BRETT A. SHUMATE
Assistant Attorney General

JOSHUA WU
Deputy Assistant Attorney General, Tax Litigation Branch

CONNOR J. PESTOVICH (NM Bar 159189)
Trial Attorney
Tax Litigation Branch
Civil Division, Department of Justice
P.O. Box 683
Washington, D.C. 20044
Phone: (202) 616-2378
Fax: (202) 307-0054
Connor.Pestovich@usdoj.gov

Counsel for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JINMING ZHANG, Plaintiff, v. INTERNAL REVENUE SERVICE; UNITED STATES OF AMERICA, Defendants.	Case No. 4:24-cv-08210-AMO **UNITED STATES' MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES** **Judge**: Hon. Araceli Martínez-Olguín **Date**: August 20, 2026 **Time**: 2:00 pm PST **Place**: Oakland, Courtroom TBD

PLEASE TAKE NOTICE that the United States of America hereby notices the hearing on the United States' Motion for Summary Judgment in the above-captioned matter for **August 20, 2026 at 2:00 pm** before the Honorable Araceli Martínez-Olguín in Oakland, California.

The United States of America hereby moves for summary judgment in the above-captioned case. Plaintiff Jinming Zhang cannot present a triable issue of fact that (1) the IRS failed to comply with 26 U.S.C. § 6751(b) before it assessed a civil penalty against her, and (2) she is entitled to reasonable cause for her failure to timely report large foreign gifts to the IRS. The Court should therefore enter judgment in favor of the United States and against Zhang. A proposed order is attached here for the Court's consideration.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ERROR! BOOKMARK NOT DEFINED.

INTRODUCTION **1**

FACTUAL AND LEGAL BACKGROUND **1**

a. In 2012, Zhang moves to the United States from China to obtain a master's degree in accounting. *2*

b. After graduating from the University of Miami, Zhang moves back to China and marries a Chinese citizen living in the United States. *2*

c. In 2017, Zhang moves to the United States and receives nearly $300,000 of gifts from her family in China. *3*

d. Zhang prepares a joint tax return for 2017 using TurboTax and self-prepares an FBAR to report her foreign bank accounts. *3*

e. Zhang, relying on TurboTax alone, fails to timely file a Form 3520 reporting her nearly $300,000 of foreign gifts to the IRS. *6*

f. After the IRS assessed a § 6039F penalty against Zhang for failing to timely disclose large foreign gifts, she appeals the decision to the IRS's settlement arm. *7*

g. The Court grants the United States' partial motion to dismiss, narrowing this case to two issues. *9*

ARGUMENT **9**

I. THE IRS COMPLIED WITH SECTION 6751(B) BECAUSE A MANAGER APPROVED THE IMPOSITION OF THE § 6039F PENALTY AGAINST ZHANG IN WRITING BEFORE ASSESSMENT 9

II. ZHANG'S BLIND RELIANCE ON TURBOTAX TO HANDLE AND SATISFY HER UNIQUE INFORMATIONAL-REPORTING OBLIGATION IS NOT REASONABLE CAUSE. 11

a. Zhang cannot show reasonable cause because she cannot point to any "advice" that TurboTax gave her which caused her to file the Form 3520 late. *13*

b. It was unreasonable for Zhang to assume that a one-size-fits-most return preparation software could advise her about her uncommon foreign-reporting obligations. *15*

c. The other facts and circumstances in this case prevent a finding of ordinary business care by Zhang, a highly educated former CPA, to fulfill her filing requirement. *18*

CONCLUSION **24**

TABLE OF AUTHORITIES

Page(s)

