following:

ORDER<sup>13</sup>

The Respondent, Daniel L. Yoder, is suspended from practice before the Internal Revenue Service for a period of two years.

Dated at Washington, D.C. May 19, 2008

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Michael A. Rosas  
Administrative Law Judge

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<sup>13</sup> Pursuant to 31 C.F.R. §10.77, either party may appeal this Decision to the Secretary of the Treasury within thirty (30) days from the date of issuance of this Decision.