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

DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY
Complainant

Complaint No. 2007-28

v.

(b)(3)/26 USC 6103
Respondent

DECISION GRANTING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

On May 22, 2007, the Director of the Office of Professional Responsibility (OPR) of the Internal Revenue Service filed a Complaint seeing to suspend Respondent, (b)(3)/26 USC 6103, an enrolled agent, from practice before the IRS for a period of 48 months.

The Complaint alleges that Respondent (b)(3)/26 USC 6103 The Director further alleges that (b)(3)/26 USC 6103

In her Answer filed July 9, 2007, Respondent, by counsel, admits that (b)(3)/26 USC 6103 Respondent contends that (b)(3)/26 USC 6103 . Respondent admits however, that during this period she continued to operate her tax practice for her clients.

On May 15, 2008, the Director of OPR filed a motion for summary judgment. The Director took issue with Respondent's assertions that (b)(3)/26 USC 6103 . On the other hand, (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 she stated in her Answer. Nevertheless, there is no question (b)(3)/26 USC 6103 .

(b)(3)/26 USC 6103 has responded to the Director's motion by counsel. She attached to her response a (b)(3)/26 USC 6103 , even though she was otherwise engaged in her tax practice.

I conducted two conference calls with counsel after the filing of the motion for summary judgment.

On July 25, 2008, I told that parties that with the exception of one "loose end," (b)(3)/26 USC 6103, I was prepared to grant the Complainant's motion and suspend Respondent from practice before the IRS for three years. I explained that I am "a creature of the Secretary of Treasury" in that I am bound by the precedent reflected in his rulings, or those of his designee, in similar cases.

I informed counsel that I was prepared to hold a video conference hearing if (b)(3)/26 USC 6103 counsel wished to present (b)(3)/26 USC 6103 as a witness, (b)(3)/26 USC 6103, and subject him to cross-examination. If Respondent wanted such a hearing, I told counsel I would allow (b)(3)/26 USC 6103 to testify as well. I would note however that (b)(3)/26 USC 6103 .

Following the July 25, conference call, Respondent filed a motion for this judge to recuse himself, which I denied in an order dated July 30, 2008.

I conducted a follow-up conference call on August 8, 2008. Respondent's counsel informed me that his client had told him that she wished to forgo a hearing but as of that morning, she may have changed her mind. I told counsel that I would require him to notify me in writing within two weeks (by August 22, 2008) as to whether he wanted a hearing or not, otherwise I would grant the motion for summary judgment. I reiterated that (b)(3)/26 USC 6103, that I would not credit an unsupported opinion. Respondent has not notified me as to whether or not it wants an evidentiary hearing regarding (b)(3)/26 USC 6103 .

The designee of the Secretary of Treasury has held that (b)(3)/26 USC 6103 and therefore constitutes disreputable conduct appropriately sanctioned by a suspension from practice before the Internal Revenue Service. "Willful" merely means a voluntary, intentional violation of a known legal duty, *See, e.g., Director, OPR v.* (b)(3)/26 USC 6103, *C.P.A.,* Complaint No. 2006-23 (Decision on Appeal, May 14, 2008).

Respondent's voluminous submissions, including a supplemental answer filed on August 8, 2008, boil down to several essential contentions. First, she contends that her conduct was not willful because she was unaware that the IRS considered (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 to be disreputable conduct. That is not the correct legal standard. An act or omission is willful if it violates a known legal duty, i.e., (b)(3)/26 USC 6103, not whether or not one is aware of the consequences of failing to comply with a known legal duty. An enrolled agent knows that (b)(3)/26 USC 6103

Respondent's reliance on *Cheek v. United States*, 498 U.S. 192 (1991) is misplaced. (b)(3)/26 USC 6103 Moreover, the Secretary's designee has made it clear that certain (b)(3)/26 USC 6103 are so unambiguous as to preclude a finding that (b)(3)/26 USC 6103 . Same *Director, OPR v.* (b)(3)/26 USC 6103, Complaint No. 2006-30 (Decision on Appeal, April 15, 2008).

Secondly, Respondent challenges the wisdom of the IRS policy and the authority of the Secretary of Treasury to suspend an enrolled agent for (b)(3)/26 USC 6103 . Neither the wisdom of the policy nor whether the Secretary has the authority to suspend Respondent is before me.

In the (b)(3)/26 USC 6103 case, in increasing the penalty that I had recommended, the Director cited the Supreme Court's decision in *United States v. Boyle,* 469 U.S. 241 (1985). That decision discussed (b)(3)/26 USC 6103 . The Director stated that the time and energy devoted to (b)(3)/26 USC 6103 diverts IRS resources from other tasks and imposes an excessive burden on the system of tax administration.

The Secretary's designee has also held that (b)(3)/26 USC 6103 The designee noted in (b)(3)/26 USC 6103 ."

Finally, the Secretary and his designee have held that they have the authority to suspend Respondent for (b)(3)/26 USC 6103 . I am bound by the prior decisions of the Secretary in similar cases. Respondent's recourse is to challenge the Secretary's authority in Federal court.

Thus, I grant the Director's motion for summary judgment and suspend (b)(3)/26 USC 6103 from practice before the IRS for a period of three years (36 months). I have reduced the requested suspension from 48 to 36 months by taking at face value . (b)(3)/26 USC 6103 . However, there is nothing in this record that would lead me to conclude that (b)(3)/26 USC 6103 . I would also note that every single practitioner whose case I have handled has (b)(3)/26 USC 6103 .

Respondent shall not be reinstated at the end of the 36 months unless [redacted]
(b)(3)/26 USC 6103

[redacted]

Arthur J. Amchan
Federal Administrative Law Judge

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