Cases

All Stacked Up Masonry, Inc. v. United States,
150 Fed. Cl. 540 (2020) 14

Allen v. Comm'r,
925 F.2d 348 (9th Cir. 1991) 16, 17, 18

Anyika v. Comm'r,
101 T.C.M. (CCH) 1322 (Mar. 24, 2011) 17, 18

Ballard v. Comm'r,
T.C. Summ. Op. 2018-53, at *7 (Nov. 27, 2018) 18

Bunney v. Comm'r,
114 T.C. 259 (2000) 17

Christman v. United States,
110 Fed. Cl. 1 (2013) 15

Cooper v. Comm'r,
877 F.3d 1086 (9th Cir. 2017) 18

Deyo v. United States,
296 F. App'x 157 (2d Cir. 2008) 10

Dieringer v. Comm'r,
917 F.3d 1135 (9th Cir. 2019) 24

DJB Holding Corp. v. Comm'r,
803 F.3d 1014 (9th Cir. 2015) 14, 17

Farhy v. Comm'r (*Farhy II*),
100 F.4th 223 (D.C. Cir. 2024) 1, 6, 9

Flume v. Comm'r,
113 T.C.M. (CCH) 1097 (Jan. 30, 2017) 16

Giambrone v. Comm'r,
T.C.M. (RIA) 2024-47 (2024) 13

Jarnagin v. United States,
134 Fed. Cl. 368 (Fed. Cl. 2017) 11, 14

Kaufman v. Comm'r,
784 F.3d 56 (1st Cir. 2015) 20

Knappe v. United States,
713 F.3d 1164 (9th Cir. 2013) 24

Laidlaw's Harley Davidson Sales v. Comm'r,
29 F.4th 1066 (9th Cir. 2022) 10

Lam v. Comm'r,
99 T.C.M. (CCH) 1347 (Apr. 19, 2010) 16

Marrin v. Comm'r,
147 F.3d 147 (2d Cir. 1998) 14

Estate of Morrissette v. Comm'r,
121 T.C.M. (CCH) 1447 (May 13, 2021) 10

Neonatology Assocs., P.A. v. Comm'r,
115 T.C. 43 (2000) 15, 16, 17, 18

Palmolive Building Investors, LLC v. Comm'r,
152 T.C. 75 (2019) 10

PBBM-Rose Hill, Ltd. v. Comm'r,
900 F.3d 193 (5th Cir. 2018) 10

Reynolds v. Comm'r,
296 F.3d 607 (7th Cir. 2002) 13, 14

Richardson v. Comm'r,
125 F.3d 551 (7th Cir. 1997) 13

Rubber Rsch., Inc. v. Comm'r,
422 F.2d 1402 (8th Cir. 1970) 14

Schweizer v. Comm'r,
124 T.C.M. (CCH) 232 (Oct. 6, 2022) 12, 13

TOT Prop. Holdings, LLC v. Comm'r,
1 F.4th 1354 (11th Cir. 2021) 10

United States v. Boyle, 469 U.S. 241 (1985) ..... *passim*

United States v. Deaton,
754 F. Supp. 102 (W.D. Ky. 1990) 4

United States v. Hidy,
471 F. Supp. 3d 927 (D. Neb. 2020) 21

United States v. Ott,
No. 18-cv-12174, 2019 WL 3714491 (E.D. Mich. Aug. 7, 2019) 20

Vezey v. United States,
191 F.3d 462 (9th Cir. 1999) 19

Williams v. Comm'r,
108 T.C.M. (CCH) 128 (Aug. 5, 2014) 23

In re Wyly,
552 B.R. 338 (Bankr. N.D. Tex. 2016) 16

Zdunek v. Comm'r,
T.C. Summ. Op. 2013-23, at *5 (Feb. 20, 2013) 20

Statutes

26 U.S.C. § 102 5

26 U.S.C. § 6039F ..... *passim*

26 U.S.C. § 6751(b) 1, 8, 9, 10

26 U.S.C. § 7701(36)(B)(i) 4

Other Authorities

I.R.S. Notice 97-3 Section VIII, 1997-1 C.B. 422 6

14A Mertens Law of Federal Income Taxation (May 2026 Update) 11, 15

Advice (n.), sense 2.a, Oxford English Dictionary (June 2026) 12

Jim Wang, Your Personal Tax Prep Checklist – Check Off These Document Before Starting Your Taxes, Intuit TurboTax Blog (Jan. 16, 2018), https://blog.turbotax.intuit.com/tax-planning-2/your-personal-tax-prep-checklist-check-off-these-documents-before-starting-your-taxes-32999/ 23, 24

New Due Date for FBARs, FinCEN, https://www.fincen.gov/news/news-releases/new-due-date-fbars-0 (Dec. 16, 2016) 20

Treas. Reg. § 1.6664-4 ..... *passim*

INTRODUCTION

The federal tax structure is largely based on a system of self-reporting. The IRS frequently relies on third-party reporting to "facilitate the IRS's verification of taxpayers' income and tax liabilities and assist the Service in detecting tax evasion." *Farhy v. Comm'r* (*Farhy II*), 100 F.4th 223, 228 (D.C. Cir. 2024). But it has limited reach. American taxpayers may be able to take part in offshore income generation activities that are never reported to the IRS. And it is in these shadows where international schemes to evade taxes have flourished, costing the United States an estimated $100 billion per year. Jane G. Gravelle, Cong. Rsch. Serv., R40623, Tax Havens: International Tax Avoidance and Evasion 1, 21, 29-30 (2022). To shine a light in these dark corners, several disclosure provisions in the Internal Revenue Code require taxpayers to report foreign financial interests and activities to the IRS or face penalties. *See, e.g.*, *Farhy II*, 100 F.4th at 228 (collecting statutes).

At issue here is 26 U.S.C. § 6039F, which requires taxpayers to report foreign gifts to the IRS if they receive more than $100,000 in a single year. The failure to make this report timely carries with it a penalty—even if due to an honest mistake. *See id.* § 6039F(c)(1)(B). Plaintiff Jinming Zhang does not dispute that she was required to make this disclosure to the IRS and failed to make it on time. Instead, Zhang contends that she is not liable for a § 6039F penalty because (i) the IRS did not obtain written manager approval before it assessed the penalty, 26 U.S.C. § 6751(b), and (ii) she reasonably expected TurboTax to prepare or alert her to all possible returns and forms that may be required under her circumstances. But the undisputed facts show that a manager approved the assessment of this penalty in writing before assessment. And the law is clear that relying on TurboTax alone to fulfill all your filing obligations (especially when you are a former CPA) is not reasonable cause. The Court should therefore grant summary judgment in favor of the United States.

FACTUAL AND LEGAL BACKGROUND

For purposes of this motion for summary judgment, the United States provides the following undisputed facts in the light most favorable to Zhang.

a. In 2012, Zhang moves to the United States from China to obtain a master's degree in accounting.

Jinming Zhang was born in China in 1989. Deposition of Jinming Zhang ("Zhang Depo.") 11:18–25. Zhang studied accounting at Shanghai University and graduated with a bachelor's degree in June 2012. Zhang Depo. 22:9 to 23:8. Right after graduation, Zhang moved to the United States to pursue a master's degree in accounting at the University of Miami. Zhang Depo. 13:2–24. The courses at University of Miami were in English and were focused on U.S. accountancy, including at least one course on U.S individual income taxation. Zhang Depo. 24:7 to 25:3. Zhang lived in the United States for a year and a half to complete her studies at the University of Miami. Zhang Depo. 13:2–7. Zhang graduated from the University of Miami in December 2013, obtaining a master's degree in accounting. Zhang Depo. 13:12–24, 24:1–17.

b. After graduating from the University of Miami, Zhang moves back to China and marries a Chinese citizen living in the United States.

After graduation, Zhang moved back to China where she worked as an auditor. Zhang Depo. 31:16–25. Zhang's work primarily focused on auditing departments of the Chinese government. Zhang Depo. 32:8–18.

