Clarifying the Reasonable-Reliance Defense to Penalties in an E-Filing Era: An Analysis of *Boyle*, *Haynes*, *Intress*, and More

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This article analyzes the general rules about filing deadlines and justifications for penalty abatement, the major cases establishing the limits of the reasonable-reliance-on-a-tax-professional defense during the paper-filing era, the new cases applying the original rules to modern times, and other aspects of tax where the rules about the extent of reliance are more flexible.

Taxpayers often file their tax returns late, the IRS penalizes them, and they try to place the blame, rightly or wrongly, on their attorneys, accountants, or return preparers. In other words, taxpayers frequently attempt to shirk penalties by raising the reasonable-reliance-on-a-tax-professional defense. This is common knowledge. What is not widely understood, though, is that the Supreme Court ruled many decades ago, in 1985, that such a defense only applies in situations where a return preparer gives erroneous substantive tax or legal advice to a taxpayer, not where the preparer simply flubs the ministerial task of meeting a filing deadline. What is even more obscure is the recent case, in 2019, extending the historic Supreme Court decision to cases where taxpayers rely on preparers to e-file their returns, and something goes awry.

This article analyzes the general rules about filing deadlines and justifications for penalty abatement, the major cases establishing the limits of the reasonable-reliance-on-a-tax-professional defense during the paper-filing era, the new cases applying the original rules to modern times when e-filing of returns by professional preparers using specialized computer software is the norm, and other aspects of tax where the rules about the extent of reliance are more flexible.

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Given the high percentage of taxpayers e-filing returns these days, as well as the inevitably of errors, it is critical for taxpayers to have a clear understanding of the current force of the reasonable-reliance-on-a-tax-professional defense.

Critical Background Information

An individual taxpayer generally must file a Form 1040 (U.S. Individual Income Tax Return) by April 15 each year.[1] If a taxpayer needs additional time to complete the Form 1040, the taxpayer may file a Form 4868 (Application for Automatic Extension of Time to File U.S. Individual Income Tax Return) on or before the original filing deadline (*i.e.*, April 15) to receive an additional six months.[2]

The IRS may generally assert penalties if a taxpayer fails to timely file a Form 1040 and pay the entire corresponding income tax liability by April 15.[3] These are commonly called late-filing penalties, late-payment penalties, or delinquency penalties. The IRS may not impose these penalties, however, if the taxpayer shows that any failure was due to "reasonable cause" and not due to "willful neglect."[4]

Justifications for seeking penalty abatement abound. Some of the most common grounds are the following:

1. A taxpayer may establish reasonable cause by providing facts and circumstances showing that the taxpayer exercised ordinary business care and prudence, but nevertheless was unable to comply with the law.[5]
2. A taxpayer's misunderstanding of fact or law may constitute reasonable cause. The regulations provide that "[c]ircumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer."[6]
3. A taxpayer's ignorance of the law may give rise to reasonable cause, particularly when the tax or compliance issue is complex. The IRS Penalty Handbook acknowledges that in some instances taxpayers may not be aware of specific obligations to file or pay taxes.[7]
4. The Internal Revenue Manual contains a special First Time Abate (FTA) policy, which provides that the IRS will grant penalty abatement, with respect to virtually all delinquency penalties, in situations where a taxpayer has not been required to file a certain return before, and the taxpayer has a history of past tax compliance.[8]
5. A taxpayer's reasonable reliance on the advice of a qualified, informed tax professional often constitutes reasonable cause.[9]

Reasonable Reliance on Tax Professionals – Origins

As indicated above, one of the most common grounds for avoiding penalties is good faith reliance by a taxpayer on a qualified, informed tax professional. This has triggered a considerable amount of litigation over the years, the results of which have largely been harsh to taxpayers. Two major examples are set forth below.

