

No. 13-34

In the Supreme Court of the United States

PETER KNAPPE, EXECUTOR OF THE ESTATE OF
INGEBORG PATTEE, DECEASED, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner had “reasonable cause” under 26 U.S.C. 6651(a)(1) to excuse his late filing of an estate tax return, when the relevant statute, regulation, and Internal Revenue Service form limited him to a six-month extension of the filing deadline, and he relied on his accountant’s erroneous assertion that he was eligible for a one-year extension.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-25) is reported at 713 F.3d 1164. The order of the district court (Pet. App. 26-48) is unreported but is available at 2010 WL 9463256.

JURISDICTION

The judgment of the court of appeals was entered on April 4, 2013. The petition for a writ of certiorari was filed on July 3, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a businessman who was named the executor of his friend's estate. Pet. App. 2. An executor must file an estate tax return within nine months after the decedent's death. 26 U.S.C. 6075(a); 26 C.F.R.

20.6075-1. In this case, the nine-month filing deadline was August 30, 2006. Pet. App. 3. At some point before then, petitioner realized that he lacked sufficient remaining time to obtain the real-estate appraisals necessary for an accurate return, and he consulted an accountant (who was assisting him in handling the estate) about obtaining an extension. *Id.* at 2-3. The accountant told him that he could obtain one-year extensions of both the filing and payment deadlines. *Id.* at 3, 5. Petitioner authorized the accountant to prepare and file an extension request. *Ibid.*

The accountant's belief that petitioner could seek a one-year extension of the deadline for filing the return was incorrect. Although the Internal Revenue Service (IRS) has discretion to grant up to ten consecutive one-year extensions of the deadline for paying an estate tax, Pet. App. 4, it is prohibited by statute from extending the deadline for filing an estate tax return by more than six months, unless the executor is out of the country, 26 U.S.C. 6081(a); see Pet. App. 4. By regulation, the IRS grants six-month extensions automatically, so long as the extension-request form is filed on or before the original filing deadline for the return. 26 C.F.R. 20.6081-1(b). The extension-request form accordingly explains that an executor "may apply for an automatic 6-month extension"; that "[a]n executor who is 'out of the country' may apply for an additional extension in excess of the automatic six months"; and that "an application for an automatic extension and an additional extension" cannot be combined on a single form. Pet. App. 3.

Petitioner's accountant filed an extension-request form that requested an automatic six-month extension of the deadline for filing the return and a discretionary one-year extension of the deadline for paying the tax.

Pet. App. 4. The accountant then sent a copy of the form to petitioner, who gave it “a cursory review, but did not examine it in detail.” *Id.* at 4-5. Petitioner has testified that “there was no reason he could not have scrutinized the form,” but that he “mostly noticed” the requested extension date of the payment deadline to “8/30/2007” and the accountant’s estimate that the total tax bill would be \$1.1 million. *Id.* at 5. Petitioner has also admitted that, if he had reviewed the form’s instructions, he would have understood that an extension of the filing deadline was limited to six months. *Id.* at 43-44.

On January 11, 2007, the IRS approved the extension requests. Pet. App. 5. On the form itself, which the IRS returned to the accountant, an IRS agent hand-wrote “2/28/07” next to the box the accountant had checked to apply for the automatic six-month extension of the filing deadline. *Ibid.* A new document attached to the form, entitled “Notice to Applicant,” included two sections, the first relating to the application for extension of the filing deadline, the second to the application for extension of the payment deadline. *Ibid.* Three checkboxes appeared in each section: “Approved,” “Not approved because,” and “Other.” *Ibid.* None of the boxes in the first section was checked. *Ibid.* In the second section, the IRS agent had checked “Approved” and had typed “TO 8/30/2007 only.” *Ibid.*

Neither petitioner nor his accountant realized that the deadline for filing the estate tax return had been extended by only six months, rather than by a year, and petitioner continued to rely on his accountant’s representations that he had an additional year to file. Pet. App. 6. Petitioner eventually filed the return (along with the payment) on May 29, 2007. *Ibid.* Because the

return was filed three months after the extended filing deadline (February 28, 2007), the IRS assessed a late-filing penalty under 26 U.S.C. 6651(a)(1). Pet. App. 6-7.¹ When petitioner called his accountant to ask why the IRS believed the return was late, the accountant reviewed the regulations and quickly recognized that he had made an error. *Id.* at 7. The accountant has “admitted that determining the correct deadline ‘was not an ambiguous question.’” *Ibid.*

