

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

**SHARYN M. FISK,
DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,**

Complainant,

v.

(b)(6) / 26 USC 6103

Respondent.

)
) **COMPLAINT NO.: 2020-00003**

)
) **DOCKET NO.: 20-IRS-0001**

)
) **HON. GEORGE J. JORDAN,**
) **Administrative Law Judge**

DEFAULT DECISION AND ORDER

I. INTRODUCTION

On September 28, 2020, Complainant Sharyn M. Fisk, in her official capacity as Director of Professional Responsibility of the Internal Revenue Service (IRS), filed a Complaint against (b)(6)/ 26 USC 6103 Respondent _____ pursuant to 31 C.F.R. Part 10 and 31 U.S.C. § 330. Specifically, Complainant seeks to suspend Respondent from practice before the IRS for a minimum of twenty-four (24) months for alleged disreputable conduct. Complainant served the Complaint on Respondent by UPS Overnight service to his last known address of record on September 29, 2020.

To date, Respondent did not file an Answer. On November 16, 2020, Complainant filed a Motion for Decision by Default. Respondent has also not filed a reply to the Motion. Accordingly, a ruling on the Motion is ripe. After thorough consideration of the record before

me, I **GRANT** Complainant's Motion for Decision by Default and **ORDER** Respondent suspended from practice before the IRS for twenty-four (24) months.

II. AUTHORITY TO REGULATE AND DISCIPLINE IRS PRACTITIONERS

The Secretary of the Treasury (Secretary) has the authority to “regulate the practice of representatives of persons before the Department of the Treasury.” 31 U.S.C. § 330(a)(1). This regulatory authority helps to ensure “competent representation that protects the taxpayer, the IRS, and the general public.” *Wright v. Everson*, 543 F.3d 649, 656 (11th Cir. 2008). Circular 230 also grants the Secretary authority to bring proceedings to censure, suspend, or disbar practitioners who appear before the IRS. *See* 31 C.F.R. § 10.50(a). Sanction proceedings are “conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.” 31 C.F.R. § 10.70(a). Pursuant to Memoranda of Agreement dated June 6, 2011 and January 15, 2013, the United States Coast Guard Office of the Administrative Law Judge is authorized to hear cases pending before the United States Department of the Treasury. As such, this case was assigned to me for adjudication.

III. MOTION FOR DEFAULT

IRS procedural regulations require respondents to file an Answer with the ALJ, and serve a copy on IRS counsel, within 30 days of being served with the Complaint. 31 C.F.R. § 10.62(c); 31 C.F.R. § 10.64(a). Complainants are permitted to serve a Complaint by various means including certified mail; first class mail, subject to certain limitations; private delivery service, such as UPS or FedEx; personal delivery; or other means if agreed to by the respondent. 31 C.F.R. § 10.63(a)(1)-(3). Unless the ALJ grants an extension of time, failure to file a timely Answer constitutes an admission of the allegations contained in the Complaint and a waiver of the right to a hearing. 31 C.F.R. § 10.64(d). Thus, the ALJ to issue a decision “by default without

a hearing or further procedure.” Id. Here, Complainant served the Complaint on Respondent on September 29, 2020 by UPS Overnight service. (Ex. 1). The Complaint informed Respondent of the 30-day time limit for filing an Answer; provided the names and addresses of both the Administrative Law Judge and IRS representative to serve the Answer on; and informed Respondent the consequence of failing to file an Answer could be a decision by default. 31 C.F.R. § 10.62(c).

Respondent’s Answer was due on October 29, 2020. To date, Respondent has not filed an Answer. Since Complainant proved they properly served the Complaint and the Complaint complied with all the requirements of 31 C.F.R. § 10.62(c), I find the allegations in the Complaint are deemed admitted, and may issue a decision by default.

IV. FINDINGS OF FACT

Having found it proper to issue a default decision, I now turn to the facts Respondent is deemed to have admitted. These facts are supported by the Complaint and supporting documentation in the record. In addition to numerous background facts, Complainant alleges four separate counts of disreputable conduct and conduct in violation of the regulations governing practice. The Complaint also includes several factors in aggravation. While the background facts provide important context for the matter at hand, they are not necessary to prove the elements of the four charges and I therefore adopt and incorporate by reference sections I: The Respondent; II: **(b)(6) / 26 USC 6103**; III: United States Tax Court Decision; IV: Oregon Board of Accountancy Proceeding; and V: Office of Professional Responsibility Disciplinary Proceeding. I also generally adopt and incorporate by reference the facts alleged in sections VI: Respondent’s Disreputable Conduct and Conduct in Violation of the Regulations Governing Practice and VII: Aggravating Factors Reflecting on

Respondent's Current Fitness to Practice, but note that certain allegations, and the corresponding proposed findings of fact presented in the Motion, are phrased instead as legal conclusions.¹

Thus, I make the following specific findings as to each count.

