

1 THE DEPARTMENT OF THE TREASURY  
2 OFFICE OF PROFESSIONAL RESPONSIBILITY  
3 INTERNAL REVENUE SERVICE  
4 WASHINGTON, D.C.

5 DIRECTOR,  
6 OFFICE OF PROFESSIONAL RESPONSIBILITY,

7 Complainant,

8 v.

9 JOSEPH R. BANISTER,

10 Respondent.

COMPLAINT NO. 2003-2

11  
12 COMES NOW the Complainant, Brien T. Downing, who in his official capacity as  
13 Director of the Office of Professional Responsibility (formerly the Office of the Director of  
14 Practice), Internal Revenue Service, files this complaint pursuant to 31 C.F.R. §§ 10.60  
15 and 10.91, issued under authority of 31 U.S.C. §330, and makes the following allegations  
16 of fact and charges of misconduct against the above-named Respondent. All citations to  
17 31 C.F.R. §§10.0 et seq. are also found in corresponding sections of Treasury Department  
18 Circular No. 230.

19 I.

20 (A) At all times material hereto, Respondent was a Certified Public Accountant  
21 (CPA). See Complainant's Exhibits 1-9, 12 and 14. Respondent has engaged in practice  
22 before the Internal Revenue Service. See Complainant's Exhibits 5, 6, 7, 12 and 14.  
23 Respondent's last address of record with the Internal Revenue Service is 2282 Sunny  
24 Vista Drive, San Jose, California 95128.

25 (B) As a Certified Public Accountant (CPA) who has engaged in federal tax practice  
26 before the Internal Revenue Service, Respondent is bound by 31 C.F.R. §§10.0 et seq.  
27 and the rules and regulations contained therein.  
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II.

Respondent is a former Internal Revenue Service Criminal Investigation Special Agent. He was a Special Agent for approximately five (5) years. See Complainant's Exhibits 4, 5, 10, and 14.

III.

Respondent is subject to disbarment or suspension from practice before the Internal Revenue Service by virtue of 31 C.F.R. §10.50 for his violation of the rules and regulations in 31 C.F.R. Part 10; specifically, Respondent engaged in disreputable conduct in violation of 31 C.F.R. §§ 10.34, 10.51, 10.51(d), 10.51(j), 10.22(b), and 10.22(c) as set forth below.

(A) Respondent engaged in disreputable conduct in violation of 31 C.F.R. §§ 10.51, 10.51(d), 10.51(j), 10.22(b), and 10.22(c) in that:

(1) Respondent advised taxpayer Frank W. Coleman that he was not liable for income taxes for the years 1989 through 1998 because the Sixteenth Amendment to the Constitution was "not ratified." See Complainant's Exhibits 13 and 14.

(2) Respondent advised taxpayer Frank W. Coleman that he was not liable for income taxes for the years 1989 through 1998 because Internal Revenue Code (I.R.C.) § 861 and the regulations thereunder defined "source" of income in such a way as to exclude Mr. Coleman's income from taxation. See Complainant's Exhibits 11, 12, 13, and 14.

(3) Respondent advised taxpayer Walter A. Thompson that he was not liable for income taxes for 1996 and 1998 because his income for the stated tax years was not taxable income per I.R.C. §§ 861-865 because I.R.C. § 861 and the regulations thereunder defined "source" of income in such a way as to exclude Mr. Thompson's income from taxation. See Complainant's Exhibits 8 and 9.

(B) Respondent engaged in disreputable conduct in violation of 31 C.F.R. § 10.34 in that:

1 On February 29, 2000, and on January 31, 2000, Respondent signed as the  
2 preparer for taxpayer Walter A. Thompson's Amended U.S. Tax Returns  
3 (Forms 1040X) for calendar years 1996 and 1998, respectively. The  
4 aforementioned amended returns stated that Mr. Thompson's income for the  
5 stated tax years was not taxable income per I.R.C. §§ 861-865. Said returns  
6 were filed with the Internal Revenue Service. See Complainant's Exhibits  
7 8 and 9.

#### 8 IV.

9 (A) By his conduct as specified in paragraphs III(A)(1), III(A)(2), III(A)(3) and III(B)  
10 above, Respondent failed to exercise due diligence in violation of 31 C.F.R. § 10.22 (b) and  
11 (c) and engaged in disreputable conduct in violation of 31 C.F.R. § 10.51. Specifically,  
12 Respondent gave advice to taxpayer Frank Coleman and to taxpayer Walter A. Thompson  
13 that had no basis in law or fact; and while representing taxpayer Coleman and taxpayer  
14 Thompson before the Internal Revenue Service, Respondent took a position that had no  
15 substantive basis in law or fact.

16 (B) By his conduct as specified in paragraphs III(A)(1), III(A)(2) and III(A)(3) above,  
17 Respondent knowingly counseled taxpayer Frank Coleman and taxpayer Walter A.  
18 Thompson of an illegal plan to evade Federal taxes or the payment thereof in violation of  
19 31 C.F.R. § 10.51(d).

20 (C) By his conduct as specified in paragraphs III(A)(1) (2) and (3) above, Respondent  
21 violated 31 C.F.R. § 10.51(j) by providing false opinions, either knowingly, recklessly, or  
22 through gross incompetence, to taxpayer Frank Coleman and to taxpayer Walter  
23 A. Thompson.

24 (D) By his conduct as specified in paragraphs III(A)(1), III(A)(2), III(A)(3) and III(B)  
25 above, Respondent violated 31 C.F.R. §§ 10.22(b) and (c) by failing to exercise due  
26 diligence in determining the correctness of oral and/or written representations he made to  
27 taxpayer Frank Coleman, to taxpayer Walter A. Thompson, and to the Internal Revenue  
28 Service.


1 (E) By his conduct as specified in paragraph III(B) above, Respondent violated  
2 31 C.F.R. § 10.34 by signing as the preparer of federal income tax returns that did not have  
3 a realistic possibility of being sustained on their merits and were clearly frivolous.

4 Respondent's actions in paragraphs III(A)(1), III(A)(2), III(A)(3) and III(B), evidence  
5 disreputable conduct that warrants his disbarment from practice before the Internal  
6 Revenue Service. WHEREFORE, Complainant prays that Respondent be disbarred from  
7 practice before the Internal Revenue Service pursuant to the provisions of 31 C.F.R.  
8 §§10.50 and 10.70, issued under the authority of 31 U.S.C. § 330.

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10 BRIEN T. DOWNING  
11 Office of Professional Responsibility  
Internal Revenue Service

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13 By:   
14 JAY V. KESSLER  
Senior Counsel  
(General Legal Services)

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16 Dated: MAY 15 2003

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