49 T.C. 200 (1967)

Reliance on an attorney to file a tax return, even when the taxpayer knows a return is required, does not automatically constitute ‘reasonable cause’ to excuse penalties for late filing if the taxpayer fails to exercise ordinary business care and prudence in ensuring the return is filed on time.

Summary

The executors of the Duttenhofer estate hired an attorney to handle estate matters, including filing the estate tax return. The attorney failed to file the return on time, and the executors argued that their reliance on the attorney constituted ‘reasonable cause’ for the late filing, thus excusing them from penalties under Section 6651 of the Internal Revenue Code. The Tax Court disagreed, holding that while reliance on an attorney *can* be reasonable cause in certain circumstances (like uncertainty about whether a return is required at all), it is not when the taxpayer knows a return is necessary and fails to diligently oversee the attorney’s timely filing. The court emphasized that executors have a non-delegable duty to ensure tax obligations are met and cannot simply rely blindly on hired professionals.

Facts

Frank Duttenhofer died on February 22, 1963, and Albert Uhlenbrock and William Duttenhofer were appointed co-executors of his estate.
The will requested the executors to employ attorney Thomas Mongan for estate administration, which they did.
Both executors signed an ‘Estate Tax Preliminary Notice’ (Form 704) which explicitly stated that failure to file Form 706 within 15 months of death could result in penalties.
Co-executor Albert Uhlenbrock knew an estate tax return was required but did not know the due date.
Attorney Mongan requested an extension to file the estate tax return approximately three months *after* the filing deadline, which was denied.
The estate tax return was eventually filed roughly five months late.
The executors argued that their reliance on Mongan to handle the estate tax matters constituted ‘reasonable cause’ for the late filing.

Procedural History

The Commissioner of Internal Revenue assessed a deficiency and an addition to tax (penalty) for the estate’s failure to file a timely estate tax return.
The Estate of Frank Duttenhofer petitioned the Tax Court to contest the penalty, arguing that the late filing was due to ‘reasonable cause’.
The Tax Court ruled in favor of the Commissioner, upholding the penalty.

Issue(s)

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1. Whether the executors' reliance on an attorney to prepare and file the estate tax return constitutes 'reasonable cause' for the failure to file timely under Section 6651 of the Internal Revenue Code, thereby excusing them from penalties for late filing.
2. Whether pending litigation related to the estate, which might affect the estate tax liability, constitutes 'reasonable cause' for the failure to file the estate tax return timely.

Holding

1. No, because while reliance on an attorney *can* be reasonable cause in situations where the taxpayer is unsure if a return is required, it is not when the taxpayer knows a return is necessary and fails to exercise ordinary business care and prudence in ensuring timely filing. The executors knew a return was required and failed to take steps to ensure it was filed on time.
2. No, because even if litigation might affect the tax liability, the attorney could have obtained an extension or filed a return based on available information and later amended it if necessary. The pending litigation did not prevent timely filing.

Court's Reasoning

The court defined 'reasonable cause' as the 'exercise of ordinary business care and prudence,' citing *Southeastern Finance Co. v. Commissioner*, 153 F.2d 205 (5th Cir. 1946).
The court distinguished cases where reliance on an attorney *was* considered reasonable cause. In those cases, the taxpayers were often unaware that a tax return was required at all and relied on expert advice that no return was necessary. In contrast, here, the executors knew an estate tax return was required.
The court quoted *Ferrando v. United States*, stating that executors must 'assume at least the minimum responsibility of seeing to it that the attorney acts with diligence' and 'ascertain the time when the return and the tax are due. Ordinary prudence demands that he do so'.
The court found that the executors 'practically abdicated their responsibilities' and 'blindly acquiesced' to the attorney, failing to act as 'ordinarily intelligent and prudent businessmen.'
Regarding the pending litigation argument, the court noted that the attorney could have requested an extension or filed based on available information and amended later. The court stated, 'We cannot agree that the uncertainty of the outcome of litigation, even together with the other factors herein, constituted reasonable cause for Mongan's failure to file.'

Practical Implications

This case clarifies that while taxpayers can rely on professionals for tax advice and preparation, this reliance is not a blanket excuse for failing to meet tax filing deadlines, especially when the taxpayer is aware of the filing obligation.
Executors and other fiduciaries have a personal, non-delegable duty to ensure tax

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returns are filed timely. Simply hiring an attorney and assuming everything will be handled is insufficient to establish ‘reasonable cause’ for late filing penalties.

Taxpayers should proactively inquire about filing deadlines and monitor the progress of return preparation, even when using professional assistance.

This case highlights the distinction between relying on advice about whether a return is *required* versus relying on an advisor to simply *file* a return that is known to be required. The ‘reasonable cause’ defense is weaker in the latter situation.

Subsequent cases have cited *Duttenhofer* to reinforce the principle that taxpayers must demonstrate ordinary business care and prudence, including some level of oversight, even when relying on professionals for tax matters.

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