

State Exhibit C: Letter dated 7/22/95 (Respondent to Schroeder)
State Exhibit D: Decision by Default and Order, United States Department of the Treasury, Complaint No. 94-47, 3/29/95

Respondent Exhibit 1: 193A IAC chapter 15
Respondent Exhibit 2: Letter dated 3/14/96 (Cooper to Mountsier)
Respondent Exhibit 3: Internal Revenue Cumulative Bulletin, 1989-2, July-December

Respondent Exhibit 4: Respondent IRS record - 1990
Respondent Exhibit 5: Respondent IRS record - 1991
Respondent Exhibit 6: Respondent IRS record - 1992
Respondent Exhibit 7: Respondent IRS record - 1993
Respondent Exhibit 8: Respondent IRS record - 1985
Respondent Exhibit 9: Respondent IRS record - 1986
Respondent Exhibit 10: Respondent IRS record - 1988
Respondent Exhibit 11: Respondent IRS record - 1989
Respondent Exhibit 12: Respondent medical record entries, September 17, 1992 to November 8, 1994.

FINDINGS OF FACT

1. On February 2, 1973, the Respondent was issued Iowa CPA certificate number 1338 by the Board, CPA Certificate No. 1338 is currently in good standing. (Board file)

2. On March 29, 1995, an Administrative Law Judge for the United States Department of the Treasury issued a Decision by Default and Order against the Respondent.

a) Notice of Institution of Proceeding and a Complaint, dated November 8, 1994, were served on the Respondent. The Complaint charged the Respondent with misconduct sufficient to warrant his suspension or disbarment before the Internal Revenue Service. The Respondent was notified that he must file an answer to the Complaint

within thirty (30) calendar days or a decision by default could be rendered against him.

b) The Respondent failed to file an answer and on March 6, 1995, the Complainant moved for Decision by Default, which was granted.

c) The Decision by Default includes Findings of Fact and Conclusions of Law. The Administrative Law Judge found that the Respondent willfully failed to timely file Federal tax returns for the years 1985, 1986, and 1988 through 1993, which failures constitute disreputable conduct under 31 C.F.R. section 10.51(d). Additionally, it was found that the Respondent willfully failed to timely make estimated payments for the years 1984 through 1994 and willfully failed to timely pay outstanding income tax liabilities for the years 1990, 1991, and 1993. Such conduct represents repeated, serious failures to perform known legal obligations.

d) In the Conclusions of Law, the Administrative Law Judge concluded that willful failure to timely file Federal tax returns, in violation of revenue laws, is dishonorable, unprofessional, and adversely reflects on a practitioner's fitness to practice before the Internal Revenue Service. She further concluded that the Respondent's conduct constituted disreputable conduct under 31 C.F.R. 10.51.

e) The Respondent was disbarred from practice before the Internal Revenue Service.

(Testimony of Roger Murphy; State Exhibit D)

3. The Board does not have an established program to routinely determine whether licensed accounting practitioners or certified public accountants are timely filing their personal income tax returns. The Department of the Treasury, Internal Revenue Service does publish a cumulative bulletin which lists all disbarred individuals, including AP's and CPA's. The Board or its staff does not routinely review this publication. However the state association has an agreement with the Federal government called the "Florida project." This project, which was started approximately three years ago, provides information about disbarred practitioners to the Board. (Testimony of William Schroeder; Respondent Exhibit 3)

4. When the Board became aware of the disbarment action by the United States Department of the Treasury, they wrote to the Respondent and requested an explanation of the facts and circum-

stances surrounding the action. The Respondent replied on July 22, 1995. He stated, in relevant part:

(B) Notification and findings by default were received untimely during illness (sic) and seasonable heavy workload. Was unable to adequately respond at that time.

The Respondent additionally stated that he was currently preparing facts that he felt would overturn the Director's action. (Testimony of Roger Murphy; State Exhibits B, C)

5. Although he received notice, the Respondent did not appear in the proceedings before the Department of the Treasury, nor did he file an answer. The Respondent testified that the notice arrived the day before he entered the hospital for an operation. The Respondent submitted the entries from his medical record, which showed that he had surgery for kidney stones on November 2, 1994, and he was in his physician's office for a follow-up visit on November 8, 1994. At this visit, his physician concluded that he was kidney stone free. The Respondent would have received the Complaint and notice from the Department of Treasury after the date of this office visit. (Testimony of Respondent; Respondent Exhibit 12; State Exhibit D)

6. The Respondent's oldest son was diagnosed with a serious illness in June 1990 and passed away in December 1995. The son, who was an adult, lived away from home but relied on his parents for emotional, financial, and transportation assistance. The Respondent testified that the considerable demands of his son's illness affected his practice. He described his own tax returns as "complex" and testified that he could not always get them done due to time pressures. He would take care of his son and his clients first. (Testimony of Respondent)

7. The Respondent testified that he suffered a whiplash injury in an automobile accident in 1993 which resulted in intermittent pain. The pain from the whiplash injury at times affects his concentration and his ability to sit at a desk for extended periods. The Respondent did not submit any medical records documenting this injury. (Testimony of Respondent)

8. The Respondent's own practice is 85-90% tax work. The Respondent submitted some of the documentation that he had received from the IRS concerning his personal taxes. These documents establish that the Respondent was assessed penalties for late filing of his own income tax returns for the years 1988, 1990, 1991, 1992, and 1993. The Respondent acknowledged that he received IRS notices. When asked if he considered referring his personal tax returns to another CPA, the Respondent replied that the only person in his area that he trusted to complete his taxes was unable

to complete them. This explanation was not credible. (Testimony of Respondent; Respondent Exhibits 4-11)

