



Appeal of Doyle H. Flock

Either of the penalties imposed by Revenue and Taxation Code sections 18681 and 18683 (for failure to file a timely return and failure to file after notice and demand, respectively) may be excused if the taxpayer establishes that the failure to file was due to reasonable cause and not due to willful neglect. In this context, "reasonable cause" means the exercise of ordinary business care and prudence, or such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (See Appeal of Estate of Anna Armstrong, Deceased, Cal. St., Bd. of Equal., Oct. 27, 1964; Treas. Regs. § 301.6651-1 (c)(1).) It has been held that a failure to file in reliance on the advice of a competent professional tax adviser constitutes "reasonable cause," provided that the adviser was fully informed of the relevant facts concerning the taxpayer's business affairs. (Burton Swartz Land Corp. v. Commissioner, 198 F.2d 558 (5th Cir. 1952); Appeal of Estate of Anna Armstrong, Deceased, supra.) **Appellant is apparently seeking sanctuary under this rule, but the facts fail him. The record reveals that he earned wages of \$22,395 in 1977, an amount which clearly necessitated the filing of a return. (Rev. & Tax. Code, § 18401.) If he informed his advisers of these wages and they nevertheless advised him that a return wasn't necessary, they obviously were not competent in matters of taxation. If he did not inform them of his wages, they clearly weren't fully informed about his affairs. In either case, he was not entitled to rely on their advice not to file. Under these circumstances, we hold that the failure to file penalties, imposed for two separate breaches of appellant's duty to file, were proper.**

With respect to the negligence penalty asserted under Revenue and Taxation Code section 18684, appellant has the burden of proving that his failure to file a timely return was due neither to negligence nor to an intentional disregard of rules and regulations. (Estate of Helen A. Meredith, ¶ 81,072 P-H Memo. T.C. (1981); see also Marcello v. Commissioner, 380 F.2d 499 (5th Cir. 1967).) **Appellant has made no real effort to meet his burden, perhaps because the admitted facts clearly show that his actions were negligent at the very least. Certainly, it would not be difficult to find that he intentionally disregarded respondent's rules and regulations, if such a finding were necessary to sustain this penalty.**

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section **18596** of the Revenue and Taxation Code, that the petition for rehearing of the appeal of Doyle H. Flock from the action of the Franchise Tax Board on his protest against a proposed assessment of additional personal income tax and penalties in the total amount of **\$2,182.17** for the year 1977, be and the same is hereby denied, and that our order of March 2, 1981, be and the same is hereby modified to reflect respondent's concession. As so modified, our order of March 2, **1981**, is affirmed.

Done at Sacramento, California, this 10th day of **December, 1981**, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins and Mr. Cory present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly - , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member