2. After exhausting his administrative remedies, petitioner filed suit against the United States in district court, seeking a refund of the late-filing penalty. Pet. App. 7. Petitioner contended that his reliance on his accountant qualified him for a statutory exception to the late-filing penalty, which applies when “it is shown that” the “failure” to timely file a return was “due to reasonable cause and not due to willful neglect.” 26 U.S.C. 6651(a)(1); see Pet. App. 7. The government did not dispute that petitioner’s failure to file was “not due to willful neglect,” but it did dispute that reliance on his accountant’s advice qualified as “reasonable cause.” *Id.* at 9 n.2, 47. IRS regulations provide that a taxpayer seeking to establish reasonable cause must prove that he “exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time.” 26 C.F.R. 301.6651-1(c)(1). The district court granted summary judgment for the government. Pet. App. 26-48.

3. The court of appeals affirmed. Pet. App. 1-25.

¹ The government subsequently acknowledged in litigation that the initial amount of the penalty (\$196,414.60) was too high, and the penalty was therefore reduced. Pet. App. 7 n.1. The amount currently at issue, including interest, is \$185,626.71. *Ibid.*

The court of appeals concluded that, even assuming petitioner had “no actual or constructive knowledge of the correct filing deadline,” Pet. App. 10, petitioner had “failed to exercise ordinary business care and prudence” by “relying on his accountant’s advice about that nonsubstantive matter,” *id.* at 25; see *id.* at 15. The court observed that in *United States v. Boyle*, 469 U.S. 241 (1985), this Court held that an executor’s reliance on his attorney to timely file an estate tax return did not constitute reasonable cause for a late filing. Pet. App. 11. The court of appeals recognized that the *Boyle* Court had “expressly declined” to decide whether reliance on an accountant solely for the purpose of determining a filing deadline would likewise fail to constitute reasonable cause. *Id.* at 14. It found, however, that the reasoning of *Boyle* (and circuit precedent interpreting *Boyle*) was instructive on that issue. *Id.* at 16-25. The court explained that *Boyle* “drew a sharp distinction between substantive advice on tax law, on which executors may reasonably rely, and nonsubstantive advice, on which they may not rely.” *Id.* at 16. The court of appeals further observed that, under *Boyle*, “the filing date of a tax return is a nonsubstantive matter: ‘[O]ne 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. . . . It requires no special training or effort to ascertain a deadline and make sure that it is met.’” *Ibid.* (quoting *Boyle*, 469 U.S. at 251-252) (alterations by court of appeals).

Addressing the particular facts of this case, the court of appeals reasoned that the maximum length of a filing-deadline extension is not a “debatable” question as to which reliance on an expert might provide reasonable cause for a late filing. Pet. App. 21 (quoting *Baccei v.*

United States, 632 F.3d 1140, 1148 n.3 (9th Cir. 2011)). The court recognized that, under *Boyle*, “reliance cannot function as a substitute for compliance with an unambiguous statute.” *Ibid.* (quoting 469 U.S. at 251). The court found the law at issue here to be “unambiguous,” observing that “[i]t was clear from the face of the [extension-request form], from the corresponding instructions, and from the governing statute that the maximum available extension of the filing deadline was six months.” *Ibid.* (internal quotation marks omitted); see *id.* at 20-21.

The court of appeals additionally reasoned that allowing a taxpayer to avoid the late-filing penalty based on a lawyer’s or accountant’s erroneous advice about the due date of a return “would reward collusion between culpable executors and their agents.” Pet. App. 24. An agent who claimed to have given erroneous advice “would risk nothing, because the waiver of the penalty would leave the executor without damages” that could provide the basis for a malpractice suit. *Ibid.* And “negligent agents would be unilaterally incentivized to persist in giving erroneous advice to their clients, even if they realized the error.” *Ibid.*

ARGUMENT

Petitioner contends (Pet. 13-30) that his reliance on his accountant’s erroneous advice about the estate tax return filing deadline constituted reasonable cause to excuse him from paying the penalty for a late-filed return. The court below correctly rejected that contention, and its decision reflects a straightforward application of this Court’s ruling in *United States v. Boyle*, 469 U.S. 241, 252 (1985). Further review is not warranted.