9. The Respondent testified that the IRS misposted some of his estimated tax payments to the wrong year, which resulted in assessments of significant penalties for no payment of estimated taxes. The Respondent testified that estimated tax payments which should have been posted to 1984, were instead posted to the year in which they were actually paid, 1985. According to the Respondent, this was eventually resolved and that penalty was substantially reduced. (Testimony of Respondent; Respondent Exhibit 8)

CONCLUSIONS OF LAW

1. Iowa Code section 542C.21(9) and (10) (1995) provide:

After notice and hearing as provided in section 542C.23, the board may revoke or may suspend for a period not to exceed two years, a certificate issued under section 542C.5 or a license issued under section 542C.7 or 542C.8, or may revoke, suspend or refuse to renew a permit issued under section 542C.20, or may censure the holder of a permit, for any one or any combination of the following causes:

9. Suspension or revocation of the right to practice before any state or federal agency.

10. Conduct discreditable to the public accounting profession.

2. 193A IAC 11.6(1) provides:

11.6(1) Acts discreditable. A CPA or AP shall not commit any act that reflects adversely on their fitness to engage in the practice of public accountancy.

3. 193A IAC 12.4(1)"b" provides in relevant part:

b..the phrase "conduct discreditable to the public accounting profession" shall be construed in light of the following:

The reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on a CPA or AP engaged in such practice certain obligations both to their clients and the public. These obligations include the obligation...to uphold the

standards of the public accountancy profession, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

4. The Respondent concedes his disbarment from practice before the Internal Revenue Service. This disbarment directly violates Iowa Code section 542C.21(9), as charged in Count I of the Complaint.

In Count II, the Respondent is charged with conduct discreditable to the public accounting profession, as defined by 193A IAC 11.6(1) and 12.4, in that he was disbarred from practice before the Internal Revenue Service for willfully failing to timely file Federal tax returns.

The Respondent argues, however, that there is no proof in this record that his late filings of his personal income tax returns was "willful." He contends that mere failure to timely file tax returns cannot be considered as "conduct discreditable to the accounting profession," as charged in Count II of the Complaint.

The Respondent contends that the Board may not rely upon the findings of the Department of the Treasury since they are default findings. At the outset, the Board notes that the Respondent had full opportunity to respond to the charges before the Department of the Treasury, but chose not to do so. Although the Respondent did have some health problems and family problems at the time, these problems cannot excuse his complete failure to respond to extremely serious charges before the Department of the Treasury or to request an extension of time in which to respond. Moreover, the Respondent did not seek to remove the default after it was entered. He cannot now argue that he was deprived of due process. The Board may consider both the action and the underlying findings of the Department of the Treasury.

Disbarment from practice before the Internal Revenue Service, regardless of the reasons for the action, constitutes "conduct discreditable to the public accounting profession." The disbarment significantly limits the professional activities of the certified public accountant. It is reasonable to assume that consumers would expect a certified public accountant to be authorized to represent them before the Internal Revenue Service. The Respondent is unable to do so. In addition, for numerous years the Respondent has reaped the benefits of his professional designation as a certified public accountant, while failing to fulfill his known legal responsibilities as a citizen to timely file his own returns. He has asked clients to trust him to timely prepare and file their tax returns while he has failed to fulfill his own legal responsibility to timely file.

Moreover, the Respondent is a certified public accountant with over twenty years of experience. He testified that his practice is 85-90% tax work. Given this background, the Board reasonably concludes that the Respondent is a knowledgeable person who knows when tax returns are due and understands his legal responsibility to file tax returns. If he was unable to complete the work in a timely manner, he was obligated to retain the services of another practitioner who could complete the work for him. Several of the untimely returns predate both the Respondent's health problems and his son's illness. Under these circumstances, there are more than sufficient facts in this record to conclude that the Respondent's failure to timely file his returns was willful.

The preponderance of the evidence established that the Respondent was disbarred from practice before the Internal Revenue Service for willfully failing to timely file Federal tax returns in violation of revenue laws. This disbarment constitutes a violation of Iowa Code section 542C.21(9) and (10), conduct discreditable to the accounting profession.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the permit to practice as a certified public accountant, issued to James R. Getting, is hereby REVOKED, for a minimum period of one year. Pursuant to 193A IAC 12.12(3), the Respondent has an affirmative duty to provide written notification of this revocation to his clients within 15 days and to provide proof of such notification to the Board.

IT IS FURTHER ORDERED, that the Respondent shall provide proof (e.g. copy of business letterhead, business card, etc.) that he is not holding himself out to the public as a certified public accountant while his permit is revoked. Although the Board is not revoking the Respondent's certificate, in order to ensure that the Respondent does not use his certificate to hold himself out as a certified public accountant, the Respondent shall submit his certificate to the Board office for safekeeping during the period of his permit revocation. The Respondent will remain obligated to timely renew his certificate and pay his renewal fees.

IT IS FURTHER ORDERED, that an application for reinstatement of the permit may not be filed until:

- 1) One year has elapsed from the effective date of this order, and
- 2) The Respondent's disbarment from practice before the Internal Revenue Service has been lifted.

In addition, the Respondent must comply with the procedure for reinstatement outlined at 193A IAC 12.16. If an application for reinstatement is granted, the Respondent will be required to submit proof of the required number of continuing education hours prior to reinstatement.

Dated this *29th* day of *March*, 1996.

David A. Vaudt, CPA

Chairperson

Iowa Board of Accountancy Examiners

cc: Ronald L. Mountsier
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(CERTIFIED)

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Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.