

THE DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
BEFORE THE ADMINISTRATIVE LAW JUDGE

DIRECTOR, OFFICE OF PROFESSIONAL  
RESPONSIBILITY,

Complainant,

16-AF-0081-OD-001  
(Complaint No. 2016-00001)

v.

October 6, 2016

(b)(3) / 26 USC 6103,

Respondent.

INITIAL DECISION ON DEFAULT JUDGMENT

On July 22, 2016, the Director of the Office of Professional Responsibility (“OPR” or “Complainant”) for the Internal Revenue Service (IRS) filed a *Motion for a Decision by Default* (Default Motion) in the above-captioned matter.<sup>1</sup>

PROCEDURAL HISTORY

On April 19, 2016, the OPR Director filed a *Complaint* against (b)(3) / 26 USC 6103 (Respondent). The *Complaint* seeks an order disbaring Respondent from practice before the Internal Revenue Service for committing violations of the Federal regulations governing authority to practice before IRS that are set forth in 31 C.F.R. Part 10.<sup>2</sup>

A copy of the *Complaint* was served on Respondent by United States Postal Service (USPS) via certified mail, return receipt requested, to Respondent’s last known address of record with the IRS: (b)(3) / 26 USC 6103, (b)(6). In addition, an additional copy was sent to the same address by regular USPS mail. Based upon USPS tracking information, the *Complaint* was delivered to Respondent’s address on April 19, 2016.

By *Notice of Hearing and Order*, issued April 25, 2016, Respondent was required to file an answer within 30 days from the date the *Complaint* is served upon Respondent. The

<sup>1</sup> Pursuant to an Interagency Agreement in effect beginning June 10, 2015, Administrative Law Judges of the United States Department of Housing and Urban Development are authorized to hear cases brought by the Department of the Treasury, Internal Revenue Service.

<sup>2</sup> The regulations governing practice before the IRS, found at 31 C.F.R. Part 10, were most recently revised on June 12, 2014. 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 prior to June 12, 2014, which is instituted after that date, shall apply the procedural rules of the revised regulations contained in Subparts D and E, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred. 31 C.F.R. § 10.91 (Rev. 6-2014).

*Complaint* included a similar instruction to Respondent. Respondent did not file a timely answer to the *Complaint*. As of the date of this *Initial Decision*, Respondent has not filed an answer, requested an extension of time to do so, or otherwise appeared in this matter.

### CONSEQUENCES OF FAILURE TO ANSWER

Section 10.64 of title 31 of the Code of Federal Regulations sets forth the requirement for answering a complaint and the consequences for not do so.

Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make a decision by default without a hearing or further procedure.

31 C.F.R. § 10.64(d). As a result of Respondent's failure to answer the *Complaint*, Respondent is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact.

### FINDINGS OF FACT

Respondent has engaged in practice before the IRS as a certified public accountant subject to the disciplinary authority of the Secretary of the Treasury and the OPR. Respondent's last known address of record with the Internal Revenue Service is (b)(6), (b)(7)(C), (b)(6), (b)(7)(C). In 2010, Respondent was issued Preparer Tax Identification Number (PTIN) (b)(6), (b)(7)(C) by the Internal Revenue Service to prepare tax returns.

Respondent is the sole shareholder of (b)(3) / 26 USC 6103 ("the Corporation"), which has a Federal Employer Identification Number of Same. Respondent was responsible for making payments to the Corporation's creditors, disbursing the Corporation's funds, and making (b)(3) / 26 USC 6103.

(b)(3) / 26 USC 6103 [to the end of the pg.]

[REDACTED]

[REDACTED]

(b)(3) / 26 USC 6103



Respondent's PTIN was suspended on February 14, 2014. Therefore, between February 14, 2014 and February 25, 2016, Respondent did not have a valid current PTIN, which Respondent was required to use on returns or claim for refunds when Respondent prepares substantially all of a tax return or claim for refund. See 34 C.F.R. §10.51(a)(17) (Rev. 6-2014). Between January 1, 2015, and December 31, 2015, Respondent prepared and signed at least 265 Federal income tax returns without possessing a current or otherwise valid PTIN.

On March 3, 2015, OPR mailed a letter to Respondent requesting information concerning his alleged violations of Circular 230. On August 18, 2015, OPR mailed a letter to Respondent providing him an additional 10 days to respond to OPR's March 3, 2015, request for information. Respondent failed to respond to OPR's request for information.

#### CONCLUSIONS OF LAW

The *Complaint* alleges Respondent willfully engaged in 12 counts of misconduct in violation of the Federal regulations governing practice before the IRS.