1. In *Boyle*, this Court held that an executor’s reliance on an agent to ascertain and meet the filing dead-

line for an estate tax return could not provide the basis for a reasonable-cause excuse that would avoid a late-filing penalty under 26 U.S.C. 6651(a)(1). In *Boyle*, an executor's attorney advised him that he was required to file an estate tax return, but the attorney did not mention the filing deadline. 469 U.S. at 242. The executor repeatedly contacted the attorney to inquire about the filing and was assured that the return would be timely filed. *Id.* at 242-243. Due to the attorney's clerical oversight, however, the return was filed late. *Id.* at 243.

In rejecting the executor's claim that the circumstances constituted reasonable cause under Section 6651(a)(1), the Court concluded that "Congress has placed the burden of prompt filing on the executor, not on some agent or employee of the executor." *Boyle*, 469 U.S. at 249. The Court emphasized that a taxpayer's "duty is fixed and clear" with respect to his "obligation to ascertain the statutory deadline and then to meet that deadline, except in a very narrow range of situations"; that "Congress has charged the executor with an unambiguous, precisely defined duty to file the return within nine months," with "extensions * * * granted fairly routinely"; and that an expectation that an attorney would "attend to the matter does not relieve the principal of his duty to comply with the statute." *Id.* at 249-250.

The Court contrasted the situation in *Boyle* itself with cases in which courts had found reasonable cause based on a taxpayer's "reli[ance] on the erroneous advice of counsel concerning a question of law." 469 U.S. at 250. The Court accepted that "it is reasonable for the taxpayer to rely on" advice from an accountant or attorney "on a matter of tax law," because "[m]ost taxpayers are not competent to discern error in the substantive

advice of an accountant or attorney.” *Id.* at 251. “By contrast,” the Court explained, “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.” *Ibid.* While recognizing that “[r]eliance by a lay person on a lawyer is of course common,” the Court concluded that such “reliance cannot function as a substitute for compliance with an unambiguous statute.” *Ibid.* With respect to filing deadlines in particular, the Court emphasized that “[i]t requires no special training or effort to ascertain a deadline and make sure that it is met.” *Id.* at 252.

2. The court below correctly applied the principles set forth in *Boyle* to the facts of this case. Although the Court in *Boyle* declined specifically to address the question whether reliance on an accountant solely for the purpose of determining a filing deadline constitutes reasonable cause for a late-filed return, see 469 U.S. at 251 n.9, *Boyle*’s logic strongly supports the result here.

This case differs from *Boyle* in only two respects, neither of which matters under the reasoning of *Boyle*. First, petitioner did not delegate his statutory timely-filing responsibilities entirely to an agent, but instead relied on the agent only to file for an extension and advise him on the length of that extension. The Court in *Boyle* recognized, however, that a taxpayer has “an obligation” not only to “to meet” the statutory filing deadline, but also “to ascertain” that deadline. 469 U.S. at 249. The Court also recognized that “ascertain[ing] a deadline,” like meeting a deadline, requires “no special training or effort,” and that the deadline for filing an estate tax return is “unambiguous” and “precisely defined.” *Id.* at 250, 252. Accordingly, just as “[r]eliance by a lay person on a lawyer * * * cannot function as a

substitute for compliance with an unambiguous statute,” *id.* at 251, reliance by a lay person on an accountant cannot function as a substitute for satisfying the antecedent obligation to know what the statute requires.

Second, while *Boyle* directly involved only the default nine-month deadline for filing an estate tax return, this case involves a request for an extension. The Court in *Boyle* expressly recognized, however, in discussing the executor’s non-delegable duty to ascertain and meet the filing deadline, that the default deadline could be extended. 469 U.S. at 250. The statute governing extension requests is just as clear about the maximum length of an extension as the statute governing the filing of estate tax returns is about the initial deadline. Compare 26 U.S.C. 6075(a) (“Returns made under section 6018(a) (relating to estate taxes) shall be filed within 9 months after the date of the decedent’s death.”), with 26 U.S.C. 6081(a) (“Except in the case of taxpayers who are abroad, no * * * extension shall be for more than 6 months.”). It would be anomalous to conclude that an executor has a duty to know (and comply with) the requirements of one unambiguous statute but not with the requirements of the other.

