**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. 2008-12**

(b)(3)/26 USC 6103,
**Respondent**

## DECISION

**JOEL P. BIBLOWITZ, Administrative Law Judge:** On May 30, 2008 a Complaint was issued by the Director, Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service, herein called the Complainant and/or OPR, pursuant to 31 C.F.R. Sc. 10.60, issued under the authority of 31 U.S.C. Sec. 330. The Complaint seeks to have (b)(3)/26 USC 6103, and attorney engaged in practice before the Internal Revenue Service, who is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility, suspended from practice before the Internal Revenue Service for a period of forty eight months by reason of having engaged in disreputable conduct as set forth in 31 C.F.R. Sec. 10.51. The Complaint alleges Respondent (b)(3)/26 USC 6103
Respondent field an Answer to the Complaint denying most of its substantive allegations, and a hearing was held in Boston, Massachusetts on October 1, 2008 at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the parties have been given due consideration. Upon the entire record and my observation of the demeanor of the witnesses, I make the following

## Findings of Fact

Respondent, an attorney who has engaged in practice before the Internal Revenue Service, and whose last known address of record with the Internal Revenue Service is Address 1, is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility. The Complaint alleges, as "background facts," that Respondent (b)(3)/26 USC 6103
Respondent admits that (b)(3)/26 USC 6103. The Complaint further alleges "charges of misconduct" for (b)(3)/26 USC 6103. It is alleged, and admitted by the Respondent, that (b)(3)/26 USC 6103. It is further alleged that the Respondent (b)(3)/26 USC 6103. The Respondent's Answer denies these allegations.

Attorney 1, attorney advisor for the Office of Professional Responsibility, testified for the Complainant. She testified that she is currently the litigation point of contact for the Complainant, that she perfects files that are going to litigation, and works with the General Legal Services attorney who is in charge of the litigation. She testified that Respondent's situation was referred to OPR by Revenue Office 1, an IRS revenue officer in about 2005, Revenue Officer 1 alleged that the Respondent (b)(3)/26 USC 6103 , but Attorney 1 is not aware of how Revenue Officer 1 obtained this information, and Revenue Officer 1 did not tell her that she was engaged in a dispute with the Respondent while he was representing a taxpayer. To her knowledge, the Respondent (b)(3)/26 USC 6103 . As a result, by letter dated October 11, 2006, Stephen Whitlock, Acting Director of OPR, wrote to Respondent:

> This letter is in regard to your eligibility to practice before the Internal Revenue Service and is being sent pursuant to section 10.60 of Treasury Department Circular 230, a copy of which is enclosed.
>
> (b)(3)/26 USC 6103
>
> Further action with respect to the above information will be held in abeyance for a period of 30 days from the date of this letter. Within that time, you are afforded an opportunity to request a conference at this office or to submit a response with your explanation of the foregoing matters. If you wish a conference, please provide alternative dates and times that would convenient for you. A power of attorney must be submitted should you engage the services of a representative.
>
> Your response is requested within 30 days. Should you have any questions, please contact . . .

By letter dated January 8, 2007, Attorney 2, Enforcement Attorney for OPR, wrote to Respondent:

> Enclosed is a copy of a letter from the Acting Director, Office of Professional Responsibility, dated October 11, 2006, regarding your eligibility to practice before the Internal Revenue Service. To date, this office has received no response. I will provide you an additional 20 days from the date of this letter to respond. After such time, any disposition of this case will be based solely upon the information already in my possession. Such disposition may include seeking the imposition of a sanction via an Administrative hearing.
>
> Please direct your reply to me at …

By letter dated February 5, 2007, Respondent wrote to Attorney 2:

> I am writing to you in response to your letter dated January 8, 2007 (a copy of which is enclosed for your convenience). Your letter makes reference to an October 11, 2006 letter from the Acting Director of the Office of Professional Responsibility (a copy of which is also enclosed for your convenience).

> The acting director's letter states that [redacted]. This statement is not correct. [redacted]. In addition, [redacted]
>
> I am happy to provide your office with [redacted] if it is necessary. However, I assume you can confirm [redacted]. Should you desire [redacted], or require any additional information in connection with this matter, please feel free to contact me at . . . I will also make myself available for a conference should you feel that is necessary.

Attorney 1 identified [redacted]. She testified that [redacted] but Attorney 1 testified that [redacted]. Attorney 1 testified further that in recommending that the Respondent be suspended from practicing before the IRS for a period of forty eight months, OPR took into consideration as aggravating factors [redacted] and the fact that he was a tax attorney with a large firm and had previously been employed by the IRS as a tax attorney. They also considered, as a mitigating factor, his explanation that he had moved to State 1 to care for his ailing parents during the period in question.

The Respondent testified in narrative form. On July 31, 2008 I issued an Order directing the parties to notify the other party by September 12, 2008 of all the witnesses that it intends to call and all exhibits that it intends to employ at the hearing. I received a timely response from the Complainant, but no response from the Respondent to this order. When the Respondent commenced testifying herein, the Complainant noted her objection to the Respondent calling any witness or introducing any exhibits on his behalf because of his failure to comply with my ruling. When I asked the respondent for his response, he defended that his is not familiar with National Labor Relations Board practices and procedures. I informed him that it had nothing to do with the Labor Board or its procedure; I issued an Order that he failed to comply with and, therefore, I ruled that he could not call any witnesses or present any exhibits. At that point Complainant stated that although the Respondent did not respond to my Order, she anticipated that he would testify on his own behalf, so she had no objections to his testimony.

