

UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

KAREN L. HAWKINS, DIRECTOR,)	
OFFICE OF PROFESSIONAL)	
RESPONSIBILITY,)	Complaint No. IRS 2013-00009
INTERNAL REVENUE SERVICE,)	
)	AMENDED DECISION
Complainant)	
)	
v.)	
)	
(b)(3)/26 USC 6103)	
)	
Respondent)	
)	

Complainant's Motion for Decision by Default Granted

On December 4, 2013, Complainant filed a Motion for Decision by Default ("Motion"), seeking a ruling that the allegations in the Complaint (No. IRS 2013-00009) be deemed admitted in accordance with 31 C.F.R. § 10.64(d) because Respondent failed to file an Answer within 30 days of service of the Complaint. A previous motion for default was denied because the Complainant failed to demonstrate proper service of the Complaint. That failure has now been cured, so Complainant's renewed motion for default is granted by this Order.

On July 23, 2013, Complainant initiated this proceeding by filing a Complaint against Respondent, (b)(3)/26 USC 6103. The Complaint alleges that Respondent, an enrolled agent, engaged in three counts of disreputable conduct within the meaning of 31 C.F.R. § 10.51 based upon (b)(3)/26 USC 6103. The Complaint requests that Respondent be suspended from practice before the IRS for a period of twelve (12) months.

Pursuant to 31 C.F.R. § 10.62(c), the Complaint notified Respondent that he was required to file an answer within 30 calendar days from the date of service. The Complaint also advised that failure to file an answer could result in a decision by default under 31 C.F.R. § 10.64.

Complainant mailed a copy of the Complaint, along with an attached cover letter, on July 23, 2013, to Respondent via Certified Mail through the U.S. Postal Service to his last known address of record with the IRS: [Redacted], (b)(3)/26 USC 6103 [Redacted]. According to the Return Receipt, the Complaint and cover letter addressed to Respondent were signed for by a person with the name [Redacted] on July 24, 2013.

Respondent did not file an answer within the required period of 30 days. On September 9, 2013, Complainant filed a Motion for Decision by Default. In an Order dated October 23, 2013, I denied that motion because Respondent did not sign the Certified Mail Return Receipt, there was no evidence indicating that [Redacted] had authority to accept mail for the Respondent, and there was no evidence of alternative service. Therefore, Complainant failed to demonstrate proper service of the Complaint in accordance with the provisions of 31 C.F.R. § 10.63(a).

On October 29, 2013, Complainant mailed another copy of the Complaint to Respondent's last known address by first class mail. This mailing satisfied the alternative service provided by 31 C.F.R. § 10.63(a)(2)(ii) when a complaint sent by certified mail is not accepted or claimed by the respondent. The Complaint has not been returned as undelivered. As of today's date, some 50 days after service by mail, Respondent has not filed an answer, which was due 30 days after service. Therefore, now that the Complaint has been properly served and Respondent has failed to file an Answer, Complainant's Motion for a Decision by Default will be granted.

Findings of Fact

Pursuant to 31 C.F.R. § 10.64(d), due to Respondent's default, each of the allegations of the Complaint are deemed admitted. Thus, as more fully set forth in the Complaint, the following facts are established.

Respondent has engaged in practice before the Internal Revenue Service as an enrolled agent, as defined by 31 C.F.R. §10.2(a)(4). Before issuance of the Complaint, Respondent was advised in writing of the law and facts warranting the issuance of the Complaint, and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments to the Office of Professional Responsibility regarding his conduct.

Count 1: [Redacted] (b)(3)/26 USC 6103

Count 2: (b)(3)/26 USC 6103

Count 3: (b)(3)/26 USC 6103

The conduct described in Counts 1, 2, and 3, was (b)(3)/26 USC 6103

, for which Respondent may be censured, suspended, or disbarred from practice before the IRS. I find that the sanction sought by Complainant, suspending Respondent from practice before the IRS for twelve months, is appropriate. (b)(3)/26 USC 6103

adversely reflects upon a practitioner's fitness to practice, and would undermine the public's faith in the integrity of the Internal Revenue Service. The suspension here is appropriate in consideration of the relevant circumstances, particularly the seriousness of Respondent's misconduct. Therefore the sanction sought by Complainant will be granted.

Order

Respondent is suspended from practice before the Internal Revenue Service for a period of twelve months, with reinstatement after that period conditioned upon the Respondent (b)(3)/26 USC 6103, and in the period before reinstatement, having not otherwise violated any other provisions in 32 C.F.R. Part 10.

/s/

Andrew S. Pearlstein
Administrative Law Judge

Dated: December 31, 2013

Pursuant to 31 C.F.R. § 10.77, this Decision may be appealed to the Secretary of the Treasury within thirty (30) days from the date of service of this Decision on the parties. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington, D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Amended Decision titled **Complainant's Motion for Decision by Default Granted** (Complaint No. IRS 2013-00009) upon the following parties to this proceeding as indicated below:

By Fax and Certified Mail:

Alison K. Sablick, Esq.
Internal Revenue Service
Office of Chief Counsel
[Redacted]
New York, New York [Redacted]
Fax: [Redacted]
(Counsel for Complainant)

By Certified Mail and First Class Mail:

(b)(3)/26 USC 6103
[Redacted]
(b)(3)/26 USC 6103 [Redacted]
(Respondent)

Dated: December 31, 2013,
Salt Lake City, Utah.

_____/s/
Brooke Gordon
Legal Assistant