## 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.

(b)(3)/26 USC 6103 The Complaint alleges that Respondent The Director (b)(3)/26 USC 6103 further alleges that In her Answer filed July 9, 2007, Respondent, by counsel, admits that (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Respondent contends that . 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. (b)(3)/26 USC 6103 The Director took issue with Respondent's assertions that (b)(3)/26 USC 6103 On the other hand, (b)(3)/26 USC 6103 she stated in her Answer. (b)(3)/26 USC 6103 Nevertheless, there is no question (b)(3)/26 USC 6103 has responded to the Director's motion by counsel. She attached to (b)(3)/26 USC 6103 her response a . 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 counsel wished to present USC 6103 as a witness, (b)(3)/26 USC 6103 as a witness as a

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.

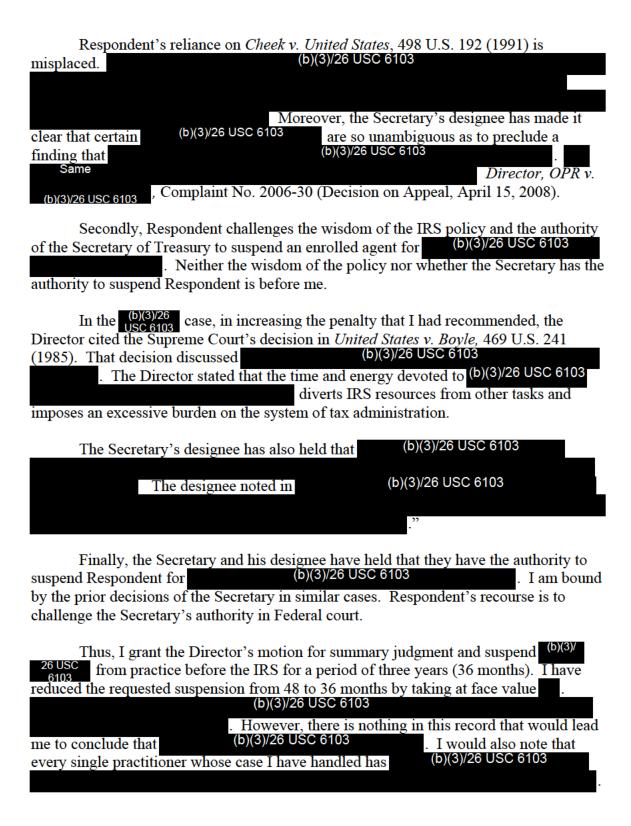
I conducted a follow-up conference call on August 8, 2008. Respondent's counsel informed me that his client had told him that she wished to forgo a hearing but as of that morning, she may have changed her mind. I told counsel that I would require him to notify me in writing within two weeks (by August 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

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)

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 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



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

Arthur J. Amchan Federal Administrative Law Judge

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202-501-8588