

ESTATE OF THOMAS OLIFF

*

IN THE

*

v.

MARYLAND TAX COURT

*

COMPTROLLER OF MARYLAND

*

No. 19-IN-00-0907

MEMORANDUM AND ORDER

This case arises from the assertion of the Petitioner, the Estate of Thomas Oliff (“Estate”), that it is appropriate for this Court to abate the penalty imposed by the Respondent, Comptroller of Maryland (“Comptroller”), for the Estate’s underpayment of estate tax. The Comptroller objects to any abatement of the penalty.

The matter is before this Court on the parties’ Motions for Summary Judgment. The facts and issues are detailed in the parties’ Stipulation of Facts, Stipulation of Settled Issues, and the affidavit of the Estate’s Personal Representative (“PR”), Linda Loiff-Rohleder.¹ During a June 24, 2021 conference call counsel further stipulated to add an Exhibit E to Exhibits A to D, which were appended to the Stipulation of Facts.

The estate tax underpayment of \$165,708 from which the disputed penalty of \$16,571 arose resulted from a miscalculation reflected in line 7 of the MET 1F form submitted to the PR by the Estate’s tax preparer, Rosen, Sapperstein, & Friedlander, LLC (“RS&F”), a public accounting firm. The miscalculation was extracted from line 8 of the worksheet utilized by RS&F, which follows the MET 1F form and to which reference is made at line 7 of the MET 1F form.

¹ The affidavit was appended to the Petitioner’s Response to Respondent’s Cross-Motion for Summary Judgment and Opposition to Petitioner’s Motion for Summary Judgment. The Comptroller did not offer any rebuttal or objection to the affidavit.

The worksheet includes a table with eight columns and 11 rows from which a calculation is extracted for entry onto line 7 of the worksheet. The worksheet directs that the lesser of lines 6 or 7 be entered onto line 8. The RS&F's miscalculation arose from an erroneous computation derived from the worksheet table, which was entered on line 7 and was the lesser of lines 6 or 7.

The miscalculation caused the estimated federal credit for state death taxes reported at line 7 of the MET 1F form to be understated. The entries from which this estimated federal credit was to be calculated were accurately reported on the form and worksheet. The calculation using the entries is rote with instructions provided with the MET 1F form. There was no explanation for RS&F's miscalculation. The MET 1F form prepared by RS&F was submitted to the Comptroller by the PR.

The PR, who is the daughter of the decedent, reviewed the completed MET 1F form provided to her by RS&F before its submission to the Comptroller. Before that submission she also discussed the form and the tax payment calculations with RS&F and the Estate's legal representatives. She had worked with RS&F "...in various capacities (financial statement, tax preparation and consulting) for over 10 years." PR Affidavit #7.

Consistent with the above undisputed facts, the issue before this Court is whether a miscalculation of tax due, when all reported inputs for the calculation are valid, can provide a legal justification for a penalty waiver. The Comptroller argues a miscalculation such as that before this Court can never support a penalty waiver. The Estate argues that upon a showing of reasonable cause a penalty waiver is appropriate.

In *Taylor v. Comptroller*, 465 Md. 76, 96 (2019) the Comptroller likewise took an absolutist position, asserting a credible, but erroneous legal argument is not a sufficient

premise for a penalty waiver. There, the estate presented a legal argument that the required inclusion in the federal return of certain estate assets, i.e. qualifying terminable income property, did not apply to the Maryland return. In rejecting the Comptroller's absolutist position the Court observed, "[w]e find it difficult to conceptualize that a coherent legal argument based on the peculiar facts of the case, even if erroneous, does not constitute sufficient affirmative evidence for waiving the late penalty." Consistent with this observation, the Court held "[t]he Tax Court had broad authority to waive the late penalty." *Id.* at 97.