3. Petitioner contends (Pet. 23-28) that the court of appeals’ approach—under which reliance on an expert for nonsubstantive matters will not provide reasonable cause for a late filing, Pet. App. 22—is inappropriate and unworkable. That approach, however, follows directly from this Court’s decision in *Boyle*, which recognized that “taxpayers are not competent to discern error in the substantive advice of an accountant or attorney,” 469 U.S. at 251, but concluded that they *are* competent to ascertain and comply with filing deadlines, *id.* at 252. In any event, petitioner’s concerns about the potential

breadth or administrability of the court of appeals' approach are premature. The only circuit decisions petitioner identifies as objectionable (this one and *Baccei v. United States*, 632 F.3d 1140, 1148 n.3 (9th Cir. 2011)) are decisions rejecting reliance on an agent in the context of filing deadlines—the precise subject of *Boyle*. It remains to be seen whether and how the courts of appeals might extend the reach of those decisions.

This case would be a particularly unsuitable vehicle for attempting to draw a line between the types of advice that may give rise to reasonable cause for a late filing and the types of advice that may not, because petitioner clearly could and should have personally comprehended the deadlines at issue. Unlike petitioner's complicated hypothetical involving state law (Pet. 26-27), this case involves a straightforward and unambiguous question of federal law on which the IRS provides explicit guidance to taxpayers. The IRS extension-request instructions that petitioner received in this case stated that an "automatic 6-month" extension is available but that "[u]nless you are an executor out of the country * * * , the maximum extension of time to file is 6 months from the original due date of the applicable return." Pet. App. 20.² Petitioner admitted that, if he had reviewed the form's instructions, he would have understood that only a six-month extension of the filing deadline could be requested. *Id.* at 43-44. Yet despite having "no reason * * * not [to] have scrutinized the

² Because requests for six-month extensions are automatically granted so long as they are filed before the original nine-month period elapses, 26 C.F.R. 20.6081-1(b), petitioner is wrong to suggest (Pet. 25) that the court of appeals' approach necessarily makes it per se unreasonable for an executor to file for an extension close to the deadline.

form,” petitioner gave it only “a cursory review.” *Id.* at 4-5. That cursory review did not satisfy the statutory timely-filing obligations that Congress has placed on taxpayers, *Boyle*, 469 U.S. at 249-250, and did not constitute reasonable cause for a late filing.

4. Petitioner does not identify any conflict in the circuits that would warrant this Court’s review. Petitioner suggests (Pet. 19) that the decision below conflicts with decisions of the Second, Third, Fifth, and Seventh Circuits. The decisions he identifies all substantially predate *Boyle*, however, and they all involved reliance on experts for a determination whether a return needed to be filed at all, not a determination of when a return would be due. *Haywood Lumber & Mining Co. v. Commissioner*, 178 F.2d 769, 770 (2d Cir. 1950); *Girard Inv. Co. v. Commissioner*, 122 F.2d 843, 848 (3d Cir. 1941), cert. denied, 314 U.S. 699 (1942); *Burton Swartz Land Corp. v. Commissioner*, 198 F.2d 558, 559 (5th Cir. 1952); *Commissioner v. American Ass’n of Eng’rs Emp’t, Inc.*, 204 F.2d 19, 20 (7th Cir. 1953). This Court’s decision in *Boyle* cited each of those decisions and distinguished them from the filing-deadline situation at issue there. See 469 U.S. at 250. The court of appeals in this case likewise distinguished its conclusion about the filing-deadline advice here from decisions “stand[ing] for the principle that the question of whether a return is due is a matter of substantive tax law, and that a taxpayer acts with ordinary business care and prudence when he relies on an expert’s answer to that question.” Pet. App. 13; see *id.* at 15; *id.* at 19 (“It is undisputed that an executor’s reliance on expert advice constitutes reasonable cause in some cases.”).

