

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. 2009-07

(b)(3)/26 USC 6103

Respondent.

DECISION ON MOTION FOR DEFAULT JUDGMENT

On February 18, 2009, a Complaint was issued on behalf of the Acting Director, Office of Professional Responsibility (OPR), Internal Revenue Service, pursuant to 31 C.F.R. §§10.50, 10.51, 10.60 and 10.62,¹ issued under the authority of 31 U.S.C. §330, alleging that Respondent (b)(3)/26 USC 6103 a certified public accountant engaged in practice before the Internal Revenue Service, as defined by 31 C.F.R. §10.2(d), engaged in disreputable conduct within the meaning of 31 C.F.R. §10.51 and is subject to suspension or disbarment from such practice. Specifically, it is alleged that the Respondent (b)(3)/26 USC 6103

¹ The regulations governing the practice before the IRS, found at 31 C.F.R. Part 10, were most recently revised on September 26, 2007. The savings clause contained at 31 C.F.R. §10.91 of the revised regulations provides that any proceeding under this part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, shall apply the procedural rules of the revised regulations contained in Subpart D (Rules Applicable to Disciplinary Proceedings) and E (General Provisions). However, "...conduct engaged in prior to September 26, 2007, shall be judged by the regulations in effect at the time the conduct occurred." 31 C.F.R. §10.91 (2007)

Pursuant to 31 C.F.R. § 10.62, Respondent's answer to the complaint was due within thirty (30) calendar days from the date of the service of the complaint. On February 25, 2009, the Respondent submitted a letter to the Agency with a copy to the Chief Administrative Law Judge. With regard to the specific counts of the complaint, the Respondent asserted that [REDACTED] (b)(3)/26 USC 6103 [REDACTED]

On March 30, 2009, the Complainant filed a Complainant's Motion for Default Judgment, requesting that the Administrative Law Judge grant the relief requested in the Complaint and specifically order that the Respondent be disbarred from further practice before the Internal Revenue Service (IRS) pursuant to the provisions of 31 C.F.R. §§10.50, 10.51, 10.52, 10.64, 10.76, and 10.79, issued under the authority of 31 U.S.C. §330, reinstatement thereafter being at the sole discretion of the OPR. The motion is based on the Respondent's failure to file an answer to the complaint. The Complainant asserts that the Respondent's letter of February 25, 2009, is not an answer to the complaint since it did not meet the minimum requirements of 31 C.F.R. §10.64(b). In particular, the letter did not admit or deny each allegation set forth in the Complaint.² Therefore, despite his receipt of the complaint, appropriate notice of the requirement to answer, and the potential consequence of the failure to file an answer, the Respondent has failed to properly answer the Complaint. 31. C.F.R. §10.53(d). Therefore, the Complainant asserts that the Respondent has admitted all allegations of the Complaint and has waived his right to a hearing.

On April 14, 2009, the Respondent filed a response to the Complainant's Motion for Default Judgment. The Respondent stated that he had resigned his Power of Attorney (Form 2848) and would no longer practice before the Internal Revenue Service. He included a letter [REDACTED] (b)(6) [REDACTED], indicating his resignation was a good idea and consistent [REDACTED] (b)(6) [REDACTED]. The Respondent did not specifically address the allegations set forth in the Complaint or the Motion for Default Judgment.

² Section 10.64(b) *Contents*. The answer must be written and contain a statement of facts that constitute the respondent's ground of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

On May 8, 2009, the Complainant filed a response, asserting that the Respondent's April 14 letter was not an appropriate response to the Motion for Default Judgment and further asserting that the Administrative Law Judge did not have the authority to accept the Respondent's resignation as a resolution of this matter.