No Reliance on Agent to Timely File

The seminal case regarding the reasonable-reliance-on-a-tax-professional defense was *United States v. Boyle*, decided more than three decades ago, in 1985.[10] The facts in *Boyle* are not particularly complicated. The taxpayer died, her son was appointed executor of her estate, and he hired an attorney to represent the estate. The attorney explained to the executor that they would need to complete and file a timely Form 706 (United States Estate and Generation-Skipping Transfer Tax Return), but he did not mention the filing deadline.[11] The executor did not have skills, training, education, or significant experience with estate tax issues. The executor cooperated fully with the attorney, provided him with all necessary data in a timely manner, and relied on him for "all relevant information and guidance."[12] The executor contacted the attorney several times to check the progress of the probate proceedings and the Form 706, and he was assured that the Form 706 would be filed before the deadline. The attorney, however, failed to file the Form 706 by the deadline. The executor called the attorney approximately three months after the deadline, at which point the attorney told him, for the first time, that the Form 706 was not submitted to the IRS by the deadline because of a "clerical oversight."[13] The executor met with the estate attorney a few days later, and the Form 706 was filed.

The IRS assessed late-filing penalties against the estate. The executor paid the penalties, filed a claim for refund, and after the IRS either ignored or disallowed the claim for refund, he filed a suit for refund in district court. His main argu-

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[1] Section 6072(a).

[2] Section 6081(a); Reg. 1.6081-1T; Reg. 1.6081-4(a) and (b).

[3] Section 6651(a).

[4] Section 6651(a); Reg. 301.6651-1(a)(1).

[5] IRM 20.1.1.3.2(1) (11/21/2017).

[6] Reg. 1.6664-4(b)(1).

[7] IRM 20.1.1.3.2.2.6 (11/25/2011).

[8] IRM 20.1.1.3.3.2.1 (11/25/2017).

[9] Reg. 1.6664-4(c)(1); IRM 20.1.1.3.3.4.3 (11/25/2017).

[10] United States v. Boyle, 469 U.S. 241 (1985).

[11] Section 6075(a) provides that a Form 706 generally must be filed within nine months of the taxpayer's death.

[12] Boyle, *supra* note 10.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. (emphasis in original).

[19] *Id*.

[20] *Id*.

[21] *Id*. The concurring Opinion clarifies that, while *Boyle* addresses late filing in the context of Forms 706, "the principles we announce today will apply with full force to the personal income tax returns required of every individual who receives an annual gross income of $1,000 or more" and "a taxpayer cannot avoid the reach of [Section] 6651(a)(1) merely by delegating this duty to an attorney, accountant, or other individual."

[22] *See, e.g.,* Fleming v. United States, 648 F.2d 1122 (CA-7, 1981) (taxpayer relied on incorrect statement from attorney that the filing-extension had been submitted); Smith v. United States, 702 F.2d 741 (CA-8, 1983) (mistaken information from tax advisor regarding due date of relevant return did not constitute reasonable cause); Carmean v. United States, 4 Ct. Cl. 181 (Fed. Cl. Ct., 1983) (attorney did not file a timely estate tax return, as instructed by the taxpayer); Estate of Hinz, TCM 2000-6 (attorney for estate submitted a filing-extension request but misread the extended deadline).

[23] McMahan, 114 F.3d 366 (CA-2, 1997).

[24] *Id*.

ment was that the IRS should waive the late-filing penalty because his reliance on the estate attorney constituted reasonable cause. The District Court held in favor of the executor, as did the Seventh Circuit Court of Appeals when the government challenged the initial decision. The case ultimately went to the Supreme Court, which had an entirely different take on the matter.

