

No Reasonable Cause to Abate Late Filing Penalty

Cross References

- *Spottiswood*, U.S. District Court for Northern California, April 24, 2018

The taxpayer prepared a joint federal income tax return for himself and his wife for the 2012 tax year using Turbo Tax software. On that return, he made a mistake when inputting a dependent's Social Security Number. He transmitted the return to Turbo Tax on or about April 12, 2013 to be electronically submitted to the IRS for electronic filing. On April 12, 2013, the IRS rejected the return because a dependent's Social Security Number and last name did not match IRS records.

Turbo Tax sent an email to the taxpayer notifying him the IRS had rejected the 2012 joint federal income tax return.

Turbo Tax software has a "check e-file status" screen. The taxpayer did not check this screen (or notice the email) until many months later. The taxpayer owed \$395,619 in federal income tax on his 2012 return. The taxpayer claimed he failed to notice that \$395,619 had not been withdrawn from his checking account because he had an unusually high account balance. On January 7, 2015, he filed a [corrected paper copy of his] 2012 joint federal tax return and paid the \$395,619 income tax liability in full. On February 16, 2015, the IRS assessed a late filing penalty of \$89,014, a late payment penalty of \$41,539, and \$26,216 in interest.

The taxpayer paid the interest on the late payment, but asked to have the two penalties abated. On April 27, 2015, the taxpayer submitted a letter to the IRS which stated:

"When I was investigating the issue, I discovered the following by logging back into my Turbo Tax 2012 software. I discovered that my return, which I thought had been successfully e-filed, had actually been rejected. If I had realized that there was a chance of rejection I would have mailed in my return, but e-filing seemed like an easier option and it was free with the software. Intuit may have informed me in the fine print that I needed to log back in to make sure that my return had not been rejected, but if so I did not read this fine print. Had I logged back in a few days later I would have realized that the return had been rejected. But I did not log back in until 18 months later."

The IRS did not grant an abatement for the late filing and late payment penalties. The taxpayer then petitioned the District Court.

IRC section 6651 imposes a late filing and a late payment penalty when a taxpayer fails to timely file and pay taxes owed, unless it is shown that such failures are due to reasonable cause and not due to willful neglect. Reasonable cause does not include carelessness, reckless indifference, nor intentional failure. Taxpayers must show that they exercised

ordinary business care and prudence, but were nevertheless unable to file the return or pay the tax within the prescribed time.

In this case, the taxpayer acknowledged that he was subject to the late payment penalty, but believed the late filing penalty should be abated. He argued that the original return submitted to the IRS should not have been rejected because it qualified as a tax return. The U.S. Supreme Court has ruled that a document is sufficient to be considered a tax return if:

- 1) It is sufficient to calculate the tax liability,
- 2) It purports to be a return,
- 3) It evinces an honest and reasonable attempt to satisfy the requirements of tax law, and
- 4) It is executed by the taxpayer under penalty of perjury.

The taxpayer argued that while the return included an error in inputting a dependent's Social Security Number, it still met the Supreme Court's definition of a tax return, and as such, should have been accepted for filing. The taxpayer argued that the IRS would have accepted a paper-filed return containing the same error, and that the IRS unlawfully applied a more stringent standard to the electronically-submitted return.

The court stated the taxpayer failed to submit evidence that support the claim that the same mistake contained on a paper-filed return would have been treated differently. Without such evidence, the taxpayer failed to create a triable issue. The IRS rejected the return because it contained an error. The IRS thus could not calculate the tax liability.

The court also stated it is undisputed that the taxpayer did not use the "check e-file status" Turbo Tax screen to confirm the IRS had accepted the return. He did not check the email account he provided to Turbo Tax for the purpose of communicating with him about his tax return. The taxpayer did not submit any evidence showing he could not have done so. Under these circumstances, the court cannot find that the taxpayer created a triable issue that there was reasonable cause for the failure to timely file the tax return. As such, the taxpayer is liable for the late filing penalty.

Author's Comment

While it is true that e-filing is better at catching these types of mistakes, the issue is whether the IRS treats mistakes on e-filed returns differently than paper filed returns. Being more efficient at catching mistakes is not the same as treating mistakes differently. The taxpayer in this case failed to establish what the IRS would have done differently had he filed a paper return and then ignored an IRS letter inquiring about such mistake.