The Respondent was employed as an attorney by the IRS for about five years, beginning in about 1993. Since that time he has been employed by, and a partner in, law firms, initially in Philadelphia and, at the present time, in Boston. His principal defenses herein are

that [redacted (b)(3)/26 USC 6103]. He also defends that [redacted (b)(3)/26 USC 6103]. His other defense is that this matter was instituted as a personal vendetta against him by Revenue Officer 1 because of his "zealous" representation of a client in dealing with Revenue Officer 1, the IRS agent in the case. The IRS is extremely strict about the need for taxpayer privacy and access to taxpayer information is strictly limited. Violations of these secrecy rules are grounds for termination of IRS employees. Since it is admitted by the Complainant that Revenue Officer 1 initiated this matter, he testified: "If it is determined that [Revenue Officer 1] [redacted (b)(3)/26 USC 6103], I believe that's ground for dismissal of this entire action on a legal basis."

Respondent also defends [redacted (b)(3)/26 USC 6103]. In this regard, in about 1999, his mother was diagnosed with Illness 1 and he quit his job in Philadelphia and moved to Boston and moved in with his parents to care for his mother, and remained with them for the next five years. During this period, he and his sister cared for their parents, cooking and taking them to doctor appointments: [redacted (b)(3)/26 USC 6103] He also testified that he is a partner in the fifth largest law firm in Boston and "one of the most highly regarded tax controversy attorneys in this city [Boston]." On cross examination he testified that he continued to work between 1999 and 2005 representing clients before the IRS.

**Analysis and Conclusions**

Respondent defends that [redacted (b)(3)/26 USC 6103] should be excused because of his obligations in caring for his parents. Putting aside [redacted (b)(3)/26 USC 6103], but were only alleged as background by the Complainant, the evidence establishes that [redacted (b)(3)/26 USC 6103]. The Respondent testified that [redacted (b)(3)/26 USC 6103] other than by determining his credibility herein, which I do reluctantly, because the conflict between his testimony and [redacted (b)(3)/26 USC 6103] requires me to do so.

Throughout the course of this matter, I was struck by the Respondent's apparent disinterest in, or lack of respect for, this proceeding. Although he has been a practitioner in the tax field for fifteen years, and began his legal career as an IRS attorney, his Answer to the Complaint was filed late, although the Complainant stated that they would waive the late filing. On October 11, 2006, the Complainant wrote to him to notify him of the allegations against him which "suggests' a violation of [redacted (b)(3)/26 USC 6103]. A response was requested within 30 days. Having received no response, Complainant wrote again to Respondent on January 8, 2007, giving him an additional 20 days to respond, but he did not respond until February 5, 2007, twenty eight days later, disagreeing with the Complainant's allegations. In his response, the Respondent stated: "I am happy to provide your office with [redacted (b)(3)/26 USC 6103] if it is necessary," although he did not do so. It appears to me that if he truly took the IRS' complaint

seriously, he would have responded immediately after receiving Whitlock's October 11, 2006 letter and would have sent him (b)(3)/26 USC 6103, rather than waiting almost four months before responding and offering to (b)(3)/26 USC 6103. In a similar manner, when I issued my Order setting forth a deadline for notifying the other party of proposed witnesses and exhibits, he did not respond. When Respondent made clear his desire to call a witness, I questioned him about his failure to respond to my Order, and he blamed it on his lack of experience with NLRB practices and procedure, whereas it had nothing to do with that, it was simply a failure to respond to my Order. While the above history does not establish that the Respondent is an incredible witness, it convinces me that he does not feel the need to follow the orders or directions of others, whether it is the undersigned or the IRS, and I find that (b)(3)/26 USC 6103.

I therefore find that the Respondent (b)(3)/26 USC 6103 The ultimate issue therefore is whether this constitutes grounds for suspension of practice before the IRS and, if so, for how long a period of time. I will then examine if Respondent's "vendetta defense" constitutes a valid defense to the allegations herein and if (b)(3)/26 USC 6103 mitigates this violation, in whole or in part. In doing so, it is important to remember that it is not alleged herein that (b)(3)/26 USC 6103.

Pursuant to 31 C.F.R. 10.52(a) a practitioner may be censured, suspended or disbarred from practicing before the IRS for willfully violating any of the provisions set forth in Circular 230. Section 10.51 provides that these sanctions may be imposed on a practitioner who engages in disreputable conduct, and the appropriate subsection of that provision states: "Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way evading or attempting to evade any assessment of payment of any Federal tax." The initial issue herein is whether the Respondent's (b)(3)/26 USC 6103.