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A practitioner may be sanctioned for willfully violating the regulations set forth at 31 C.F.R. Part 10. Incompetence and disreputable conduct are sanctionable pursuant to the regulations. 31 C.F.R. § 10.51. A practitioner that willfully fails to make a Federal tax return in violation of the Federal tax laws may be sanctioned for disreputable conduct. 31 C.F.R. § 10.51(a)(6) (Rev. 4-2008, 8-2011 and Rev. 6-2014). In addition, a practitioner that willfully prepares all or substantially all of a tax return or claim for refund when the practitioner does not possess a current or otherwise valid PTIN is subject to sanctions. 31 C.F.R. § 10.51(a)(17).

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10.51(a)(6). In addition, Respondent also engaged in disreputable conduct by willfully preparing and signing at least 265 Federal income tax returns without possessing a current or otherwise valid PTIN in violation of 31 C.F.R. § 10.51(a)(17).

Last, Respondent engaged in disreputable conduct and willfully violated the regulations governing practice before the IRS by failing to respond to the OPR's request for information. When a proper and lawful request is made by a duly authorized officer or employee of the IRS concerning an inquiry into an alleged violation of the regulations, a practitioner is required to provide any information the practitioner has concerning the alleged violation unless the practitioner believes, in good faith and on reasonable grounds, that the information is privileged. 31 C.F.R. § 10.20(a)(3) (Rev. 6-2014). As found, *supra*, OPR sent Respondent a lawful request for information regarding his alleged violations of IRS regulations. However, Respondent willfully failed to respond to the request for information despite being given an extension to respond. Such failure constitutes a violation of the IRS regulations and is sanctionable conduct.

### SANCTION

Respondent's actions constitute disreputable conduct and failure to comply with the regulations governing practice before the IRS as set forth in 31 C.F.R. Part 10. The OPR Director claims Respondent's misconduct adversely reflects on Respondent's current fitness to practice before the IRS and, as such, warrants his disbarment from practice. In support of this claim, the OPR Director cites numerous aggravating factors that include Respondent's

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The willful failure to file a personal Federal income tax return is viewed as a serious offense. OPR v. Llorente, Complaint Number 2008-03, Decision on Appeal (IRS, Apr. 10, 2009). Based upon the uncontested aggravating factors proffered by the OPR Director, Respondent has engaged in a widespread pattern of (b)(3) / 26 USC 6103 (b)(3) / 26 USC 6103

Although the *Complaint* only seeks sanctions

(b)(3) / 26 USC 6103

### CONCLUSION

Respondent failed to file an answer to the *Complaint* and is in **DEFAULT**. As such, his lack of response constitutes an admission of the allegations of the *Complaint* and a waiver of hearing. See 31 C.F.R. § 10.64(d). Based upon the allegations deemed admitted by Respondent, the Court finds, by clear and convincing evidence, that Respondent (b)(3) / 26 USC 6103

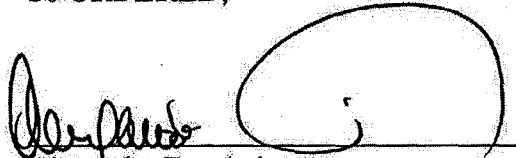
(b)(3) / 26 USC 6103

possess a current or otherwise valid PTIN. Respondent also ignored OPR's lawful requests for information regarding his alleged violations of IRS regulations. Respondent's conduct, as set forth in Counts 1-12, constitute incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51.

The Court finds that the seriousness of Respondent's offenses, coupled with the numerous aggravating factors, demonstrate that Respondent is currently unfit to practice before the IRS and disbarment is warranted. See Llorente, at 3 (imposing a sanction of disbarment for a practitioner who demonstrated (b)(3) / 26 USC 6103

(b)(3) / 26 USC 6103 Accordingly, Respondent is **DISBARRED** from practice before the IRS.

So ORDERED,



Alexander Fernández

United States Administrative Law Judge

**Notice of Appeal Rights:** Within thirty (30) days of this *Initial Decision*, either party may file an appeal with the Secretary of the Treasury, or delegate deciding appeals. 31 C.F.R. § 10.77(a). In the absence of an appeal to the Secretary of the Treasury or delegate, this *Initial Decision* will, without further proceedings, become the decision of the agency 30 days after the issuance date. 31 C.F.R. § 10.76(d).

## CERTIFICATE OF SERVICE

I hereby certify that copies of this **INITIAL DECISION AND DEFAULT JUDGMENT** issued by Alexander Fernández, Administrative Law Judge, in HUDOHA 16-AF-0081-OD-001, were sent to the following parties on this 6<sup>th</sup> day of October, 2016, in the manner indicated:

  
Cynthia Matos, Docket Clerk

### VIA REGULAR MAIL:

(b)(3) / 26 USC 6103,  
(b)(6)

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