Petitioner also cites (Pet. 18) several decisions of the Tax Court. Because the federal courts of appeals gen-

erally have jurisdiction “to review the decisions of the Tax Court * * * in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury,” 26 U.S.C. 7482(a)(1), an assertion of a conflict between a Tax Court decision and a court of appeals decision would no more warrant certiorari than an assertion of a conflict between a district court decision and a court of appeals decision, see Sup. Ct. R. 10(a). In any event, several of the cases cited by petitioner involved advice about whether a return was necessary, not advice about the filing deadline for a return. See *Zabolotny v. Commissioner*, 97 T.C. 385, 400 (1991), aff’d in part and rev’d in part, 7 F.3d 774 (8th Cir. 1993); *Estate of Paxton v. Commissioner*, 86 T.C. 785, 820 (1986); *Estate of Buring v. Commissioner*, 51 T.C.M. (CCH) 113 (1985); see also *Aiken Indus., Inc. v. Commissioner*, 56 T.C. 925, 935-936 (1971) (pre-*Boyle* decision). And two other decisions involved situations in which a taxpayer relied on an expert’s erroneous advice that the taxpayer could seek a second 6-month extension after the first had been granted—a situation that the court of appeals in this case expressly distinguished as involving a potentially more ambiguous question of statutory interpretation than the one at issue here. See Pet. App. 19-21 (discussing *Estate of La Meres v. Commissioner*, 98 T.C. 294 (1992)); see *Estate of Lee v. Commissioner*, 97 T.C.M. (CCH) 1435, 1438 (2009); *La Meres*, 98 T.C. at 321.

Petitioner also cites (Pet. 18) a decision of the Court of Federal Claims, *Estate of Liftin v. United States*, 111 Fed. Cl. 13 (2013). That court’s decisions are subject to review by the Federal Circuit, 28 U.S.C. 1295(a)(3), and thus cannot create a circuit conflict. In any event, the decision in *Estate of Liftin*, consistent with the decision

below, recognized that *Boyle* had “distinguished advice from an attorney involving an interpretation of substantive tax law, which can constitute reasonable cause, from an attorney’s assistance in meeting the requirements of unambiguous statutes, which cannot constitute reasonable cause.” *Estate of Liftin*, 111 Fed. Cl. at 20. The court in *Estate of Liftin* invoked that distinction to conclude that reliance on an attorney’s advice on “a substantive question of tax law regarding the interaction between the statutes and regulations providing for the marital deduction and the statutes and regulations setting the deadline for filing the Estate’s return” constituted reasonable cause for a late filing, while reliance on an attorney’s advice “that the Estate could delay filing until it could submit an accurate return” did not. *Id.* at 22-23.

The only circuit decision petitioner identifies that does appear to reach a result different from the decision below is *Estate of Bradley v. Commissioner*, 33 T.C.M. (CCH) 70 (1974), *aff’d*, 511 F.2d 527 (6th Cir. 1975). That decision pre-dates *Boyle* by a decade, and is simply a short affirmance of a Tax Court decision without any independent discussion of the issues. See 511 F.2d at 528. The only appellate decisions ever to cite that decision are this Court’s decision in *Boyle* (see 469 U.S. at 251 n.9)³ and the court of appeals’ decision here (see Pet.

³ *Boyle* identifies one other circuit decision, *Sanderling Inc. v. Commissioner*, 571 F.2d 174 (3d Cir. 1978), and two other Tax Court decisions, as taking the view that reasonable cause exists in a situation where, “in reliance on the advice of his accountant or attorney, the taxpayer files a return after the actual due date but within the time the adviser erroneously told him was available.” *Boyle*, 469 U.S. at 251 n.9. The court below correctly distinguished the Third Circuit’s decision in *Sanderling, Inc.* on the ground that not only was the due date of the return in that case “not readily determinable,” but

App. 15), neither of which followed its approach. Accordingly, that decision does not create a conflict warranting further review.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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“the IRS itself was uncertain about the correct due date at trial.” Pet. App. 15 n.3 (quoting *Sanderling Inc.*, 571 F.2d at 178). The pertinent Tax Court decisions likewise involved factual circumstances different from those presented here. In the first, the Tax Court found reasonable cause where an executrix had relied on an attorney’s advice that litigation over the assets of the estate justified delaying the filing of the return. See *Estate of DiPalma v. Commissioner*, 71 T.C. 324, 327 (1978). In the second, the Tax Court simply acknowledged the holding of the first, while concluding that the facts before it “did *not* [show an] exercise [of] ordinary care” that would warrant an exception from the late-filing penalty. *Estate of Rapelje v. Commissioner*, 73 T.C. 82, 90 & n.9 (1979) (emphasis added).