

§ 10.77

under this § 10.76, the practitioner may ask the Director to issue a complaint under § 10.54. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

[59 FR 31528, June 20, 1994]

Subpart D—Rules Applicable to Disqualification of Appraisers

SOURCE: 50 FR 42016, Oct. 17, 1985, unless otherwise noted.

§ 10.77 Authority to disqualify; effect of disqualification.

(a) *Authority to disqualify.* Pursuant to section 156 of the Deficit Reduction Act of 1984, 98 Stat. 695, amending 31 U.S.C. 330, the Secretary of the Treasury, after due notice and opportunity for hearing may disqualify any appraiser with respect to whom a penalty has been assessed after July 18, 1984, under section 6701(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6701(a)).

(b) *Effect of disqualification.* If any appraiser is disqualified pursuant to 31 U.S.C. 330 and this subpart:

(1) Appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service; and

(2) Such appraiser shall be barred from presenting evidence or testimony in any such administrative proceeding. Paragraph (b)(1) of this section shall apply to appraisals made by such appraiser after the effective date of disqualification, but shall not apply to appraisals made by the appraiser on or before such date. Notwithstanding the foregoing sentence, an appraisal otherwise barred from admission into evidence pursuant to paragraph (b)(1) of this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal. Paragraph (b)(2) of this section shall apply to the presentation of testimony or evidence in any administrative proceeding after the date of such disqualification, re-

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gardless of whether such testimony or evidence would pertain to an appraisal made prior to such date.

§ 10.78 Institution of proceeding.

(a) *In general.* Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under 26 U.S.C. 6701(a), he/she may reprimand such person or institute a proceeding for disqualification of such appraiser through the filing of a complaint. Irrespective of whether a proceeding for disqualification has been instituted against an appraiser, the Director of Practice may confer with an appraiser against whom such a penalty has been assessed concerning such penalty.

(b) *Voluntary disqualification.* In order to avoid the initiation or conclusion of a disqualification proceeding, an appraiser may offer his/her consent to disqualification. The Director of Practice, in his/her discretion, may disqualify an appraiser in accordance with the consent offered.

§ 10.79 Contents of complaint.

(a) *Charges.* A proceeding for disqualification of an appraiser shall be instituted through the filing of a complaint, which shall give a plain and concise description of the allegations that constitute the basis for the proceeding. A complaint shall be deemed sufficient if it refers to the penalty previously imposed on the respondent under section 6701(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6701(a)), and advises him/her of the institution of the proceeding.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event there is failure to file an answer.

§ 10.80 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-

class mail as hereinafter provided, by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent, or in any other manner that has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made by mailing the complaint to the respondent by first-class mail, addressed to the respondent at the last address known to the Director of Practice. If service is made upon the respondent in person or by leaving the complaint at the office or place of business of the respondent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a disqualification proceeding under this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Treasury Department, Internal Revenue Service, Washington, DC 20224. All papers shall be filed in duplicate.

§ 10.81 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The an-

swer shall be filed in duplicate with the Director of Practice.

(b) *Contents.* The answer shall contain a statement of facts that constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint that he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact he/she possesses such information.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

§ 10.82 Supplemental charges.

If it appears that the respondent in his/her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he/she in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his/her disqualification, the Director of Practice may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

§ 10.83 Reply to answer.

No reply to the respondent's answer shall be required, and any new matter in the answer shall be deemed to be denied, but the Director of Practice may file a reply in his/her discretion or at