The Comptroller also suggests *ConAgra Foods RDM, Inc. v. Comptroller*, 241 Md. App. 547 (2019), along with *Taylor*, indicate Maryland's appellate courts authorize penalty or interest waivers only where a credible, yet rejected legal argument is the premise for the waiver. But, consistent with *Taylor*, the Court in *ConAgra Foods RDM, Inc.* also alluded to the Tax Court's broad authority in affirming an interest waiver premised on a credible legal argument. *ConAgra Foods RDM, Inc. v. Comptroller, supra.* at 644-645. Neither case suggested this broad authority is limited only to waiver requests founded on credible legal arguments.

In *Conagra Food RDM, Inc.* the Comptroller argued, as he does in this case, that public policy considerations require the requested waiver be rejected. In that case, the Comptroller argued that "survival of statutory interest assessments will become the exception rather than the rule." *Id.* at 602. Likewise, in this case the Comptroller raises the prospect of similar consequences i.e., penalties would be waived for "...any taxpayer who has provided income and expense information to a preparer, no matter how exaggerated a mistake the preparer makes." Comptroller's Reply to Petitioner's

Response in Opposition to Comptroller's Cross-Motion for Summary Judgment at 9. The Court in *Conagra Food RDM, Inc.* rejected the public policy argument, as now does this Court. See also *Frey v. Comptroller*, 422 Md. 111, 186 (2011).²

Acceptance of the Comptroller's suggested limitation to the Tax Court's "broad authority" established at Tax General Article § 13-714 would improperly add an exclusion to this authority not articulated in the unambiguous statute. This result would be inconsistent with proper statutory construction. *Frey v. Comptroller, supra.* at 185. So, consistent with the *Taylor* and *ConAgra Foods RDM* holdings, the absolutist position urged by the Comptroller is rejected. Hence, the dispositive consideration before this Court in exercising its "broad authority" is whether there is "reasonable cause" to justify the requested penalty waiver.

The Court in *Taylor* cited 70 Md. Op. Atty Gen 208 (1985) to explain the "reasonable cause" Tax General Article § 13-714 requires to justify a penalty waiver. The Court observed "a general test of 'ordinary prudence' or 'reasonable diligence' has been recognized as satisfying the 'good cause' standard," which is the same standard as the statutory "reasonable cause standard, and this "[Attorney General] opinion provides that "reasonable cause" may be found under a variety of circumstances to enable the waiver of late penalties." *Taylor v. Comptroller, supra.* at 98. But this generic direction does not address the specific underlying precipitator for the sought relief i.e., a miscalculation of tax due.

² A more compelling public policy consideration, contrary to the Comptroller's perspective, might be the diminishment of taxpayers' willingness to retain competent tax professionals, if there were impediments to relying on those professionals' preparation of tax returns.

Relying on Tax General Article § 10-107's direction that "[t]o the extent practicable, the Comptroller shall apply the administrative and judicial interpretations of the federal income tax law to the administration of the income tax laws of this State," the parties have cited federal interpretations of income tax law to support their respective positions. But, for a federal interpretation to be controlling the related Maryland provision must be "...inextricably keyed' to the federal tax code `by virtue of its adoption of the federal tax law'" or "...exactly comparable." *Lyon v. Campbell*, 324 Md. 178, 185 (1991); *Genie Co. v. Comptroller*, 107 Md. App. 551, 568 n.13 (1995). The waiver provision at issue, Tax General Article § 13-714, does not meet these criteria.

The IRS has stated "[t]he wording used to describe reasonable cause provisions varies... [with] [s]ome IRC penalty sections also require[ing] evidence that the taxpayer acted in good faith or that the taxpayer's failure to comply with the law was not due to willful neglect." Internal Revenue Service, Internal Revenue Manual, Part 20, Penalty and Interest 20.1.1.3.2 & Exhibit 20.1.1-1, Penalty Relief Application Chart. See 26 USC § 6664 (c)(1) (accuracy related penalty- reasonable cause and good faith); 26 USC 6651(a)(1) (failure to file penalty- reasonable cause and not due to willful neglect) ³ This recognized variance in federal "reasonable cause" provisions contrasts with the single straightforward provision at Tax General Article § 13-714. Hence, this Maryland statute is not "...inextricably keyed' to the federal tax code `by virtue of its adoption of the federal tax law'" or "...exactly comparable." That the cited federal interpretations are not controlling is further evidenced as no federal authority is cited in *Taylor* or *ConAgra*