Even though her work at this time was focused on Chinese accountancy, Zhang continued to work towards getting a certified public accountant (CPA) license in the United States. *See* Zhang Depo. 27:2–5. To obtain a CPA license, Zhang had to pass four exams, each focusing on a different subject. Zhang Depo. 26:18 to 27:19. She passed most of these exams while she was still in the United States, but she had to fly to Guam from China in 2014 to retake the tax portion of the CPA exams. Zhang Depo. Ex. 6 at 5. Zhang obtained her CPA license in 2015. Zhang Depo. 26:7–10. She maintained the CPA license until 2022, when she let the license go to inactive status to avoid paying unnecessary dues. Zhang Depo. 30:2 to 31:2.

On December 26, 2016, Zhang married Zhenghang Xu, a Chinese citizen living in the United States. Zhang Depo. 12:9–16, 19:6–18. Xu moved to the United States in 2010. Zhang Depo. 19:6–18. Zhang continued to work as an auditor in China until she married. Zhang Depo. 33:16–21. When they married, Zhang was still living in China. Zhang Depo. 12:17–19.

c. In 2017, Zhang moves to the United States and receives nearly $300,000 of gifts from her family in China.

Zhang did not immediately move to the United States to join her husband after marriage. In the time between marrying and moving to the United States, however, she spent "several months in the US" because the couple had a wedding ceremony in the United States (as well as one in China) and her husband was looking to buy a house for them to live in. *Id.*; *see also* Zhang Depo. Ex. 6 at 5 (summarizing Zhang's visits to the United States before moving to the United States permanently). After taking their month-long European honeymoon, Zhang moved permanently to the United States in September or October 2017, settling down with her husband in San Jose, California. Zhang Depo. 12:5–8, 14:5 to 15:3.

In 2017, Zhang received wedding gifts from her parents, grandparents, and uncles in China. Zhang Depo. 53:10–25. In China, there is a tradition for parents and family members to help their children (especially daughters) buy a house or car when they get married. Zhang Depo. 54:1–18. Because Zhang lived in the United States, her family could not directly buy a house or car for her, so they gave her cash gifts so that she could buy them herself. Zhang Depo. 54:15–18. These gifts were wired to Zhang's Bank of America account in the United States. Zhang Depo. 62:18 to 63:3.

In total, Zhang received $287,108 from her family members in China. Zhang Depo. 61:20 to 62:17; Zhang Depo. Ex. 2 at 6–7.

d. Zhang prepares a joint tax return for 2017 using TurboTax and self-prepares an FBAR to report her foreign bank accounts.

In early 2018, Zhang prepared the couple's 2017 individual income tax return (Form 1040). Zhang Depo. 40:19–21. This was the first U.S. income tax return that Zhang had ever prepared for herself or others. Zhang Depo. 40:22–24. To help prepare this return. Zhang used Intuit Inc.'s TurboTax software. Zhang Depo. 40:25 to 41:9.

Intuit, a provider of financial services and products, offers return-preparation software to both professionals and consumers. Deposition of Jaimz Davis (Intuit Inc.'s Rule 30(b)(6) Designee) ("Intuit Depo.") 18:3–22. The consumer software, known as TurboTax, is considered do-it-yourself return-preparation software. Intuit Depo. 18:14–22, 45:16 to 46:7. That means that

it can help a taxpayer "fill out the form," but ultimately the user is "the preparer." Intuit Depo. 45:16 to 46:7; *see also United States v. Deaton*, 754 F. Supp. 102, 103 (W.D. Ky. 1990) ("[I]n order to be deemed a 'preparer,' the statute contemplates the performance of more than mere ministerial acts."); 26 U.S.C. § 7701(36)(B)(i) (excluding persons who merely type, reproduce, or provide other mechanical assistance from definition of "tax return preparer").

For 2017, Intuit offered several versions of its TurboTax to its customers. Intuit Depo. 18:23 to 19:7. Users could choose between using a desktop or web application, and users could choose between several tiers of the software. Intuit Depo. 18:23 to 19:7, 25:23 to 26:19. The most basic version of the TurboTax software is for taxpayers with simple (e.g., non-itemized) tax returns. Intuit Depo. 19:1–3. For taxpayers with slightly more complicated tax returns, these customers could purchase TurboTax Deluxe, which came with increased capabilities like allowing taxpayers to take itemized deductions. Intuit Depo. 19:3–5. Finally, if at any time during the process a taxpayer decided that they needed to ask a question or have a tax professional review their return, the taxpayer could pay for TurboTax Live which would allow them to "actually talk to an expert while you were in TurboTax and have them look at your taxes." Intuit Depo. 19:5–7, 20:12 to 22:6, 27:10 to 28:12.

TurboTax is one of, if not the most, widely used consumer return-preparation software in the United States. But it has its limitations. TurboTax can only help its customers prepare their Form 1040 and associated schedules. Intuit Depo. 24:17 to 25:7, 49:2 to 50:9. It does not have the capability to prepare non-Form 1040 tax and informational returns that the taxpayer may otherwise need to file with the IRS, like partnership and corporate tax returns, or Forms 3520 or 5471 which are used to report certain foreign assets and interests. *Id.* Relevant here, Intuit makes this limitation clear on its website by warning its customers that the software cannot help them prepare a Form 3520 to fulfill any requirement to report large foreign gifts to the IRS. Intuit Depo. Ex. 3 at 2–3.

Zhang decided to use TurboTax to help prepare her 2017 tax return because her husband and friends previously used it to help prepare their taxes. Zhang Depo. 42:3–12. Critically, before deciding to use TurboTax, Zhang did no research to confirm that TurboTax could prepare

all relevant tax forms for her given her foreign financial assets and activities. Zhang Depo. 42:3 to 43:6, 45:19 to 46:4. And TurboTax never represented to her that it could help prepare tax returns and forms for taxpayers like her with foreign income, assets, or gifts. Zhang Depo. 46:19 to 47:3.

