

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MW 2 INC.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 8646-16 SL
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

This is a collection review case involving the filing of a notice of Federal tax lien in respect of outstanding liabilities for late-filing penalties for the five taxable (calendar) years 2009 through 2013.

On August 22, 2016, respondent filed a Motion For Summary Judgment. On September 14, 2016, petitioner filed a Response to respondent’s motion objecting to its granting.

In his motion, respondent relies heavily on the U.S. Supreme Court case of United States v. Boyle, 469 U.S. 241 (1985), in arguing that “It was the petitioner’s duty to know the relevant filing deadlines and make sure they are met” and that “[p]etitioner’s reliance on his accountant conveying that the returns were timely filed for the taxable periods at issue is insufficient to establish reasonable cause and the late filing penalty under I.R.C. §6651(a)(1) should be sustained.” In his motion, however, respondent makes no mention of a relatively recent Third Circuit case interpreting Boyle, namely, Estate of Thouron v. United States, 752 F.3d 311 (3rd Cir. 2014).¹ There the Court of Appeals stated as follows:

¹ It would appear that venue on appeal would lie with the Third Circuit if the instant case were appealable. We therefore follow the jurisprudence of that circuit, notwithstanding the “small tax case” status of the instant case. See Golsen v. Commissioner, 54 T.C. 742 (1970), affd. 445 F.2d 985 (10th Cir. 1971).

As we read it, Boyle identifies three distinct categories of late-filing * * * cases. In the first category, a taxpayer relies on an agent for the ministerial task of filing * * *. See Boyle, 469 U.S. at 249-50 * * *. In the second, “in reliance on the advice of his [or her] accountant or attorney, the taxpayer files a return after the actual due date but within the time the adviser erroneously told him [or her] was available.” Id. at 251, n.9 * * *. In the third, “an accountant or attorney advises a taxpayer on a matter of tax law[.]” Id. at 251 * * * (emphasis in original).

By its facts, Boyle fits into the first category. * * *

Boyle specifically did not reach the remaining categories. It noted a split of authority as to the second category * * * [and] explicitly declined to resolve this dispute. * * * As to the third category, Boyle stated that “[t]his case is not one in which a taxpayer has relied on the erroneous advice of counsel concerning a question of law.” Id. at 250 * * *. In such cases, “[c]ourts have frequently held that ‘reasonable cause’ is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken.” Id. * * *

* * * * *

Therefore, we read Boyle as reaching only the first category of cases * * *.

* * * * *

Boyle dealt with a “clerical oversight” in failing to file a return by the deadline. It did not rule on when taxpayers rely on the advice of an expert, whether that advice relates to a substantive question of law or identifying the correct deadline.

Accordingly, the Court of Appeals vacated the order granting the motion for summary judgment that had been filed by the United States and remanded the case to the District Court for further proceedings.

This Court may grant summary judgment only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.

See Rule 121(b), Tax Court Rules of Practice and Procedure; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Among other things, questions exist in the instant case whether petitioner had reasonable cause for failing to file timely its income tax returns (Forms 1120S, U.S. Income Tax Return for an S Corporation), see sec. 6699, and thus as to petitioner's entitlement to abatement of applicable penalties. Drawing all factual inferences against respondent as the moving party in the motion for summary judgment, respondent has failed to establish that there are no genuine issues of material fact in dispute nor that he is entitled to judgment as a matter of law. Summary judgment is not appropriate under these circumstances.²

Upon due consideration, it is

ORDERED that respondent's Motion For Summary Judgment, filed August 22, 2016, is denied.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
September 28, 2016

² Respondent's effort to "carve out" the taxable year 2012 from the five taxable years otherwise in issue is not supported by the motion or by the record. Accordingly, the Court does not deal with that taxable year separately from the others.