³ U.S. v. Boyle, 469 U.S. 241 (1985) indicates that these elements must be proven independently. That case considered a late filing penalty waiver and found a lack of willful neglect and reasonable cause were separate elements, requiring independent proof. Id. at 245

Foods RDM where the Courts analyzed the appropriateness of a waiver of penalty or interest, respectively.

While the interpretations are not controlling, they "...can offer guidance but need not be relied upon." *Lyon v. Campbell, supra.* at 185; *Genie Co. v. Comptroller, supra.* at 568 n.13. Although guidance from the interpretations cited by the parties is muted, as they concede none directly address the specific issue before the Court, the Court does find principles extracted from the interpretations useful in exercising its "broad authority."⁴

The parties generally rely on two classes of cases considering penalty waivers to support their positions. One arises from accuracy related penalties and the other from filing related penalties. Guidance will be extracted from the cases considering accuracy related penalties as the miscalculation at issue would be in that class. The required analysis for this class of cases is more nuanced than that for the filing related penalties cases since, as the Supreme Court has noted, "... one does not have to be a tax expert to know that tax returns have fixed filing dates and that taxes must be paid when they are due..." and "[i]t requires no special training or effort to ascertain a deadline and make sure that it is met." *United States v. Boyle*, 469 U.S. 241, 251 & 252 (1985). *Whitsett v. Commissioner*, T.C. Memo. 2017-100, 15 n.6 (2017).

The foundation for the federal interpretations is 26 CFR § 1.6664-4(b)(1), which provides in relevant part,

⁴ This guidance is further muted as Tax General Article § 10-107 applies only to "...administrative and judicial interpretations of the federal **income tax law** to the administration of the **income tax laws** of this State." [emphasis added]. This case concerns estate tax addressed by Title 7 of the Tax General Article, not income tax, which is addressed at Title 10 of the Tax General Article.

The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. ... Generally, the most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. ... An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. ... Reliance on ..., professional advice... constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith.

The Comptroller's analysis suggesting that the computation error noted in the regulation only applies to taxpayer error and not preparer error, as in this case, is strained. The Court rejects the analysis choosing to rely on the regulation's plain meaning, properly not adding exceptions not articulated in the statute. *Frey v. Comptroller, supra.* at 185. An absurd result would arise if the taxpayer can be excused for a computation error, while the preparer's computational error, upon which the taxpayer justifiably relies, cannot be excused. Such absurd results are to be avoided. *Breck v. Md. State Police*, 452 Md. 229, 248 (2017). Consistent with this perspective, the Court in *Thrane v. Commissioner*, 92 T.C.M. 501, 503 (2006), while considering a waiver, stated "[i]n appropriate circumstances... a taxpayer's reliance on his accountant's preparation of the return, including the computations thereon, may constitute reasonable cause." [citations omitted.]⁵

The federal interpretations cited by the parties of accuracy related penalty waiver requests offers the following guidance. The requisite advice from a tax preparer the regulation envisions is defined "...broadly enough to include "any communication",

⁵The Court's reasoning was that "... the regulations provide that an isolated computational error generally is not inconsistent with reasonable cause and good faith. The error underlying petitioner's income omission of \$173,093, wherein his accountants failed to remove that amount from salaries generally when they separately stated it as officer compensation in the electronically stored version of petitioner's S corporation's Form 1120S, resembles the kind of isolated computational error generally intended to give rise to relief." *Id.* 503-504.