Zhang used the entry-level or deluxe version of TurboTax to help prepare her 2017 tax return. Zhang Depo. 48:2–5. Before getting started, Zhang gathered the couple's Forms W-2 and 1099. Zhang Depo. 49:20–24. Zhang did not disclose her large foreign gifts to her husband or otherwise ask him any questions about whether these gifts needed to be reported to the IRS. Zhang Depo. 56:15 to 57:1. This was the couple's first joint tax return, but Zhang nevertheless decided not to ask for a copy of her husband's previous year tax return. *See* Zhang Depo. 38:17–21, 49:20–24, 51:17 to 52:9. If she had, she likely would have discovered the Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts (Form 3520) her husband filed to report the foreign gifts he received in 2016. *See* Zhang Depo. 52:10 to 53:1

Once she gathered this information, Zhang followed the software's interview process to input the information to help self-prepare her income tax return. Zhang Depo. 49:25 to 50:5. TurboTax first asked her to input identifying information like names, addresses, and social security numbers. Intuit Depo. 33:20 to 34:13. It then asked her to input the couple's income. Intuit Depo. 34:14 to 35:17. TurboTax asked about various sources of income, but it did not ask her about foreign gift income or gift income at all, Zhang Depo. 50:11–13; Intuit Depo. 36:1–4, most likely because gift taxes are reported and paid by the donor—not the donee. *See* 26 U.S.C. § 102 (excluding gifts received from taxable income). TurboTax then asked about various deductions and credits. Intuit Depo. 36:5 to 37:12 Once TurboTax received all the information it asked for, the software prompted the user to review the data to ensure it was correct. Intuit Depo. 37:13–21. Zhang affirmed the accuracy of the information, and a draft income tax return was prepared. Zhang Depo. 64:15–24. Zhang reviewed the draft return and timely filed it with the IRS on March 18, 2018. Zhang Depo. 39:16 to 40:18, 64:15–24.

In her filed return, Zhang noted that she had bank accounts in a foreign country and acknowledged that she needed to file an FBAR with FinCEN reporting these foreign bank

accounts. Zhang Depo. 68:16 to 70:7; Zhang Depo. Ex. 3 at 5. Zhang prepared and filed an FBAR, which was submitted separately from her tax return. Zhang Depo. 68:16 to 70:7. TurboTax did not help her prepare this FBAR. *Id.*

e. Zhang, relying on TurboTax alone, fails to timely file a Form 3520 reporting her nearly $300,000 of foreign gifts to the IRS.

Section 6039F of the Internal Revenue Code requires U.S. persons, like Zhang, to file information returns reporting foreign gifts over $10,000. This report is made on Form 3520, and it is due on the same date as the individual's tax return. *See* 26 U.S.C. § 6039F(c)(1) (explaining that the report must be made "within the time prescribed therefor (including extensions)"); I.R.S. Notice 97-3 Section VIII, 1997-1 C.B. 422 ("Generally, to avoid penalties under section[] . . . 6039F . . ., Form 3520 must be filed as an attachment to the taxpayer's income tax return by the due date."). Congress requires foreign information reports to be made to "facilitate the IRS's verification of taxpayers' income and tax liabilities and assist the Service in detecting tax evasion." *Farhy II*, 100 F.4th at 228 (citation omitted).

The failure to timely make this report—even if no taxes are owed in connection with the requisite information—carries with it a penalty. *See id.* The penalty for failing to timely file a Form 3520 to report a foreign gift is equal to "5 percent of the amount of such foreign gift for each month for which the failure continues," but "not to exceed 25 percent of such amount in the aggregate." 26 U.S.C. § 6039F(c)(1)(B). The U.S. person "shall pay [this penalty] (upon notice and demand by the Secretary and in the same manner as tax)." *Id.* A taxpayer can avoid being penalized under section 6039F if they can show that their failure to file was due to "reasonable cause and not due to willful neglect." *Id.* § 6039F(c)(2).

When Zhang filed her U.S. income tax return for 2017, she did not know that she had to file a Form 3520 reporting her wedding gifts from her family in China. She first learned of this requirement around October 2018 while reading an article in an accounting magazine. Zhang Depo. 57:2–14. Before this, she had done no research and did not consult any professional to see if she needed to report her nearly $300,000 of foreign gifts that were otherwise not reported on her 2017 income tax return. Zhang Depo. 70:12 to 71:9.

Shortly after reading this article, she asked her friend who was a CPA about this reporting requirement. Zhang Depo. 57:15 to 58:22. Her friend informed Zhang that she needed to file the Form 3520 to report her foreign gifts. Zhang Depo. 57:15–21. Zhang prepared a Form 3520 on October 5, 2018, and submitted it to the IRS. Zhang Depo. 61:2–8; Zhang Depo. Ex. 2. Zhang attached a reasonable-cause statement to the belated Form 3520, explaining her oversight and asking the IRS to find reasonable cause. By the time the Form 3520 was file, it was over five months late. Declaration of Connor J. Pestovich Ex. 1 at #7.

f. After the IRS assessed a § 6039F penalty against Zhang for failing to timely disclose large foreign gifts, she appeals the decision to the IRS's settlement arm.

After Zhang filed her late Form 3520 with the IRS reporting her large foreign bequests, it was assigned to IRS Customer Service Representative Tracy Pace to determine if a § 6039F penalty was appropriate. Elizabeth Romo Declaration ("Romo Decl.") ¶ 10. Pace determined that Zhang's 2017 Form 3520 was not timely filed and requested approval to assess a 26 U.S.C. § 6039F penalty in the amount of $71,777. Romo Decl. ¶ 11. This amount represents 25% of the $287,108 total foreign gifts reported by Zhang on her late-filed 2017 Form 3520. Romo Decl. ¶ 12. Pace's request was noted in the IRS's Correspondence Imaging System, or "CII," which is a virtual case activity record that allows authorized IRS employees to post notes and attach documents. Romo Decl. ¶¶ 4, 11. The request was made on June 1, 2020. Romo Decl. ¶ 11.

