

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

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY

Complainant

v.

Complaint No. 2007-33

(b)(3)/26 USC 6103 ,

Respondent

G. Roger Markley, Esq.,
for the Complainant.

(b)(3)/26 USC 6103

for the Respondent, pro se.

DECISION

MICHAEL A. ROSAS, Administrative Law Judge: This matter arises from a complaint issued on July 13, 2007, by the Director, Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service (OPR), pursuant to 31 C.F.R. § 10.60 (also referred to as Section 10.60 of the Treasury Department Circular No. 230).

The complaint seeks to have the Respondent, (b)(3)/26 USC 6103 (the Respondent), an enrolled agent who practices before the Internal Revenue Service (IRS), disbarred from such practice, pursuant to 31 C.F. R. §§ 10.50 and 10.70, for having willfully engaged in disreputable conduct as set forth in 31 C.F. R. § 10.51. Specifically, it is alleged that the Respondent

(b)(3)/26 USC 6103

. In his answer to the complaint, the Respondent denied the material allegations in the complaint. He contends that

(b)(3)/26 USC 6103

, thus, there is no basis for disbarment from the practice of representing taxpayers before the IRS.

On March 27, 2008, a hearing was held before me in Grand Rapids, Michigan, at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and arguments. Closing arguments were made at the conclusion of the hearing, and the parties submitted proposed findings and conclusions of law and supporting reasons.

Upon the entire record, and based on my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT¹

The Respondent, (b)(3)/26 USC 6103, is an enrolled agent who practices before the Internal Revenue Service (IRS). His address of record is (b)(3)/26 USC 6103; (b)(6).² As an enrolled agent engaged in practice before the IRS, as defined by 31 CFR §10.2(d), the Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Director of the OPR.

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Respondent was (b)(3)/26 USC 6103

Furthermore,

As such, the

(b)(3)/26 USC 6103

¹ "Tr." refers to transcript pages, "C. Exh." refers to Complainant's exhibits, and "R. Exh." refers to the Respondent's exhibits.
² C. Exh. 1A and 13-1 (para. 3).
³ C. Exh. 11-1, 11-4, 11-7, 11-10, 11-15, 12-14 and 12-15.
⁴ C. Exh. 11-1 through 11-4, 11-10, 11-15 through 11-18, and 12-14 through 12-15; Tr. 27-28.
⁵ C. Exh. 7; Tr. 31.

(b)(3)/26 USC 6103

The Respondent (b)(3)/26 USC 6103
Accordingly, in a letter, dated March 28, 2005, the OPR notified the Respondent of (b)(3)/26 USC 6103. The Respondent responded by (b)(3)/26 USC 6103. The Respondent, an enrolled agent, was well aware of the fact that (b)(3)/26 USC 6103

This was not, however, the reason that the Respondent (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

As such, the Respondent (b)(3)/26 USC 6103

⁶ C. Exh. 10-2, 10-5, 10-8, 10-11.

⁷ The Respondent's contention, at trial and in his June 30, 2007 letter to Judge Giannasi – that he (b)(3)/26 USC 6103

– was not credible. First, it was inconsistent with his contention at trial that he (b)(3)/26 USC 6103. Second, (b)(3)/26 USC 6103 (C. Exh. 12-1; Tr. 62-70, 77-79.)

⁸ Cheryl Seidel, an IRS revenue agent, was unaware that the Respondent (b)(3)/26 USC 6103. As the document had not been produced prior to trial, Complainant's counsel was also unfamiliar with the document and initially objected to its receipt in evidence. I afforded the Complainant an opportunity during trial to authenticate or disprove the document. Ultimately, there was no dispute as to its authenticity and it was received in evidence. (R. Exh. 1; Tr. 38-41, 74-76.)

⁹ I found Seidel credible as to (b)(3)/26 USC 6103. (Tr. 33-34, 42-43.)

In a letter to Chief Administrative Law Judge Robert Giannasi, dated June 30, 2007, the Respondent explained that (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

The Respondent also attached (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

The Respondent did, (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

ANALYSIS AND DISCUSSION

The Respondent is an enrolled agent who has engaged in practice before the Internal Revenue Service. As such, he is subject to the disciplinary authority of the Secretary of the Treasury and the Director or Acting Director of OPR. 31 U.S.C. § 330(a)(1). (b)(3)/26 USC 6103

In conclusion, the clear and convincing evidence establishes that the Respondent's aforementioned (b)(3)/26 USC 6103. The Respondent's assertions that (b)(3)/26 USC 6103 inconsistent and incredible. The record established that (b)(3)/26 USC 6103. Moreover, he conceded at trial that (b)(3)/26 USC 6103. Accordingly, (b)(3)/26 USC 6103

¹⁰ The Respondent does not contend that, other than attaching them to his letter to Judge Giannasi, (b)(3)/26 USC 6103. (C. Exh. 12-1 through 12-27.)
¹¹ C. Exh. 10-6 through 10-9 and 11-1 through 11-22.
¹² C. Exh. 11-2, 11-8, 11-16.

for which he may be suspended from practice before the Internal Revenue Service pursuant to 31 C.F.R. (b)(3)/26 USC 6103 (2002) and 31 C.F.R. (b)(3)/26 USC 6103 (2005).

SANCTION

The complaint seeks to have the Respondent disbarred from practice before the IRS because of (b)(3)/26 USC 6103. The Director's decision is entitled to substantial deference, but I believe that such an extreme sanction is not warranted under the circumstances.

The relevant issue in this case is legal in nature – whether (b)(3)/26 USC 6103. I found that they do not. The Respondent, an enrolled agent, (b)(3)/26 USC 6103. The allegations against the Respondent are serious in nature, but it is questionable whether similar situations involving enrolled agents with (b)(3)/26 USC 6103 would be likely to arise again. Under the circumstances, a two-year suspension from practicing before the IRS is more appropriate.

I find that the allegations against the Respondent have been proven by clear and convincing evidence in the record, the standard provided in 31 C.F.R. § 10.50 to support the sanction of a two-year suspension from practicing before the IRS.

CONCLUSIONS OF LAW

1. The Respondent, (b)(3)/26 USC 6103, is an enrolled agent who has practiced before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility.
2. 31 C.F.R. §10.51 (f) (2002) provides that willfully failing to make a Federal income tax return is grounds for discipline.
3. The Respondent violated (b)(3)/26 USC 6103. That violation has been proven by clear and convincing evidence in the record.

4. Upon the foregoing findings of fact and conclusions of law, and the entire record, pursuant to 31 C.F.R. §10.76, I issue the following:

ORDER¹³

The Respondent, **(b)(3)/26 USC 6103**, is suspended from practice before the Internal Revenue Service for a period of two years.

Dated at Washington, D.C. May 19, 2008

Michael A. Rosas
Administrative Law Judge

¹³ 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 issuance of this Decision.