The Supreme Court reviewed various earlier cases addressing the reasonable-reliance-on-a-tax-professional defense and then announced that it would be ignoring them, because, in its opinion, the time had come to dictate "a rule with as bright a line as can be drawn."[14] The Supreme Court stated the following rationale in support of the need for a bright-line rule:

> Deadlines are inherently arbitrary; fixed dates, however, are often essential to accomplish necessary results. The Government has millions of taxpayers to monitor, and our system of self-assessment in the initial calculation of a tax simply cannot work on any basis other than one of strict filing standards. Any less rigid standard would risk encouraging a lax attitude toward filing dates. Prompt payment of taxes is imperative to the Government, which should not have to assume the burden of unnecessary ad hoc determinations.[15]

The Supreme Court then explained that Congress placed the duty to file a timely Form 706 on the executor, not some agent or employee of the executor, like the estate attorney. The Supreme Court openly acknowledged that hiring an estate attorney constitutes ordinary business care and prudence by the executor, but stated that this was not the issue in this case. The fact "[t]hat the attorney, as the executor's agent, was expected to attend to the matter [of filing a timely Form 706] does not relieve the principal of his duty to comply with the statute."[16]

The Supreme Court continued by clarifying that *Boyle* does not involve a situation where the estate attorney gave the executor mistaken "advice" on a substantive question of law. It recognized that many courts have found the existence of reasonable cause where attorneys or accountants give taxpayers erroneous "advice" about whether a particular return needs to be filed.[17] The Supreme Court then explained why reliance on substantive, bad advice merits penalty abatement, while simply relying on an agent to timely file a return does not:

> When an accountant or attorney *advises* a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. Most taxpayers are not competent to discern error in the substantive advice of an accountant or attorney. To require the taxpayer to challenge the attorney, to seek a "second opinion," or to try to monitor counsel on the provisions of the Code himself would nullify the very purpose of seeking the advice of a presumed expert in the first place. "Ordinary business care and prudence" do not demand such actions.[18]

What is not widely understood, though, is that the Supreme Court ruled many decades ago, in 1985, that such a defense only applies in situations where a return preparer gives erroneous substantive tax advice to a taxpayer, not where the preparer simply flubs the ministerial task of meeting a filing deadline.

Next, the Supreme Court stated that a taxpayer does not need to be a tax expert to understand that returns have fixed filing deadlines because "tax returns imply deadlines."[19] It recognized that while reliance by taxpayers on attorneys is common, this reliance cannot be a substitute for a clear tax statute regarding filing deadlines. The Supreme Court then underscored that taxpayers can personally file their tax returns, and sometimes executors prepare tax returns, take inventories, carry out other significant steps in the probate of an estate, and conduct probate proceedings without an attorney.[20] The Supreme Court concluded its analysis as follows:

> It requires no special training or effort to ascertain a deadline and make sure that it is met. 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 [Section] 6651(a)(1).[21]

No Reliance on Agent to File Extension Request

There are many other cases that apply, expand, or clarify the holdings in *Boyle.*[22] A comprehensive analysis of the relevant caselaw would far exceed the scope of this article, but it is worthwhile examining one interesting case, *McMahan*, because it addresses reliance in the context of a filing extension rather than a tax return.[23]

In *McMahan*, the taxpayer traditionally relied on his tax lawyer to prepare and file his federal tax returns. The case focused on the taxpayer's 1982 return. On 04/14/1983, the lawyer filed an application for an automatic four-month extension on behalf of the taxpayer and enclosed a check covering the taxpayer's estimated tax liability for the year. The filing deadline was thus postponed until 08/15/1983. The lawyer assured the taxpayer that he would file a second extension request before the deadline, seeking to postpone the filing date until 10/15/1983. The lawyer later told the taxpayer that he had indeed filed the second request. The taxpayer, therefore, went on vacation. When the taxpayer returned, he discovered that the lawyer had not filed the second request.

The IRS later assessed a late-filing penalty, and the issue eventually went to trial. The Tax Court held in favor of the IRS, upholding the penalty, so the taxpayer appealed the matter to the Second Circuit Court of Appeals. The taxpayer's principal argument to the Second Circuit was that he had reasonable cause

for late filing because he relied on his tax lawyer's assurances that he would (and did) timely file the second extension request. Reliance on a trusted tax advisor, argued the taxpayer, constituted the exercise of ordinary business care and prudence.