At that time, the IRS had a suspension on sending notices and letters due to COVID-19, so the penalty was not assessed immediately. Romo Decl. ¶ 15. Instead, on September 1, 2020, Pace renewed her request for approval to assess the $71,777 Section 6039F penalty against Zhang for late filing her 2017 Form 3520. Romo Decl. ¶ 16. The next day, another IRS employee named Rebecca Nelson reviewed the request and forwarded it "to manager for approval." Romo Decl. ¶ 16; Romo Decl. Ex. 2.

On October 6, 2020, Pace's manager, Melody Edwards, approved the request to assess this $71,777 Section 6039F penalty against Zhang. Romo Decl. ¶¶ 17–18. Edwards gave her approval in writing by posting the following note in the CII page related to Zhang's 2017 late-filed Form 3520:

Approved to assess F3520 $71,777.00 PRN 668 civil penalty per IRM 21.8.2.19.2, ME, Manager

Romo Decl. Ex. 2 (Note: "ME" refers to Melody Edwards).

The IRS assessed the $71,777 section 6039F penalty against her on November 2, 2020. Zhang Depo. Ex. 5; Romo Decl. Ex. 4 at 1.[1]

After Zhang received notice of the penalty assessment, her authorized agent sent a letter to the IRS requesting penalty abatement for reasonable cause. Zhang Depo. Ex. 6 at 4–9. The IRS rejected the request for abatement, stating the information submitted did not "establish reasonable cause or show due diligence." Zhang Depo. Ex. 8 at 1. Zhang appealed to the IRS's Independent Office of Appeals ("IRS Appeals"), largely detailing the same circumstances in her original letter to the IRS requesting penalty abatement. Zhang Depo. Ex. 9 at 1–7. IRS Appeals is the independent settlement arm of the IRS. *See* Michael I. Saltzman & Leslie Book, IRS Practice and Procedure ¶ 9.01[1] (Oct. 2025). IRS Appeals ultimately determined that Zhang likely did not have reasonable cause but offered to settle the case by abating 20% of the original penalty. Zhang Depo. Ex. 13. Zhang agreed to this settlement proposal and the IRS reduced the penalty by 20% to $57,422. Zhang Depo. Exs. 15–16.

A month later, after paying the remainder of the penalty, Zhang filed a claim for refund with the IRS. Zhang Depo. Ex. 17. In it she requested a refund of the § 6039F penalty assessed against her for several reasons including, relevant here, that the IRS did not comply with the manager-approval requirement imposed by 26 U.S.C. § 6751(b) and that she was entitled to a reasonable-cause defense. Zhang Depo. Ex. 17 at 2–4. The IRS did not act on the claim for refund in the six months after the claim for refund was filed. ECF No. 5 at ¶ 97. Zhang then filed this suit, seeking a refund of $68,004.52 for the § 6039F penalties assessed against her for 2017.

[1] As explained in further detail below, Zhang and the IRS agreed to settle the dispute by abating 20% of the original penalty. This explains why the assessment amount in this transcript is noted as $57,422, which is 80% of $71,777.

g. The Court grants the United States' partial motion to dismiss, narrowing this case to two issues.

After Zhang filed this lawsuit, the United States moved to partially dismiss her amended complaint, raising three separate defenses. ECF No. 17. First, the United States argued that the Court should dismiss Zhang's claim that the IRS did not have statutory authority to assess the § 6039F penalty because the language, structure, and function of that statute made clear that it was an assessable penalty. Second, the United States moved to dismiss Zhang's APA claims because the Court lacked subject-matter jurisdiction over them. Third, the United States moved to dismiss Zhang's Excessive Fines Clause challenge because the § 6039F penalty was neither a "fine" nor "excessive" under the Eighth Amendment. Zhang opposed the United States' partial motion to dismiss, and the Court held a hearing on the matter in April 2026.

On May 4, 2026, the Court granted the United States' partial motion to dismiss. ECF No. 37. In that Order, the Court agreed with the United States that the penalty imposed by § 6039F is an assessable penalty. *Id.* at 8–11. The Court also agreed with the United States that the very tax-refund suit she filed here was another "adequate remedy in court" that precludes her from bringing an APA claim to challenge the § 6039F penalty. *Id.* at 11–12. Finally, the Court found that the § 6039F penalty imposed against Zhang fit was merely remedial and therefore not a "fine" that implicates the Excessive Fines Clause. *Id.* at 13–14. Accordingly, the Court dismissed Zhang's *Farhy*, APA, and Excessive Fines challenges.

ARGUMENT

Zhang has two remaining challenges to the 26 U.S.C. § 6039F penalty assessed against her. First, she alleges that the IRS failed to obtain written manager approval of the penalty before assessment as required by 26 U.S.C. § 6751(b). Second, she contends that her failure to timely file a Form 3520 reporting her large foreign gifts was due to reasonable cause. Neither presents a triable issue of fact.

I. The IRS complied with Section 6751(b) because a manager approved the imposition of the § 6039F penalty against Zhang in writing before assessment.

Let's start with Zhang's procedural challenge. Absent inapplicable statutory exceptions, the IRS cannot assess a penalty against a taxpayer "unless the initial determination of such

assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination." 26 U.S.C. § 6751(b)(1). There is no genuine dispute that a manager approved the penalty in writing a month before the penalty was assessed.

The plain language of § 6751(b) is unambiguous. All it requires is that a manager approve the imposition of a civil penalty in writing before it is assessed. *See Laidlaw's Harley Davidson Sales v. Comm'r*, 29 F.4th 1066, 1074 (9th Cir. 2022). This is not a particularly demanding requirement. Approval need not be contained in any particular document or in any particular form. *Palmolive Building Investors, LLC v. Comm'r*, 152 T.C. 75, 86 (2019); *see also PBBM-Rose Hill, Ltd. v. Comm'r*, 900 F.3d 193, 213 (5th Cir. 2018); *TOT Prop. Holdings, LLC v. Comm'r*, 1 F.4th 1354, 1373 (11th Cir. 2021). And the requirement that such approval be in writing does not demand "any particular form of signature or even any signature at all." *Deyo v. United States*, 296 F. App'x 157, 159 (2d Cir. 2008). A simple email can satisfy this manager-approval requirement. *Estate of Morrissette v. Comm'r*, 121 T.C.M. (CCH) 1447, at *42 (May 13, 2021).

