



## Robert W. Wood

THE TAX LAWYER

Jun. 2 2012 — 6:41 am

### In A Nation Of Computerization And Robotics, Should TurboTax Defense Be Respected?

Among the better “oops” tax excuses of the last few years was the statement by Treasury Secretary hopeful [Timothy Geithner](#). Accused of not paying approximately \$35,000 in self-employment/FICA tax, he said TurboTax didn't say he owed it, he famously said. He was confirmed as Treasury Secretary and the [TurboTax defense](#) was born. See [No More Laughing At TurboTax Defense](#).



Image via thoughts.com

Since then, many observers have viewed his example as the ultimate in penalty abatement. Being confirmed as Treasury Secretary is surely better than getting a pass on a few thousand dollars of penalties. But most regular Joe taxpayers have had little success, including these cases: [Hopson v. Commissioner](#); [Parker v. Commissioner](#); [Lam and Chang v. Commissioner](#); and [Au v. Commissioner](#).

Recently, some have noted the prevalence of tax return software and the millions of Americans who prepare their returns this way. As such, should TurboTax (and other software) be considered professional tax

advice qualifying for penalty relief? See [Mock and Shurtz: The Turbo Tax Crime Wave](#). Perhaps, but one problem is user error.

How does one differentiate **software** errors from **input** errors? The Tax Court noted the distinction in [Olsen v. Commissioner](#). A patent attorney blamed his tax mistakes on his tax preparation software, saying it should excuse penalties. Over IRS objections, the Tax Court agreed. See [Tax Court Approves ‘Geithner Defense,’ Surprising Experts](#).

Olsen (a government patent attorney) and his wife received interest from a trust that issued a Schedule K-1. Olsen had never previously dealt with a K-1. Trying to ensure he did it right, he upgraded to more sophisticated tax preparation software. Unfortunately, he made a data entry error and the interest he was trying to report wasn't correctly displayed.

Was this “reasonable cause” and was Olsen acting in good faith sufficient to avoid penalties? Yes on both counts, said the court. Yet this was **Olsen's input error**, not the tax software's. That's a critical point. If the **software** had made the error based on Olsen's proper input, wouldn't his penalty relief claim be even better?

**Olsen** made the mistake, not the software. Still, said the court, an **isolated transcription error** doesn't mean he wasn't reasonable and acting in good faith. See [Treasury Regulation Section 1.6664-4\(b\)\(1\)](#). In fact, the Tax Court said it found Olsen to be forthright and credible.

There will be more such cases, but many like Olsen's will be user error. That means there won't be a one-size-fits-all answer.

For more, see:

[Where Should I Go to Get My Last-Minute Taxes Done?](#)

[Turbo Tax Defense Works For Patent Attorney](#)

[By Easy Filing, Software Has Enabled The Tax Code's Slide Into Madness](#)

[Tax Defense: “I Have ADD”](#)

[More Tax Defenses: “I Forgot!”](#)

[Does Going On Return Filing Extension Increase IRS Audit Risk?](#)

[‘Sick Lawyer’ Excuse Not Enough To Escape IRS Penalties](#)

[‘My Dog Ate It’ And Other Tax Excuses](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*