Don't Count on Your Accountant: the Ninth Circuit Looks At Reasonable Cause.

In *Knappe v. United States*, 2013 U.S. App. LEXIS 6809 (9th Cir. Apr. 4, 2013), the Ninth Circuit posed a question: "When can you trust your accountant's advice about when your taxes are due?" *Knappe*, 2013 U.S. App. LEXIS 6809, slip op. at *2.

The answer: at least in the Ninth Circuit, you can't.

Peter Knappe was the executor of a friend's estate. *Id.* at *3. As he had never been an executor before, Mr. Knappe did what any sensible person would do, he hired an accountant. The accountant, Mr. Burns, correctly advised him that an estate return would be required and that the deadline was nine months the date of death. *Id.* Some timing problems arose in obtaining real estate appraisals, so Knappe consulted with the accountant, who advised him that an extension of both the filing and payment deadlines could be obtained. Mr. Knappe asked the accountant to obtain the extension. *Id.* at *4.

Burns prepared Form 4786, requesting an extension of both the filing date and the payment deadline. *Id.* at *5. At the time he filed the form, Burns thought he could obtain a one year extension of the filing deadline and the payment deadline. Actually, only a six month extension of the filing deadline is available, a point that the accountant missed, even after a review of the instructions, the statute and the regulations. *Id.* at 6-7. The accountant had told Mr. Knappe that a one year extension was available for both filing and payment, and Knappe had focused upon the one-year extension date when he looked at the completed form.

The estate return was then filed four months late, and the IRS assessed a twenty percent penalty for the delinquency. Mr. Knappe asked the IRS to abate the penalty under Section 6651(a)(1), arguing that the delay in filing was based upon reasonable cause and not willful neglect. The IRS refused to abate the penalty, and an action was filed by the executor. The district court reduced the penalty, as the IRS conceded that it had miscalculated it, but the court also granted the government's motion for summary judgment.

On appeal the Ninth Circuit's focus was on whether the executor had reasonable cause for the delay in filing. Reasonable cause exists if a taxpayer "exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time." *Knappe*, 2013 U.S. App. LEXIS 6809, slip op. at *11-*12 (quoting 26 C.F.R. § 301.6651-1(c)(1)).

On the merits, the Ninth Circuit concluded that the advice that the accountant had provided to the executor was non-substantive advice and that the executor was not reasonable in relying upon it. *Id.* at *23-*26. Its rationale was fairly straightforward: the initial deadline for the return was clear, and while acknowledging that the rules for extensions "were harder to work through," the court considered them unambiguous. *Id.* at *20, *25.

The outcome suggests that when a taxpayer relies on an accountant's advice, he can only use that advice to defeat a penalty if the underlying issue was ambiguous. The problem is that most taxpayers don't look at the underlying issue to determine whether a court would consider it to be ambiguous: they hire an accountant because they don't feel qualified to address the requirements of the Code and the relevant regulations. With this decision, the Ninth Circuit seems to have lost sight of the way in which taxpayers interact with their accountants.

Jim Malone is a tax lawyer in Philadelphia.