There can be no genuine dispute that the IRS complied with § 6751(b) here. As described above, IRS Customer Service Representative Tracy Pace determined that Zhang's 2017 Form 3520 was not timely filed and requested approval to assess a 26 U.S.C. § 6039F penalty against Zhang in the amount of $71,777 and noted this request in the CII system. Romo Decl. ¶ 11. After a suspension resulting from COVID-19, her request was forwarded "to manager for approval." *Id.* ¶¶ 15, 16. On October 6, 2020, Pace's manager, Melody Edwards, gave her written approval of this penalty by posting the following note in the CII system:

> Approved to assess F3520 $71,777.00 PRN 668 civil penalty per IRM 21.8.2.19.2, ME, Manager

Romo Decl. Ex. 2; *see* Romo Decl. ¶¶ 17–18.

Edwards' approval was given a month before the penalty was assessed on November 2, 2020, Romo Decl. Ex. 4 at 1, so there is no genuine dispute that the IRS complied with 26 U.S.C. § 6751(b). *See Laidlaw's*, 29 F.4th at 1071. The Court should therefore grant summary judgment

to the United States on this issue.

II. Zhang's blind reliance on TurboTax to handle and satisfy her unique informational-reporting obligation is not reasonable cause.

Zhang also challenges the penalty by raising a reasonable cause defense, but she has insufficient evidence to create a triable issue of fact. *See* 26 U.S.C. § 6039F(c)(2) (providing the penalty shall not apply if the taxpayer "shows that the failure is due to reasonable cause and not due to willful neglect"). The reasonable cause defense appears throughout the Tax Code, *see, e.g.*, 26 U.S.C. §§ 6651(a)(1), (2), and its use in § 6039F must be construed in light of its well-established meaning. *See Jarnagin v. United States*, 134 Fed. Cl. 368, 376 (Fed. Cl. 2017) (citing *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998)). Under certain circumstances, the reasonable cause defense allows a taxpayer to avoid a tax penalty if they can show that they exercised ordinary care and prudence but were nonetheless unable to file timely due to factors outside their control. *See* 14A Mertens Law of Federal Income Taxation § 55.13 (May 2026 Update) (listing events that may support a finding of reasonable cause for failing to timely file a tax return).

There may be no more misleading term in the Tax Code than "reasonable cause," because it is a narrower defense than its broad-sounding name implies. In *Boyle*, the Supreme Court was asked to clarify whether a taxpayer's reliance on a professional to prepare and file a tax return constitutes reasonable cause to defeat a late-filing penalty. 469 U.S. 241 (1985). The Supreme Court answered "No," adopting a bright-line rule that taxpayers cannot delegate their responsibility to timely file returns to their agents. *Id.* at 249–50. A taxpayer who hires a professional to prepare and file their taxes may exercise "ordinary business care and prudence," but *Boyle* makes clear that the responsibility remains on the taxpayer to ensure that the return is timely filed. *Id.* If the return is late, reliance on this professional is not reasonable even if the taxpayer believed that the professional would competently discharge their duties. *Id.*

The Supreme Court clarified in dicta that a taxpayer may still have reasonable cause if the "taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken." *Id.* at 250. The Supreme Court emphasized, however, that this reasonable-reliance-on-a-professional

defense applies only when "an accountant or attorney *advises* a taxpayer on a matter of tax law, such as whether a liability exists." *Id.* at 251 (emphasis in original).

Three takeaways from *Boyle* are relevant here. First, a taxpayer cannot escape a late-filing penalty by simply hiring or relying on a tax professional to fulfill their tax filing obligations. *Id.* at 249–50. Second, to establish a reasonable-reliance-on-a-professional defense, the taxpayer must show at the outset that there was substantive "advice"—i.e., an affirmative communication—upon which to rely. *See id.* at 251; Treas. Reg. §1.6664-4(c)(2) (defining "advice" as a "communication" setting forth an analysis of conclusion); *see also* Advice (n.), sense 2.a, Oxford English Dictionary (June 2026), https://doi.org/10.1093/OED/9726626955 ("Opinion given or offered as to what action to take; counsel; recommendation."). Implicit assumptions that a professional prepared all returns required under the Tax Code will not do. *See Boyle*, 469 U.S. at 252; *Schweizer v. Comm'r*, 124 T.C.M. (CCH) 232, at *8 (Oct. 6, 2022). Third, "our system of self-assessment in initial calculation of a tax simply cannot work on any basis other than one of strict filing standards," meaning the United States "should not have to assume the burden of unnecessary ad hoc determinations" of reasonable cause. *Boyle*, 469 U.S. at 249. "Any less rigid standard would risk encouraging a lax attitude toward filing dates." *Id.*

In light of these principles, Zhang cannot show a triable issue of reasonable cause. Zhang must breach a heavily fortified castle because she bears the "heavy burden" of proving both (1) that her failure did not result from "willful neglect," and (2) that her failure was due to "reasonable cause." *Boyle*, 469 U.S. at 245; 26 U.S.C. § 6039F(c)(2). Zhang's reasonable-reliance-on-TurboTax defense fails for three independent reasons. First, Zhang fails to make a preliminary showing that TurboTax issued any "advice" that she need not report her large foreign gifts to the IRS upon which she could have reasonably relied (the moat, to continue the castle metaphor). Second, it was unreasonable for Zhang, a former CPA, to blindly assume that a one-size-fits-most return-preparation software could competently advise her on the filing obligations that may arise from receiving nearly $300,000 of foreign gifts in a single year (the walls). Finally, the other facts and circumstances in this case prevent finding reasonable cause because Zhang could have easily found out about this foreign gift reporting requirement by doing

a simple Google search or asking her husband who filed one of these Forms 3520 the year before (the keep).

a. Zhang cannot show reasonable cause because she cannot point to any "advice" that TurboTax gave her which caused her to file the Form 3520 late.