The Second Circuit referred to *Boyle* for the general proposition that reliance on an agent to complete a ministerial task, such as filing a tax return by the deadline, does not constitute reasonable cause. The Second Circuit explained that the reasoning in *Boyle* applied in this case.

> [The taxpayer] here had a personal, non-delegable duty to file a timely return by August 15 unless and until he received a second extension. This duty included the timely filing of an application for an extension . . . Taxpayer's reliance on an agent to file the extension form does not fall within the narrow exception, noted by *Boyle*, for reliance on the substantive advice of an expert.[24]

After rejecting certain other arguments raised by the taxpayer, the Second Circuit restated its opinion that a taxpayer may not be excused from penalties because his tax advisor failed to file a return or extension on time.

> [The taxpayer's] attempt to separate filing a timely extension from filing a timely return illustrates the insight of an old adage. By allowing delegation of filing the extension form, the IRS gives taxpayers an inch; but by seeking exemption from liability for the delegated agent's failure to file an extension form, the taxpayer tries to take a mile. [The taxpayer] is not entitled to take that mile. In the absence of the narrow exceptions noted in *Boyle*, a taxpayer has an affirmative non-delegable duty to ensure that the appropriate forms—whether a tax return or an extension request—are actually filed by the statutory deadline.[25]

Reliance on Agents in the Era of E-Filing

Things have changed a lot since the years covered by *Boyle* and *McMahan*. For instance, taxpayers who now hire professionals to prepare their Forms 1040 generally have them filed electronically with the IRS, via the computer software used by the preparer.[26] In other words, most taxpayers are now e-filing their Forms 1040, instead of filing hardcopies. This has created new disputes with the IRS and challenged the applicability of *Boyle* and its progeny to the modern era. The two key cases addressing *Boyle* in the context of e-filing, both decided in 2019, are analyzed below.

Almost Reaching the Key Issue

A frontal challenge to the relevancy of *Boyle* nearly occurred in *Haynes v. United States*, a decision by the Fifth Circuit Court of Appeals.[27] The taxpayers in *Haynes* hired an accountant and provided him with all data necessary to prepare their joint Form 1040 for 2010. On the extended deadline of 10/17/2011, the accountant e-filed the Form 1040 with the IRS, via his return-preparation software, and confirmed this with the taxpayers. Approximately 10 months later, the taxpayers received a notice from the IRS about the missing Form 1040. This triggered an inquiry by the accountant, who ultimately determined that he e-filed the Form 1040 to the IRS, but it had been rejected because one of the taxpayer's Social Security numbers had been inadvertently inserted in the box for Employer Identification Number.

The taxpayers paper-filed a Form 1040 to rectify matters, and the IRS, in turn, asserted delinquency penalties. The taxpayers paid the penalties under protest and filed a penalty-abatement request. When the IRS denied it, the taxpayers initiated a suit for refund in district court. Both the government and the taxpayers later filed motions for summary judgment on the question of whether there was reasonable cause for the late-filing of the Form 1040. The District Court held in favor of the IRS, so the taxpayers sought review by the Fifth Circuit Court of Appeals.

The Fifth Circuit noted that *Boyle* only dealt with a situation where the taxpayer or his agent was to paper-file a tax return by physically placing it in the mail. The taxpayers in *Haynes* wanted to limit *Boyle* to that narrow context on the grounds that e-filing a tax return, with the special computer software needed, is fundamentally different. The government, however, asked the Fifth Circuit to broaden the applicability of *Boyle*, to include both paper filing and e-filing of returns. Unfortunately for the tax community, the Fifth Circuit passed on deciding this important issue because it was premature to do so.