whether or not “in any particular form” and must reflect the preparer’s “analysis or conclusion” founded on “special training.” *Woodsum v. Commissioner*, 136 T.C. 585, 593 (2011). The critical consideration is whether the error would be apparent to the taxpayer upon the taxpayer’s requisite “...effort to assess the taxpayer’s proper tax liability.” It must be such that it would be visible in “[a] review undertaken to “make sure all income items are included” (in the words of *Magill* ⁶)-or even a review undertaken only to make sure that the *major* income items had been included.” *Id.* at 596. A cursory or brief review though is not sufficient. *Metra Chem Corp. v. Commissioner*, 88 T.C. 654, 661-663 (1987). And, whether the taxpayer reviewed the return with the tax preparer is a consideration as “...[u]nconditional reliance on a tax return preparer does not by itself constitute reasonable reliance in good faith.” *Stough v. Commissioner*, 144 T.C. No. 16, 27 (2015) But the taxpayer does not have to “...duplicate the work of his return preparer.” *Woodsum v. Commissioner, supra.* at 595-96 . Complexity and the taxpayer’s familiarity with the specific reporting requirement are considerations as to whether the error is apparent. See *Thrane v. Commissioner, supra.* at 503; *Pritchett v. Commissioner*, 63 T.C. 149, 174-75 (1974). “[F]or a taxpayer to rely reasonably upon advice so as possibly to negate a[n]... accuracy-related penalty ..., the taxpayer must prove ...that the taxpayer meets each requirement of the following three-prong test: (1) The adviser was a competent professional who had sufficient expertise to justify reliance, (2) the taxpayer provided necessary and accurate information to the adviser, and (3) the taxpayer actually relied in good faith on the adviser’s judgment.” *Neonatology v. Commissioner*, 115 T.C. 43, 99 (2000)

⁶ *Magill v. Commissioner*, 70 T.C. 465 (1978)

Considering the guidance these federal interpretations offer in the context of the Tax Court's broad authority to waive the penalty, this Court finds the Estate offered sufficient "affirmative evidence" to justify a penalty waiver.⁷ *Taylor v. Comptroller, supra* at 94. The PR certainly honored what the regulation characterizes as "[g]enerally the most important factor....," the extent of the taxpayer's effort to assess the taxpayer's proper liability." She reviewed the form before its filing, discussing both the form and the tax payment calculations with RS&F and the Estate's legal representatives. While the cited cases consider reviews with the tax preparer or an attorney, none have the taxpayer undertaking a review with both, as did the PR. It is not likely that the PR, who is the daughter of the decedent, was familiar with estate tax filings. And, the error at issue would not be apparent from a review of the form, as all entries were correct.⁸ While the PR would not be required to perform the underlying calculations for which the entries were relevant, performing those calculations is not as simple as the Comptroller suggests. The form and worksheet are linked to the federal estate filings and Table B with its eight columns might offer clarity to a professional tax preparer, but not to a layperson. "[S]pecial training" was required to properly complete the form. The PR meets the three-prong *Neonatology* test as RS&F is a public accounting firm with whom the PR had worked for over 10 years in regard to various accounting services; there is no dispute

⁷ The case-by-case analysis 26 CFR § 1.6664-4(b)(1) directs is consistent with the "broad authority" available to both the Maryland and U.S. Tax Courts.

⁸ With today's accounting software, it is reasonable to presume with correct entries calculations are done properly. See *Thrane v. Commissioner, supra* at 502; *Woodsum v. Commissioner, supra* at 503-504.

that all necessary information was provide accurately; and, as noted above, the PR relied in good faith on RS&F's and the Estate's legal representative's judgement.

Accordingly, it is this 7th day of July 2021, by the Maryland Tax Court **ORDERED** that the decision of the Comptroller is reversed and the penalty is waived in its entirety.⁹

⁹ Issues raised not specifically addressed by this Court were deemed *de minimus*, irrelevant, or without merit.

CC: Vadim D. Ronzhes, Esq.
Jeffrey G. Comen, Esq.
Julie Greene, Administrator

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.