To show a triable issue of reasonable cause, Zhang must first cross the moat and establish that she received some advice from TurboTax that led her to believe that it was not necessary to file a Form 3520 reporting her large foreign gifts. She cannot bridge this first obstacle.

The Supreme Court's repeated emphasis of the word "advice" throughout *Boyle* sends a crystal-clear message to the lower courts: Before a taxpayer can claim reasonable reliance on a professional, they must show that there was "advice" upon which they relied. *See Boyle*, 469 U.S. at 251 (emphasizing the word "*advises*"). "Advice" means "any communication, including the opinion of a professional tax adviser, setting forth an analysis or conclusion provided to (or for the benefit of) the taxpayer." *Schweizer*, 124 T.C.M. (CCH) 232, at *8 (cleaned up); *see also* Treas. Reg. § 1.6664-4(c)(2) (defining "advice"). Critically, a "professional who simply prepares a return by inputting data without exercising judgment is not considered to render 'advice' that justifies reasonable reliance." *Schweizer*, 124 T.C.M. (CCH) 232, at *8; *see also, e.g.*, *Giambrone v. Comm'r*, T.C.M. (RIA) 2024-47, at *19 n.14 (2024) ("Simply preparing a return based on data provided by a taxpayer does not count as advice."). If the taxpayer fails to "make the threshold showing that reliance on Turbo Tax [sic] caused them to make substantive errors," the taxpayer's reasonable-cause defense "goes nowhere." *Reynolds v. Comm'r*, 296 F.3d 607, 619 (7th Cir. 2002).

Zhang cannot make this threshold showing because, during her deposition, she admitted that TurboTax never told her about Form 3520 or the requirement to report foreign gifts. Zhang Depo. 70:8–11. She also admitted that TurboTax never asked her any questions about receiving foreign gifts or income. *Id.* at 50:11–16. Based on these admissions, "[t]here is no evidence that [TurboTax], after being informed of the circumstances, advised her that she did not" have to file a Form 3520 reporting her large foreign gifts in 2017. *Richardson v. Comm'r*, 125 F.3d 551, 559 (7th Cir. 1997); *see also Schweizer*, 124 T.C.M. (CCH) 232, at *8; *Giambrone*, T.C.M. (RIA)

2024-47, at *19 n.14. The mere fact that return-preparation software "has prepared a tax return does not mean that" it has opined that other returns or forms need not be filed with the IRS. *DJB Holding Corp. v. Comm'r*, 803 F.3d 1014, 1030 (9th Cir. 2015). The failure to make this preliminary showing prevents Zhang from raising a reasonable-reliance-on-a-professional defense. *See, e.g.*, *Reynolds*, 296 F.3d at 619; *Marrin v. Comm'r*, 147 F.3d 147, 152–53 (2d Cir. 1998).

And this result makes sense. The reasonable-reliance-on-a-professional defense is only a shield when taxpayers specifically seek advice from a tax professional on a substantive tax issue. For example, there is no dispute that a taxpayer, unsure whether foreign stock gifted to him from a foreign family member should be reported on a Form 3520, would be shielded from § 6039F penalties if he went to a tax professional knowledge on these foreign-reporting issues and was advised that in-kind bequests need not be reported—even if such advice turned out to be erroneous. *See Boyle*, 469 U.S. at 251. But this safe harbor is only available in that hypothetical because the taxpayer was specifically told (*see* advised) that they need not report in-kind bequests. *See DJB Holding*, 803 F.3d at 1030 (holding taxpayers failed to establish reasonable cause where they did not produce evidence showing they ever asked their accountant for an opinion). That is not the case here.

Zhang cannot point to any substantive "advice" issued to her by TurboTax upon which she reasonably relied to determine that she need not file a Form 3520 for 2017. *See Rubber Rsch., Inc. v. Comm'r*, 422 F.2d 1402, 1407 (8th Cir. 1970) (holding the failure to show that the taxpayer received advice as to its obligation to file a return deprived the taxpayer of a reasonable-cause defense). Zhang "neither requested nor received any advice one way or the other from [TurboTax] regarding whether [she] was required to file [a Form 3520]—that is, [TurboTax] conducted no analysis and drew no conclusions concerning the obligation [to file a Form 3520], nor did [it] communicate any such conclusion to" Zhang. *Jarnagin*, 134 Fed. Cl. at 379. The most Zhang can muster is that TurboTax never alerted her to the foreign gift reporting requirement. But "[u]tilizing tax preparation software does not alleviate the taxpayer's duty to be aware of, and comply with, the deadlines set forth in the tax code." *All Stacked Up Masonry, Inc.*

v. United States, 150 Fed. Cl. 540, 549 (2020). To hold otherwise would allow the exception to swallow the rule.

Zhang's argument boils down to this: "I ought to be excused for failing to timely report my foreign gifts because I had no idea that it was required." But it is "well-established that 'ignorance of the law does not amount to reasonable cause' sufficient to invalidate tax penalties." *Christman v. United States*, 110 Fed. Cl. 1, 8 (2013) (quoting *Picard v. Comm'r*, 28 T.C. 955, 961 (1957)); *see also, e.g.*, 14A Mertens Law of Federal Income Taxation § 55:19 (May 2026 Update). "Where a taxpayer does not obtain competent advice, the taxpayer's erroneous belief that he or she was not required to file a return does not establish reasonable cause for failure to timely file." *Christman*, 110 Fed. Cl. at 8 (quoting *Van Ryswyk v. Comm'r*, 98 T.C.M. (CCH 113), *6 (Aug. 19, 2009)). The Court should find that Zhang cannot present a triable issue of reasonable-reliance-on-a-professional because she cannot show that she received any "advice" from TurboTax.

b. It was unreasonable for Zhang to assume that a one-size-fits-most return preparation software could advise her about her uncommon foreign-reporting obligations.