Section 10.51 refers to "Willfully failing to make a Federal tax return . . ."[1] It is important to note what it does and does not state. It requires that the failure be willful, and does not specifically state that (b)(3)/26 USC 6103. I note, as well, that of the three Regulations set forth below in footnote 1, only the 1994 fails to state " (b)(3)/26 USC 6103 . . ." Regardless, I find that (b)(3)/26 USC 6103. The Respondent is an experienced practitioner in the field with fifteen years experience as a practitioner with IRS procedure. He was obviously (b)(3)/26 USC 6103. In addition, "willful" has consistently been held to mean the "voluntary, intentional violation of a known legal duty." *United States v. Pomponio*, 429 U.S. 10, 12 (1976); *Thibodeau v. United*

[1] There are some minor differences between the IRS Regulations governing practitioners. The 1994 Regulations state: "Willfully failing: to make a Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof. . ." The 2002 Regulations state: "Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax. . . " the 2005 Regulations state: "Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax . . . " the effective date of the 2005 revision is June 20, 2005.

*States*, 828 F .2d 1499, 1505 (11th Cir. 1987). I therefore find that (b)(3)/26 USC 6103 . The next issue is whether (b)(3)/26 USC 6103 Counsel for the Complainant, in her brief, cites no case for the proposition that (b)(3)/26 USC 6103 and I could find no such precedent. In addition, as stated by the Respondent in his brief, (b)(3)/26 USC 6103 . I therefore find that (b)(3)/26 USC 6103 .

The Respondent's two defenses herein are that the situation with his parent (b)(3)/26 USC 6103 and should therefore be excused or mitigated, and that because this matter was instituted due to a vendetta by IRS Revenue Officer 1, this proceeding should be dismissed. I find that neither defense has merit. While I can sympathize with the Respondent and his obligations and sacrifices during this period, the record establishes that (b)(3)/26 USC 6103 he was employed full time for a major laws firm with yearly adjusted gross income ranging from $102,000 to $138,000. Further, while he had obligations caring for his parents during this period, it is difficult to imagine that he could not find the time (b)(3)/26 USC 6103 . Considering his expertise in the field, it should not have consumed an inordinate amount of time. I therefore reject the Respondent's (b)(3)/26 USC 6103 herein.

Remaining is the Respondent's "vendetta" allegation and defense, that because IRS Revenue Officer 1 was unhappy with the Respondent's zealous representation of a client, she (b)(3)/26 USC 6103 and initiated this proceeding. There are a number of problems with this defense: the Respondent did not prove that Revenue Officer 1 (b)(3)/26 USC 6103 and has not established that, even if she had, that it would constitute grounds for dismissing this proceeding. Respondent, in his brief, states: "During the course of the Respondent's representation of Business 1, Revenue Officer 1 (b)(3)/26 USC 6103 . Revenue Officer 1 (b)(3)/26 USC 6103 and referred the matter to the Office of Professional Responsibility in April 2005." While the Respondent credibly testified that he dealt with Revenue Officer 1 on the Business 1 matter, and Attorney 1 testified that Revenue Officer 1 initially referred the Respondent's situation to the IRS for investigation, there is no evidence that Revenue Officer 1 (b)(3)/26 USC 6103 , nor is there any evidence that she referred the matter to the Complainant in retaliation for his zealous representation of his client. Further, as stated above, the Respondent cites no case to support the proposition that even if Revenue Officer 1 had done as he alleges, it would constitute a defense to this proceeding. If Revenue Officer 1 had (b)(3)/26 USC 6103 , the appropriate remedy might be to institute intra-agency charges against her for engaging in such alleged activity. This "vendetta" defense is therefore rejected.

**The Proposed Sanction**

The Complainant proposes a forty eight month suspension from practice as the appropriate sanction in this matter. The Respondent defends that the appropriate sanction herein is a "private" reprimand. As the Director of the Office of Professional Responsibility is the official with the responsibility for regulating practice before the IRS, his/her proposed sanction is entitled to some deference. The record herein establishes (b)(3)/26 USC 6103

[redacted] That does not constitute disreputable conduct under Section 10.51 of Circular 230. Further, there is no allegation or evidence that [redacted]. For these reasons, I find that a 24-month suspension from practice before the Internal Revenue Service is an appropriate remedy herein. This remedy is appropriate and in line with the [redacted] and [redacted] cases cited by the Complainant. Although those cases resulted in disbarment of the practitioners, they were both Default Judgment cases, and in [redacted], and in [redacted] The instant matter is obviously distinguishable.

## Conclusions of Law

1. At all times material, the Respondent, [redacted], was a tax attorney engaged in practice before the Internal Revenue Service.

2. The Respondent engaged in disreputable conduct [redacted].

3. A 24-month suspension from practice before the Internal Revenue Service is an appropriate sanction for the disreputable conduct engaged in by the Respondent.

Upon the foregoing findings of fact and conclusions of law and the entire record, pursuant to 31 C.F.R. 10.70(b) (10) and 10.76, Issue the following

## Order[2]

The Respondent, [redacted], is hereby suspended from practice before the Internal Revenue Service for the period of twenty four (24) months.

Dated, Washington, DC **November 18, 2008**

Joel P. Biblowitz
Administrative Law Judge

[2] 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.