

**OFFICE OF PROFESSIONAL RESPONSIBILITY**  
INTERNAL REVENUE SERVICE  
DEPARTMENT OF THE TREASURY  
WASHINGTON, DC

November 27, 2007

Director, Office of Professional Responsibility, Complainant-Appellee	)	
	)	
v.	)	Complaint No. 2004-11
	)	
(b)(3)/26 USC 6103, Respondent-Appellant	)	
	)	
	)	

**DECISION ON REMAND**

This matter is before me on remand from the Secretary of the Treasury, *Director, Office of Professional Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2004-11 (October 5, 2007) (Initial Decision on Appeal). The case was remanded to reconsider Count 5 of the Complaint, and to reconsider an appropriate sanction in view of the new findings on Count 5 and the fact that Count 11 was dismissed. *Id.* at 20.<sup>1</sup> For the reasons set forth below, Count 5 is dismissed and the Respondent is disbarred from further practice before the Internal Revenue Service (IRS).

The original disciplinary complaint against (b)(3)/26 USC 6103 contained 14 counts alleging various violations of the Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service. 31 C.F.R. Part 10. A hearing in the matter was held in Nashville, Tennessee, and a decision was issued sustaining 12 of the 14 counts and disbarring (b)(3)/26 USC 6103.<sup>2</sup> *Director, Office of Professional Responsibility v. (b)(3)/26 USC 6103*, Complaint No. 2004-11 (March 2, 2006).

The Initial Decision on Appeal affirmed the findings with regard to Counts 1, 2, 3, 4, 7, 8, 9, 10, 12 and 14, reversed the findings with respect to Count 11, vacated and remanded the findings with regard to Count 5, and vacated and remanded the question of the appropriate sanction to impose on (b)(3)/26 USC 6103, in light of the charges ultimately sustained.

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<sup>1</sup> The Initial Decision on Appeal apparently contains a typographical error since it states that it is vacating and remanding “the ALJ’s findings with regard to Count 13.” *Id.* However, Count 13 was dismissed in the original decision and was not appealed. Further, the appellate decision states in the body that Count 5 is being vacated and remanded. *Id.* At 15-16.

<sup>2</sup> Counts 6 and 13 were dismissed.

Initial Decision on Appeal at 20. Count 5 alleged that (b)(3)/26 USC 6103 and that such conduct violated section 10.51 (1994) of the regulations, 31 C.F.R. § 10.51. The Initial Decision on Appeal held that to prove this violation the burden was on the Director to show that (b)(3)/26 USC 6103 and that the Director had failed to do so. *Id.* at 16. Therefore, the charge was vacated and remanded

to the ALJ so that he can determine whether he requires Complaint-Appellee to introduce additional evidence on (b)(3)/26 USC 6103, or whether he is prepared to reach a finding on that point on the basis of evidence already in the record.<sup>3</sup>

*Id.*

After a careful review of the evidence in this matter, I can find nothing to indicate that (b)(3)/26 USC 6103. However, it does not appear appropriate at this late date to permit the Director to submit additional evidence on the issue, having failed to do so at the proper time. Accordingly, I find that the Director has not proven Count 5 and will dismiss the charge.

Turning to the question of an appropriate sanction, in my original decision, I stated:

For most of his career as an attorney and certified public accountant, (b)(3)/26 USC 6103 has practiced before the Internal Revenue Service. (b)(3)/26 USC 6103. Clearly, one who seeks to undermine the tax system should not be permitted to practice before the agency administering the tax system. (b)(3)/26 USC 6103 requires nothing less than the ultimate sanction of disbarment.

Decision at 19. The dismissal of Counts 5 and 11 do not change this view at all. The ten remaining counts clearly demonstrate that (b)(3)/26 USC 6103 is not fit to practice before the IRS.

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<sup>3</sup> Of course, either the Complainant-Appellee is free to withdraw this charge, [or] the ALJ is free not to consider it and have the case considered solely on the basis of the 10 Counts where I have affirmed the findings of the ALJ.

**Order**

In compliance with the instructions on remand, it is **ORDERED** that Count 5 is **DISMISSED** and that the Respondent-Appellant, **(b)(3)/26 USC 6103**, be **DISBARRED** from practicing before the Internal Revenue Service.

*T. Todd Hodgson*

T. Todd Hodgson  
Administrative Law Judge