Count 1: [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]

1. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
2. [REDACTED] (b)(6) / 26 USC 6103
3. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
4. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
5. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
[REDACTED]
6. The Tax Court determined Respondent committed fraud and assessed him a penalty for the 2014 tax year of \$10,444.50.

**Count 2: False or Misleading Information, [REDACTED] (b)(6) / 26 USC 6103
[REDACTED], or Otherwise Failing to Exercise Due Diligence in Determining the
Correctness of Representations Made to the Department of the Treasury**

7. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
[REDACTED]
8. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
9. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]
10. [REDACTED] (b)(6) / 26 USC 6103
11. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]

¹ These are enumerated as allegations and proposed findings of fact 85, 99, 100, 130, 143, 144, 145, 147, and 149.

12. [REDACTED] (b)(6) / 26 USC 6103
[REDACTED]

Count 3: Willful Failure to Respond to a Lawful Request, Willful Unreasonable Delay of the Prompt Resolution of a Matter Before the IRS, and [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]

13. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]

14. [REDACTED] (b)(3) / 26 USC 6103

15. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]

16. [REDACTED] (b)(3) / 26 USC 6103

17. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]

18. [REDACTED] (b)(3) / 26 USC 6103

19. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
[REDACTED]

20. [REDACTED] (b)(3) / 26 USC 6103

21. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
[REDACTED]

22. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]

23. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
[REDACTED]

24. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]

Count 4: Willful Preparation of Tax Returns without a Current or Otherwise Valid Preparer Tax Identification Number

25. The IRS requires any person who prepares or assists in preparing, for compensation, all or substantially all of a Federal tax return or claim for refund to possess a current or otherwise valid preparer tax identification number (PTIN).

26. PTINs must be renewed annually.
27. The IRS initially issued Respondent a PTIN on January 26, 2011.
28. Respondent did not renew his PTIN for calendar year 2014, and it expired on January 1, 2014.
29. Respondent did not renew or obtain a new PTIN for calendar years 2014, 2015, or 2016.
30. Respondent prepared approximately seventeen individual returns or claims for refund and nine business returns or claims for refund in calendar year 2016 without possessing a current or otherwise valid PTIN.
31. Respondent registered his PTIN for calendar year 2017 on January 13, 2017.
32. Respondent failed to renew his PTIN for calendar year 2018 and it expired on January 1, 2018.
33. Respondent prepared approximately nine individual returns or claims for refund and seven business returns or claims for refund for compensation in calendar year 2018 without possessing a current or otherwise valid PTIN.

Aggravating Factors

34. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
[REDACTED]
35. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
36. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
37. The Tax Court determined Respondent's underpayment of tax for tax year 2012 was due to fraud and assessed him a penalty of approximately \$7,668.00.
38. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
[REDACTED]
39. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
40. [REDACTED] (b)(3) / 26 USC 6103
[REDACTED]
41. The Tax Court determined Respondent's underpayment of tax for tax year 2012 was due to fraud and assessed him a penalty of approximately \$19,406.25.

42. Respondent prepared approximately twenty-nine individual returns or claims for refund and forty-four business returns or claims for refund for compensation in calendar year 2014 with an expired PTIN.
43. Respondent prepared approximately twenty-five individual returns or claims for refund and thirty-seven business returns or claims for refund for compensation in calendar year 2015 with an expired PTIN.

V. DISCUSSION

Taking into consideration the above findings, I must next determine whether the facts, taken together with the Office of Professional Responsibility's allegations against Respondent, constitute a cognizable violation of 31 U.S.C. § 330 and 31 C.F.R. Part 10.

A. Evidentiary Standard and Standard of Proof

In IRS proceedings, the evidentiary standard provides that the rules of evidence prevailing in a court of law or equity are not controlling, but the judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. *See* 31 C.F.R. § 10.73(a).

The standard of proof differs depending on the nature of the proposed sanction. *See* 31 C.F.R. § 10.76(b). Here, Complainant seeks to suspend Respondent for more than six months, so Complainant must prove its allegations by clear and convincing evidence. *Id.* Clear and convincing evidence is defined as “evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established, and, as well, as evidence that proves the facts at issue to be highly probable.” *Jimenez v. Daimler Chrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also *Addington v. Texas*, 441 U.S. 418 (1979) (explaining that clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt). Since the facts in the Complaint are

proved by Respondent's default, Complainant must prove by clear and convincing evidence the facts in the Complaint arise to disreputable conduct.

B. Disreputable Conduct

An ALJ, by delegation from the Secretary of the Treasury, may censure, suspend, or disbar a practitioner if he or she is shown to be incompetent or disreputable within the meaning of 31 C.F.R. § 10.51. *See* 31 C.F.R. §§ 10.50(a), 10.70, and 10.76. Disreputable conduct includes willful failure to file a Federal tax return in violation of Federal tax laws, or willful evasion, attempts to evade, or participation in evasion of any assessment or payment of any Federal tax. 31 C.F.R. § 10.51(a)(6).