The Fifth Circuit explained that the reasonable-reliance-on-a-tax-professional defense only arose in *Boyle* because the estate attorney was clearly negligent; he simply missed the deadline for filing the Form 706 because of "clerical oversight." By contrast, it is unclear whether the behavior by the accountant in *Haynes* reached the level of negligence. The Fifth Circuit weighed both sides. On one hand, the accountant e-filed the Form 1040 by the extended deadline and never received a rejection notice from the IRS. On the other hand, the accountant misplaced the Social Security number and never took any proactive steps to confirm receipt of the Form 1040 by the IRS. The Fifth Circuit concluded that, whether it was reasonable for the accountant to assume, based solely on silence from the IRS, that it had received and processed the Form 1040, or whether ordinary business care and prudence would have required him to contact the IRS to confirm acceptance is a genuine question of material fact for the jury to decide. Consequently, the Fifth Circuit determined

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[25] *Id*.

[26] *See* Section 6011(e)(3); TD 9518 (03/30/2011); Notice 2011-26.

[27] Haynes v. United States, 760 Fed. Appx. 324, 123 AFTR 2d 2019-570 (CA-5, 1/29/2019).

[28] Intress v. United States, 12 AFTR 2d 2019-5420 (DC Tenn., 8/2/2019).

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*. (internal citations omitted).

[38] *Id*.

[39] Section 6721; Section 6722; Section 6723.

[40] Section 6724(a); Reg. 301.6724-1(a)(1) and (2).

[41] Reg. 301.6724-1(a)(2)(i) and (ii).

that ruling on the motions for summary judgment was inappropriate.

The Longevity of *Boyle* Confronted

Approximately 35 years after it was decided, the current relevancy of *Boyle* was finally addressed in *Intress v. United States*.[28] In this case, the taxpayers hired a professional tax return preparer to complete their joint Form 1040 for 2014. The taxpayers were out of the country when the original deadline arrived, so they instructed their preparer to submit a Form 4868 to postpone the deadline until 10/15/2015. The preparer completed Form 4868, queued it up for e-filing through the software, and mistakenly thought that she hit the "send" button. Nobody discovered this problem until the taxpayers filed their Form 1040 by what they thought was the extended deadline of 10/15/2015.

The IRS received the Form 1040 and asserted delinquency penalties of about $120,000. The taxpayers administratively challenged the penalties without success, paid them, filed a claim for refund, and when the IRS disallowed it, filed a suit for refund in district court. The taxpayers raised a number of arguments, including the reasonable-reliance-on-a-tax-professional defense. The taxpayers in *Intress*, like those in *Haynes*, urged the district court not to extend the holding of *Boyle* to the modern e-filing context. As the District Court summarized it, the taxpayers took the position that, "with time, the 'brightness' of the line drawn in 1985 [by *Boyle*] has faded, and that the Internet era introduces considerations that *Boyle* could not possibly have anticipated."[29] The District Court also described the issue as a "novel legal question," which is often called a "case of first impression."[30]

The District Court began by acknowledging that return-filing procedures with the IRS have changed significantly since *Boyle* was decided many years ago, in that "specified tax return preparers" must e-file returns through software. It also summarized the taxpayers' position that, because filing returns through a preparer necessarily involves specialized software that taxpayers cannot employ independently, taxpayers are essentially obligated to rely on an agent.[31]

The District Court reasoned that, although the facts in *Boyle* and *Intress* differ considerably, they have a similarity that is "fatal" to the arguments raised in the latter case: "taxpayers are not obligated to use tax preparation services."[32] It went on to clarify that, just as in 1985, and notwithstanding the fact that most preparers now must e-file returns, (i) a taxpayer experienced in business matters can personally prepare a return and paper-file it, (ii) a taxpayer can retain a tax return preparer who is still permitted to paper-file returns based on the limited volume of returns, and (iii) an individual taxpayer can still paper-file a return prepared by a specified tax return preparer, if the steps in Revenue Procedure 2011-25 are followed.[33]