Having carefully reviewed the pleadings before me, including the correspondence from the Respondent, I find that there are no material issues of fact to be resolved and that a decision on the motion for default judgment is the appropriate way to dispense of this matter. The uncontested facts establish the following:

FINDINGS OF FACT

1. The Respondent has engaged in practice before the Internal Revenue Service, as defined in 31 C.F.R. §10.2(a), as a Certified Public Accountant (CPA).
2. The Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility, in accordance with 31 C.F.R. §§10.3 and 10.50.
3. The Respondent's last known address of record with the Internal Revenue Service is Address 1.
4. At all times relevant to this complaint, the Respondent was involved in the presentation of matters to the Internal Revenue Service concerning matters relating to taxpayers, as defined by 31 C.F.R. §10.2(a)(4).
5. (b)(3)/26 USC 6103
6. Pursuant to 31 C.F.R. §§10.50 and 10.60, the Secretary of the Treasury, by his delegate, here the Office of Professional Responsibility of the IRS, may take a disciplinary action against any practitioner who is shown, *inter alia*, to be disreputable, or who fails to comply with any regulation in these parts.
7. The Respondent is subject to the regulations governing practice before the IRS by virtue of 31 C.F.R. §10.0 *et seq.*, particularly §§10.50, 10.52 and 10.60, and by virtue of those provisions, is subject to disbarment or suspension from practice before the Internal Revenue Service due to disreputable conduct.

8. The Respondent is subject to disbarment or suspension from practice before the IRS under 31 C.F.R. §§10.50 and 10.52, by reason of the fact that the Respondent has engaged in disreputable conduct, as set forth under 31 C.F.R. §10.51, the circumstances of such conduct are more particularly set forth hereinafter.

9. In compliance with 31 C.F.R. §10.60(c), the Respondent previously has been advised in writing of the law, facts and conduct warranting the issuance of this complaint, and has been accorded an opportunity to dispute facts, assert additional facts and make arguments.

10. [REDACTED] (b)(3)/26 USC 6103

[REDACTED]

11. [REDACTED] (b)(3)/26 USC 6103

[REDACTED]

12. [REDACTED] (b)(3)/26 USC 6103

13. [REDACTED] (b)(3)/26 USC 6103
[REDACTED] for which the Respondent may be censured, suspended or disbarred from practice before the Internal Revenue Service.

ANALYSIS AND DISCUSSION

The Respondent is a certified public accountant 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). [REDACTED] (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

The Respondent asserts in his correspondence that he does not believe that he has violated any IRS rules, but for his personal health reasons, decided to no longer practice before the IRS. In his February 25 letter, (b)(3)/26 USC 6103

The Complainant further asserts that the Respondent's correspondence of February 25 and March 29 does not constitute a legitimate answer under the IRS regulations, and thus he should be found to have admitted each and every allegation of the complaint.

By not specifically admitting or denying each allegation of the Complaint, the Respondent is found to have admitted each allegation, pursuant to 31 C.F.R. §10.64(c) of the IRS regulations. In conclusion, the Respondent has admitted that (b)(3)/26 USC 6103 .

Pursuant to 31 C.F.R. §10.50, the Respondent's eligibility to practice before the Internal Revenue Service is subject to suspension or disbarment by reason of engaging in disreputable conduct. (b)(3)/26 USC 6103

As a CPA representing taxpayers before the Internal Revenue Service, the Respondent (b)(3)/26 USC 6103

With regard to the Respondent's stated intention to resign his Power of Attorney and to no longer practice before the IRS, the Complainant correctly asserts that I do not have jurisdiction over such a matter. Therefore, my decision should not be considered an acceptance of the Respondent's offer in this matter.

With regard to the remedy in this matter, the Complainant seeks to have the Respondent disbarred from further practice before the Internal Revenue Service because of (b)(3)/26 USC 6103

I find the recommendation of OPR concerning the appropriate penalty is entitled to substantial deference. The Respondent, a CPA, (b)(3)/26 USC 6103

The allegations against the Respondent are serious in nature and it is important to deter similar conduct by other certified agents. Accordingly, I find that, under all the circumstances, disbarment from practicing before the IRS is appropriate.

ORDER

The Respondent, (b)(3)/26 USC 6103 is hereby disbarred from practice before the Internal Revenue Service.

Dated at Washington, D.C., July 1, 2009.

Susan E. Jelen
Administrative Law Judge

³ 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.