The Complaint alleges Respondent 1) [REDACTED] (b)(3) / 26 USC 6103

[REDACTED] 2) [REDACTED] (b)(3) / 26 USC 6103

[REDACTED]

[REDACTED] 3) [REDACTED] (b)(3) / 26 USC 6103

[REDACTED]; and

4) willfully prepared tax returns or claims for refund without a current or otherwise valid PTIN.

I find Respondent's [REDACTED] (b)(3) / 26 USC 6103

[REDACTED], and his use of an expired PTIN were all willful. The Tax Court has already determined Respondent committed fraud, finding "[t]he evidence establishes a pattern of unreported income and overstated deductions, failure to keep or produce records, and failure to cooperate with the IRS." Further, the Tax Court found Respondent's explanations for his behavior not credible and found the IRS established its case by clear and convincing evidence. I agree. Here, Respondent failed to answer and therefore put forth no defense against the IRS's allegations. The facts deemed admitted clearly and convincingly establish a pattern of conduct

intentionally designed [REDACTED] (b)(3) / 26 USC 6103

[REDACTED]. Further, as a certified tax professional, Respondent knew or should have known he was required to use a current or otherwise valid PTIN on returns prepared for clients.

Complainant also included a number of aggravating factors in the Complaint. These facts do not go to prove the four counts discussed above, but strongly support Complainant's contentions that Respondent showed a pattern of conduct: Respondent (b)(3) / 26 USC 6103

[REDACTED]. Respondent also prepared returns for compensation without a valid PTIN for multiple tax years.

Therefore, I find Respondent's admitted actions constitute disreputable conduct under 31 C.F.R. § 10.51. They reflect adversely on Respondent's fitness to practice before the IRS and represent others before the agency. I now to turn to what an appropriate sanction is for Respondent's conduct.

VI. SANCTION

The Secretary has the ability, after "notice and opportunity for a proceeding," to censure, suspend, or disbar any practitioner from practice before the IRS "if the practitioner is shown to be incompetent or disreputable." 31 C.F.R. § 10.50(a); *see also* 31 U.S.C. § 330(c). Sanctions "shall take into account all relevant facts and circumstances," *see* 31 C.F.R. § 10.50(e), which may include factors including the nature and seriousness of the misconduct, absence of a prior disciplinary record, the practitioner's remorse (or lack thereof), absence of a selfish motive, and the need to protect the public. *See McCoy*, Complaint No. 2018-00001 (Order Granting

Summary Adjudication, May 29, 2018), *8; *OPR v. Everett*, Complaint No. 2009-27 (Order on Motion for Summary Adjudication, July 22, 2010), *6.

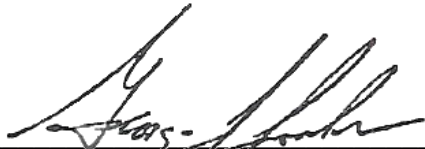
Upon review of the facts presented in this record, I find Complainant's proposed penalty of a minimum of twenty-four months' suspension to be appropriate, if not tending toward leniency. Respondent engaged in serious misconduct affecting not only his own tax returns, but also those of paying clients. However, the record contains no evidence that he falsified, omitted, or misrepresented information on client returns or otherwise caused such returns to be incorrect. Thus, as Complainant has not specifically requested or argued in favor of a more severe sanction, I find the proposed sanction appropriate.

Wherefore,

ORDER

IT IS HEREBY ORDERED that Respondent (b)(3) / 26 USC 6103 is **SUSPENDED** from practice before the IRS for a period of **TWENTY-FOUR MONTHS**, effective as of the date of issuance of this Default Decision and Order.

Done and dated April 15, 2021
Seattle, Washington



George J. Jordan
Administrative Law Judge

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 service. 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.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Default Decision and Order upon the following parties and entities in this proceeding as indicated at the addresses below:

ALJ Docketing Center
USCG ALJ Docketing Clerk
Attention: Enforcement Docket Clerk
40 S. Gay Street, Room 412
Baltimore, Maryland 21202-4022
By electronic mail to: aljdocketcenter@uscg.mil.

Timothy E. Heinlein
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By electronic mail to: Timothy.E.Heinlein@IRSCOUNSEL.TREAS.GOV.

(b)(3) / 26 USC
6103, (b)(6)
[REDACTED]

By first class mail and electronic mail to: **(b)(3)/26 USC 6103, (b)(6)** .

Dated: April 15, 2021

/s/ *Demetrice R. McClinton*
Demetrice R. McClinton,
Paralegal Specialist to the
Administrative Law Judge