

Appeal of Robert T. and M.R. Curry

Appellants' representative, a certified public accountant, sent respondent a request for an extension of time in which to file appellants' personal income tax return for 1980. The request indicated that appellants' expected income tax liability for 1980 was \$67,280. Appellants had previously made estimated payments totaling \$12,280, and a \$55,000 payment accompanied the request for an extension. Respondent granted an extension for filing appellants' 1980 return to October 15, 1981.

Appellants' return was filed on July 15, 1981. That return reported appellants' total tax liability to have been \$98,142; leaving a \$30,862 balance due. Since appellants had failed to pay 31.4 percent of their 1980 tax liability by the April 15, 1981, due date, respondent assessed the penalty specified by section 18684.2. Appellants paid the penalty and filed a claim for refund of the amount of the penalty. Respondent disallowed the claim, and this appeal followed in due course.

While respondent is **statutorily** authorized to grant reasonable extensions of time for the filing of a return (Rev. & Tax. Code, § 18433, subd. (a)), the granting of such an extension does not operate to extend the time for the payment of any tax due. (Cal. Admin. Code, tit. 18, reg. 18433.1, subd. (b)(6).) The Revenue and Taxation Code requires the penalty here at issue to be imposed for failure to pay the amount shown as tax on such a return unless 'it is shown that the failure to pay the tax on or before the due date is due to reasonable cause and **is** not due to willful neglect. (Rev. & Tax. Code, § 18684.2.) Appellants bear the burden of proving that both of those conditions existed. (Bornsby v. Commissioner, 26 B.T.A. 591 (1932); Appeal of Roger W. Sleight, Cal. St. Bd. of Equal., Oct. 26, 1983.)

The phrase "reasonable cause," as it is used in similar federal legislation, has been construed to mean such cause as would prompt **an** ordinarily intelligent and prudent businessman to have so acted under similar circumstances, in the exercise of ordinary business care and prudence. (Sanders v. Commissioner, **225 F.2d** 629 (10th Cir. **1955**), cert. den., 350 U.S. 967 [**100 L.Ed. 839**] (1956); Appeal of Electrochimica Corp., Cal. St. Bd. of Equal., Aug. 3, 1970.)

Appellants explain that the C.P.A. firm which prepared their request for a filing extension did not include the minimum tax due on tax preference items when

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calculating the total amount of their expected income tax liability for 1980. For that reason, appellants paid only \$67,280 by the due date rather than the \$98,142 actually due. Appellants' position is that **their reliance** on the **C.P.A.'s** expertise demonstrates that their failure to pay the full amount by the due date was due to reasonable cause and not due to willful neglect. As authority for this position, appellants cite Hatfried, Inc. v. Commissioner, 162 **F.2d** 625 (3d Cir. 1947), and Miller v. United States, 211 **F.Supp.** 758 (D. Wyo. 1962).

Upon analysis we conclude that appellants' authority is distinguishable and that their position is in error: Hatfried, Inc. dealt with a taxpayer's reliance on advice from an accountant on a question of tax law, whether a particular liability existed, and is, therefore, distinguishable from the instant appeal which simply involves the application of an unambiguous statute. Miller, like this appeal, did deal with the failure to meet a deadline due to reliance on the erroneous advice of an attorney. However, Miller is no longer authoritative since it has been **impliedly** overruled by the United States Supreme Court's recent decision in United States v. Boyle, 469 U.S. -- [83 **L.Ed.2d** 622] (1985). In Boyle, the Court held specifically that: "The failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not 'reasonable cause' for a late filing under (the statute)." (United States v. Boyle, supra, 83 **L.Ed.2d** at 632.)

The Court in Boyle also equated filing deadlines with payment deadlines. The Court first acknowledged that it was reasonable for a taxpayer to rely on an accountant's or attorney's advice on a matter of tax law, such as whether a liability existed. (United States v. Boyle, 83 **L.Ed.2d** at 631.) However, the Court pointed out that it did not take a tax expert to know that "tax returns have fixed filing dates and that taxes must be paid when they are due." (Id.)

We believe that Boyle controls the instant appeal and compels a conclusion in respondent's favor.