The District Court concluded that "[b]ecause the same filing options that existed in 1985 (mailing a personally or professionally prepared return) still exist, there is no reason to believe the standard of 'ordinary business care and prudence' regarding tax filing has shifted as [the taxpayers] suggest."[34] The District Court also underscored that, just as in 1985, reliance by taxpayers on an agent is common, but such reliance does not serve as a substitute for compliance with a clear statute regarding return-filing deadlines.[35] Finally, the District Court stated that, irrespective of the applicability of *Boyle*, "it would never be reasonable to blindly take someone's word that he will timely file your taxes."[36] The District Court summarized its decision as follows:

> What [the taxpayers] get wrong is the degree of change between 1985 [when *Boyle* was decided] and now; all the ease (and permissibility) of mailing a paper return, personally or professionally prepared, still exists. Also unchanged is the extent to which rigidly enforced deadlines are necessary to a functioning tax system. It appears that at least until e-filing is universally mandatory, or paper filing becomes sufficiently unwieldy, *Boyle* will continue to apply. Because *Boyle* applies, it is a straightforward conclusion that [the taxpayers'] reliance on their agent was not reasonable cause.[37]

The District Court acknowledged that e-filing is on the rise and this could call into question the relevance of *Boyle* in the future. It hinted at potential changes when the IRS requires all returns be e-filed or when paper filing by individual taxpayers becomes so cumbersome as to surpass ordinary business care and prudence. At that time, explained the District Court, the average taxpayer would be required to rely on an agent or intermediary to e-file a Form 1040.[38]

The seminal case regarding the reasonable-reliance-on-a-tax-professional defense was *United States v. Boyle*, decided more than three decades ago, in 1985.

Similar Issues, Different Stance

It is interesting to examine another area of tax law, not discussed in *Boyle*, *McMahan*, *Haynes*, or *Intress*, with an entirely different take on reliance and e-filing issues.

The IRS generally can assert penalties when taxpayers file late information returns under Section 6721 (covering certain "statements," "returns," and "other items"), Section 6722 (covering "payee statements"), or Section 6723 (covering "other specified information reporting requirements").[39] However, the IRS is prohibited from penalizing taxpayers where (i) the violation is due to "reasonable cause," as this term is specially defined for purposes of Section 6721 through Section 6724, and (ii) is not due to "willful neglect."[40] Some of these standards are discussed below.

Penalties will be waived for "reasonable cause" if either (i) there are significant mitigating factors with respect to the violation, or (ii) the violation arose from events beyond the filer's control.[41] In addition to meeting one of these two

standards, the taxpayer must also show that it acted in a "responsible manner," both before and after the violation.[42]

Notably, one of the mitigating factors listed in the regulations is reasonable reliance on a qualified tax advisor.[43]

What is more interesting, however, are the events beyond a taxpayer's control identified by the IRS. Among them are actions or inactions by the taxpayer's agent, after the taxpayer exercised reasonable business judgment in contracting with the agent to file timely and accurate returns.[44] The regulations indicate that the IRS will abate penalties when two circumstances exist. First, the taxpayer demonstrates that it exercised reasonable business judgment in contracting with the agent to file timely and accurate information returns, which includes providing the proper information to the agent sufficiently in advance of the filing deadline.[45] Second, the agent on whom the taxpayer relied had reasonable cause.[46] The regulations and IRS guidance refer to this notion as "imputed reasonable cause;" that is, the reasonable cause of the taxpayer's agent is imputed/extended to the taxpayer itself.[47]

Like the regulations, the Internal Revenue Manual also expressly recognizes penalty abatement in situations involving "imputed reasonable cause." It indicates that penalties are inappropriate where (i) the taxpayer exercised reasonable business judgment in hiring an agent to file information returns, (ii) the taxpayer supplied the agent with the proper information well in advance of the filing deadline, and (iii) there was a significant mitigating factor for the agent, or there was an event beyond the agent's control.[48] The Internal Revenue Manual provides more details, which specifically discuss e-filing:

> *This criteria is considered met if the partnership exercised reasonable business judgment in contracting with an agent to prepare and e-file the partnership return, and the agent failed to deliver on its contract.* The partnership must have contracted with a qualified agent, and provided the agent with all documentation required in order for the agent to be able to prepare and e-file the return in a timely manner. Reasonable business judgment rises above ordinary business care and prudence, as it requires research on the part of the partnership in the process of selecting a reliable agent with whom to contract, and who is able to provide the required service.[49]

Importantly, the IRS has made it clear that it is not necessary for the taxpayer to follow-up on the agent's actions or inactions in order to have "imputed reasonable cause." The preamble to the regulations indicates the following in this regard:

> [A]n event beyond the filer's control can arise from the filer's contracting with an agent to perform the filing of information returns or the furnishing of the payee statements. The *temporary regulations* require that the filer establish that it contracted sufficiently in advance of the required filing date to permit timely filing; *that it monitored the agent's efforts to perform*; and that the agent can demonstrate that an event beyond the agent's control prevented timely correct filing. *Commentators asked that the requirement that filers monitor their agents be deleted because it is not consistent with ordinary business practices. The final regulations adopt this suggestion, and require instead that the filer exercise reasonable business judgment in selecting its agent.*[50]

As discussed throughout this article, in the context of late-filing of tax returns, the courts and the IRS have long taken the position that timely filing is a "non-delegable duty," such that taxpayers *cannot* establish reasonable cause by relying on tax advisors who fail to meet their commitment to timely file items on behalf of taxpayers. However, this position does not seem to apply with respect to cases where the IRS is asserting penalties under Section 6721, Section 6722, or Section 6723, and the taxpayer is requesting penalty waiver under Section 6724. This is evident from the specific tax regulations and Internal Revenue Manual entries cited above, which discuss and define the concept of "imputed reasonable cause." It is also apparent from an appellate case, where the court explained that "we do not believe that *Boyle's* definition [of 'due to reasonable cause and not to willful neglect'] applies to Section 6724's waiver provision."[51]

Conclusion

Certain practitioners, critical of the recent decision in *Intress*, have presented several suggestions to the IRS on how to cope with the notion of reasonable reliance in the era of e-filing.[52] Other criticisms and suggestions likely will surface, too. These might include a recommendation to incorporate into the reasonable cause analysis for Forms 1040 the concept of "imputed reasonable cause" found in Section 6724. The IRS and the courts could change their tunes in the future, as e-filing becomes even more widespread. In the meantime, though, attorneys, accountants, and other return preparers seeking abatement of delinquency penalties must be aware of the limitations of the reasonable-reliance-on-a-tax-professional defense because, as established in *Boyle*, and as recently expanded in *Intress*, the proverbial falling on one's sword simply will not suffice.

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[42] Reg. 301.6724-1(a)(2) (flush language).

[43] IRM 20.1.7.9.1 (08-20-1998).

[44] Reg. 301.6724-1(c); IRM 20.1.7.12.1(12) (10/12/2017).

[45] Reg. 301.6724-1(c)(5)(i).

[46] Reg. 301.6724-1(c)(5)(ii).

[47] Reg. 301.6724-1(c)(5).

[48] IRM 20.1.7.12.1(17) (10/12/2017).

[49] IRM 20.1.2.5.1(9) (07/02/2013) (emphasis added).

[50] TD 8386 (12/30/1991), 56 Fed. Reg. 250, at 67189-67190, 12/30/1991 (emphasis added).

[51] Lefcourt v. United States, 125 F.3d 79 (CA-2, 1997).

[52] *See, e.g.*, Parillo, "Reasonable Cause Standard Unchanged by E-Filing," 164 Tax Notes 1147 (8/7/2019) (Tax Analysts Document No. 2019-30237); Cummings, "IRS Should Reject Recent Ruling on E-Filing, Group Says," 164 Tax Notes 1148 (8/9/2019) (Tax Analysts Document No. 2019-30537) (attaching a copy of the letter dated 08/08/2019, from the American College of Tax Counsel to IRS Chief Counsel Michael J. Desmond).