

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2010-16

(b)(3)/26 USC 6103 ,
Respondent-Appellant

Decision on Appeal

Authority

Under the authority of General Counsel Order No. 9 (January 19, 2001) and the authority vested in him as the Chief Counsel of the Internal Revenue Service (IRS), through a delegation order dated March 2, 2011, William J. Wilkins delegated the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Part 10 of Title 31, Code of Federal Regulations (Practice Before the Internal Revenue Service, reprinted by the Treasury Department and hereinafter referred to as Circular 230 – all references are to Circular 230 as in effect for the period(s) at issue). This is such an appeal from a Decision entered into this proceeding by Administrative Law Judge Walter J. Brudzinski (the ALJ) on November 17, 2010.

Background

This proceeding was commenced on August 18, 2010, when Complainant-Appellee Director of the Office of Professional Responsibility (OPR) filed a Complaint against Respondent-Appellant (b)(3)/26 USC 6103, a Certified Public Accountant. The Complaint alleged that (b)(3)/26 USC 6103 has practiced before the IRS as defined in § 10.2 of Circular 230; that (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103; and that he failed to provide OPR with requested information on May 18, 2009, November 5, 2009, and June 16, 2009, as required by §10.20(b) of Circular 230. The Complaint asserts that (b)(3)/26 USC 6103 constitute disreputable conduct under Circular 230 for which (b)(3)/26 USC 6103 may be disbarred from practice, and that the failures to provide OPR with information violate §10.20(b) of Circular 230 and are a basis for which (b)(3)/26 USC 6103 may be disbarred from practice. OPR requested that (b)(3)/26 USC 6103 be disbarred from practice before the IRS pursuant to §§10.50 and 10.70 of Circular 230.

The Complaint was served on (b)(3)/26 USC 6103 at his last known address, by certified mail, on August 18, 2011, return receipt requested and was delivered to him on August 23, 2010. It informed him that a failure to file an answer to the Complaint within 30 days could result in a decision by default being entered against him. (b)(3)/26 USC 6103 did not file an answer to the Complaint. On September 29, 2010, OPR filed a motion for default and on November 17, 2010, the ALJ entered an Order Granting Motion for a Decision by Default (Default Order) against (b)(3)/26 USC 6103 as provided for in §10.64 of Circular 230. The Default Order disbars (b)(3)/26 USC 6103 from practice before the IRS. The Default Order contains as an attachment §§10.77 and 10.78 of Circular 230, informing (b)(3)/26 USC 6103 that an appeal must be filed within 30 days of the date that the decision of the ALJ is served on the parties. The certificate of service for the Default Order states that (b)(3)/26 USC 6103 was served on November 17, 2010, by certified mail, return receipt requested and by First Class Mail and a notice was left by the U.S. Postal Service on November 23, 2010, for (b)(3)/26 USC 6103 to pick up the mailing.

(b)(3)/26 USC 6103 picked up the Decision Order sent by certified mail on December 8, 2010. (b)(3)/26 USC 6103 does not assert in his appeal that he did not receive the first class mailing. On December 23, 2010, (b)(3)/26 USC 6103 filed an appeal with OPR by certified mail, return receipt requested, which was received by OPR on January 3, 2011. The appeal does not address why he did not answer the Complaint but briefly describes mitigating circumstances in support of his appeal.

Section 10.76(d) of Circular 230 provides that in the absence of an appeal, the decision of the ALJ will, without further proceedings, become the decision of the agency 30 days after the date of the ALJ's decision. Section 10.77(b) provides that an appeal of the decision of the ALJ must be filed with OPR within 30 days of the date that the ALJ's decision is served on the parties. Service of process by mail is completed when a properly addressed document is mailed – the date of mailing is the date of service. Since (b)(3)/26 USC 6103 was served on November 17, 2010, he had until December 17, 2010 to timely file his appeal. Since (b)(3)/26 USC 6103 did not do so, the Default Order became FINAL AGENCY ACTION on December 17, 2010.

/s/ _____
Bernard H. Weberman
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)

April 13, 2011
Lanham, MD

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(b)(3)/26 USC 6103 ,
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Order

On April 13, 2011, I issued a Decision on Appeal in the above case. The second line of page two of the Decision on Appeal contains a typo. The date "August 18, 2011" should read "August 18, 2010."

It is ORDERED that the date "August 18, 2011" in my Decision on Appeal dated April 13, 2011, is corrected to read "August 18, 2010."

/s/
Bernard H. Weberman
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)

April 14, 2011
Lanham, MD