

Donald's is a corporation based in Lexington, Virginia and specializing in the repair of refrigeration equipment in the mid-Atlantic and southeastern states. During the relevant period, Steven Donald (Donald) handled maintenance and installation activities, while his wife was the office manager in charge of filing and paying taxes. Donald's wife began to suffer from depression in 1998, a condition which allegedly worsened when her father died in 2000 and which allegedly drove her to compulsively spend personal and corporate funds and to attempt suicide in 2002. During her bout of depression, the corporation was consistently late in filing, paying, and depositing its employment taxes, ultimately resulting in IRS penalties of \$220,788.98.²

On December 10, 1998, an IRS agent visited Donald and informed him of the corporation's delinquencies. Donald discussed the matter with his wife and left it in her hands. The corporation remained noncompliant, however, and the IRS so informed Donald a year later. Donald responded by firing his bookkeeper, borrowing funds to pay penalties, and, again, discussing the matter with his wife, whom he trusted would see to future compliance. However, the corporation's filings and returns remained delinquent, and the IRS continued to assess penalties against it through the tax quarter ending in March 2002. Ultimately, Donald removed his wife from her post, sought outside accounting assistance, and paid all penalties due the IRS. The corporation then filed abatement requests, seeking a refund of penalties. The IRS rejected the abatement requests, and the corporation filed this suit. The corporation claims that the depression of Donald's wife prevented it from complying with IRS deadlines and that it, therefore, is entitled to an abatement of all penalties.

²The IRS assessed the penalties pursuant to 26 U.S.C. §§ 6651 and 6656.

II.

“[A] penalty [under 26 U.S.C. §§ 6651 and 6656] . . . is excused if the taxpayer can prove that the failure to timely file was not due to willful neglect, and, at the same time, prove the failure was due to a reasonable cause.” Willis v. C.I.R., 736 F.2d 134, 138 (4th Cir. 1984); Dogwood Forest Rest Home, Inc. v. United States, 181 F. Supp. 2d 554, 560 (M.D.N.C. 2001) (citing United States v. Boyle, 469 U.S. 241, 245 (1985)). “[W]hat elements must be present to constitute ‘reasonable cause’ is a question of law.” Boyle, 469 U.S. at 692 n8. In Boyle, the executor of an estate relied on an attorney to file a federal estate tax return, and, due to a clerical error, the attorney failed to timely file the return, resulting in a penalty. Id. at 242-43. The executor claimed reliance on the attorney as “reasonable cause” to abate the penalty. Id. at 244. The Supreme Court held that the “obligation to ascertain the statutory deadline and then to meet that deadline” rested with the taxpayer, the executor, and that reliance on an agent, the attorney, did not “relieve the principal of his duty to comply with the statute.” Id. at 249-50. Thus, a corporation’s delegation of tax matters to an agent does not relieve the principal corporation of the duty to ascertain and meet tax deadlines. See id.; Dogwood, 181 F. Supp. 2d at 561 (“A corporation is not disabled from complying with tax deadlines if it retains control over the agent responsible for tax liabilities.”).

Here, the duty to ensure compliance with tax deadlines remained with the corporation and particularly with Donald, as an agent of the corporation. Even taking as true the allegations that Donald’s wife was depressed and distracted, that Donald spent most of his time on the road, and that Donald had faith in his wife’s abilities, the corporation has not alleged any circumstances which could have prevented the corporation from meeting all tax deadlines. In fact, the corporation admits that

Donald received two notices of noncompliance from the IRS but that he still left tax matters in the hands of his psychologically troubled wife. Just as the executor in Boyle was not entitled to rely on an attorney to meet filing deadlines, the corporation was not entitled to rely on Donald's wife, especially in light of knowledge that she was depressed and had repeatedly failed to discharge her responsibilities. The burden of ensuring compliance remained with the corporation, and the facts it alleges fall far short of discharging the burden. The corporation, therefore, is not entitled to an abatement.

III.

Accordingly, the corporation's suit is hereby dismissed.

ENTER: This ____ day of March, 2005.

UNITED STATES DISTRICT JUDGE

