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A Texas Attorney Is Disbarred from Practicing Before the IRS for Willful Failure to File Tax Returns

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WASHINGTON — The Internal Revenue Service’s Office of Professional Responsibility (OPR) has prevailed in a Texas attorney’s appeal of an order for disbarment to practice before the IRS for willfully failing to file his federal tax returns, according to the [Decision on Appeal](#).

The Treasury Secretary’s Delegate to hear appeals (Appellate Authority) has confirmed the basis for, and result of, the summary judgment granted by Administrative Law Judge (ALJ) Susan L. Biro in the case of Director, Office of Professional Responsibility vs. Donald J. Petrillo, according to the Decision on Appeal.

OPR alleged that Texas attorney Petrillo willfully failed to timely file his federal individual income tax returns for 2001 through 2006 and willfully failed to file his 2007 tax return. The untimely filings were from two to four years late. OPR further alleged that Petrillo willfully failed to pay the outstanding tax balances due on the late filed returns.

Petrillo did not deny the allegations but argued that his failures to file and pay were not the result of willful conduct but were due to personal circumstances beyond his control. Using the standard for “willfulness” set forth in previously published Circular 230 cases (“a voluntary, intentional violation of a known legal duty”), the ALJ found that the various explanations given by Petrillo for his failures to file did not negate his willfulness.

However, the ALJ explicitly declined to adopt OPR’s position that willful evasion of payment for purposes of Cir 230, sec 10.51(a)(6) should be analogous to Trust Fund Recovery penalty assessments. Finding that the failures to file were significant enough by themselves, the ALJ ordered disbarment without addressing the failures to pay.

In his appeal, Petrillo argued that (1) the ALJ applied a willful negligence standard rather than a willfulness standard; (2) the ALJ applied the wrong standard for willfulness; (3) material facts were in issue making summary judgment inappropriate; and (4) he was denied due process because the standards were changed from willfulness to willful negligence after the Complaint was filed.

The Appellate Authority determined that the ALJ had correctly and consistently applied the existing standard for willfulness to Petrillo’s conduct; that the ALJ had correctly determined from the deposition testimony and briefs that there were no material factual issues remaining to be heard; and that the ALJ’s findings of fact were well supported by the record and not clearly erroneous. Finding, during the periods in issue, that Petrillo was not mentally or physically incapacitated; was gainfully employed; prepared tax returns for others; engaged in legal work for clients; and

conducted his own personal business, the Appellate Authority concurred in the ALJ's decision to disbar, noting that Petrillo had been previously suspended by OPR from 1993 through 1997.

"This is yet another in a line of Final Agency Decisions in the past two years which reiterate that practitioners cannot expect to be excused for not filing or late filing their own tax returns when the record reflects their active engagement in other tax and business matters on behalf of paying clients, or active involvement with their own personal activities which belie any debilitation," said OPR Director, Karen L. Hawkins.