

Reliance on a Tax Professional May Create an Exception to California's Delinquent Filing Penalty

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California tax law states that any taxpayer will be liable for a delinquent filing penalty if the taxpayer fails to file her tax returns when they are due. (Rev. & Tax. Code, § 19131.) However, the statute provides an exception for those taxpayers that can show that the delinquent filing: (a) was due to a reasonable cause; and (b) not due to willful neglect.

In Certain Situations Reliance on a Tax Professional's Advice Can Constitute Reasonable Cause

Reliance on a tax professional can constitute reasonable cause. Since California law does not define reasonable cause, California has historically looked to federal case law for guidance. Federal case law states that while the burden of ascertaining the statutory deadline for filing falls on the taxpayer, there are circumstances that warrant late filing penalty relief. The federal test requires:

1. the taxpayer be unfamiliar with the tax law;
2. the taxpayer discloses all relevant facts to the tax professional;
3. the taxpayer has otherwise exercised ordinary business care and prudence; and
4. the advice relied upon must concern a question of law

Willful Neglect

Like "reasonable cause," the term "willful neglect" is not defined in California code. Federal courts have said that "willful neglect" may be read as meaning a conscious, intentional failure or reckless indifference.

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