Even if Zhang clears the mote, she cannot scale the walls of the castle because it was unreasonable to blindly rely on TurboTax for two reasons. First, Zhang did not do any research to confirm that TurboTax was a competent tax professional with sufficient expertise in reporting large foreign gifts to the IRS to justify reliance on any advice issued by TurboTax about her § 6039F filing obligation. *Neonatology Assocs., P.A. v. Comm'r*, 115 T.C. 43, 99 (2000). Second, Zhang could not rely on any advice issued by TurboTax about her foreign gift reporting requirement because the software never asked about, and Zhang never disclosed, the critical information that she received foreign gifts in 2017. *Id.* Either reason alone is sufficient to grant the United States summary judgment here.

i. It was unreasonable to assume TurboTax was a competent tax professional with sufficient expertise in reporting large foreign gifts to justify blind reliance.

Zhang cannot establish reasonable reliance on a professional because TurboTax was not a tax professional upon which she could rely. The reasonable-reliance-on-a-professional defense is only available when the taxpayer relies on advice from a competent tax professional. *See, e.g.*,

Neonatology, 115 T.C. at 99; *Boyle*, 469 U.S. at 251. Obviously, when *Boyle* was decided in 1985, the Supreme Court could not have predicted the rapid adoption of do-it-yourself software, like TurboTax, by millions of taxpayers. For purposes of this motion, the United States assumes that there may be appropriate situations where do-it-yourself return-preparation software, like TurboTax, may qualify as a "competent professional" upon which the taxpayer can reasonably rely—but it is not here. *Neonatology*, 115 T.C. at 99.

It is undisputed that TurboTax could not prepare Forms 3520. Intuit Depo. 49:13 to 50:9; *see also* Intuit Ex. 3 at 3 ("Since this form is filed separately from your income tax return . . . it isn't a supported form within Intuit TurboTax."). If TurboTax cannot prepare the relevant return, it obviously cannot qualify as a "competent professional who had sufficient expertise to justify reliance." *Neonatology*, 115 T.C. at 99; *see also, e.g.*, *Allen v. Comm'r*, 925 F.2d 348, 354 (9th Cir. 1991) (finding taxpayers did not reasonably rely on accountant where there was no evidence of the accountant's experience or expertise). Thus, Zhang should be barred from claiming that TurboTax's failure to prepare such a return constitutes reasonable cause because "it was not a flaw in the TurboTax software" that caused Zhang's late filing of the Form 3520. *Lam v. Comm'r*, 99 T.C.M. (CCH) 1347, at *3 (Apr. 19, 2010).

And Zhang has failed to show that her failure to timely file the Form 3520 was "anything but the result of [her] own negligence," since she did no research to confirm that TurboTax could competently advise her about her uncommon financial situation before blindly relying on it. *Id.* It is not "reasonable to rely on a professional's advice when the taxpayer knew, *or should have known*, that the professional lacked 'the requisite expertise to opine on the tax treatment of the disputed item.'" *In re Wyly*, 552 B.R. 338, 505 (Bankr. N.D. Tex. 2016) (emphasis added) (quoting *Neonatology*, 115 T.C. at 99). Zhang admits that Intuit never represented to her that TurboTax was able to help prepare a Form 3520 or a tax return for a person with foreign income or assets. Zhang Depo. 46:19 to 47:3. And she admits that she did not do any research to confirm that TurboTax was able to prepare all possible tax-related forms related to her situation before deciding to use TurboTax to prepare her 2017 taxes. Zhang Depo. 45:19 to 46:4; *see Flume v. Comm'r*, 113 T.C.M. (CCH) 1097, at *6 (Jan. 30, 2017) (rejecting reasonable cause for a similar

foreign-reporting penalty because taxpayer testified that he was unaware of his return preparer's qualifications). If she had, she would have discovered that TurboTax was unable to fulfill all her filing obligations since it is undisputed that TurboTax lacked "the requisite expertise to opine on the" foreign gift reporting requirement imposed by § 6039F. Intuit Depo. 49:13 to 50:9; *see also* Intuit Ex. 3 at 3. She was after all a highly educated former CPA who knew she had other foreign-reporting obligations for that year (i.e., the FBAR). *See* Treas. Reg. § 1.6664-4(c)(1) (noting the Court should consider taxpayer's education, sophistication and business experience when determining whether "reliance on tax advice was reasonable").

Zhang reasonably should have known that TurboTax—a one-size-fits-most return-preparation software—"lacked knowledge in the relevant aspects of Federal tax law" to advise her on the filing obligations that applied to her uncommon situation—namely, receiving nearly $300,000 of foreign gifts in a single year. *Id.* Thus, Zhang cannot meet her burden to show that she "justifiably relied on a professional accountant." *Allen*, 925 F.2d at 354.

ii. Any assumption that TurboTax "advised" Zhang about her foreign gift reporting requirement was unreasonable because the software never asked her if she received foreign gifts.

Even if Zhang satisfies the Court that TurboTax is a competent professional upon which she could reasonably rely, she cannot show that she "provided necessary and accurate information" to TurboTax to allow it to correctly advise her whether she needed to file a Form 3520. *Neonatology*, 115 T.C. at 99; *see Anyika v. Comm'r*, 101 T.C.M. (CCH) 1322, at *6 (Mar. 24, 2011). During her deposition, Zhang admitted that TurboTax did not ask her any questions about receiving foreign gifts or income. Zhang Depo. 50:11–16. And nothing in the record suggests that Zhang informed TurboTax about the existence, amounts, or timing of her foreign gifts, "information the accountant would need in order to opine on the" applicability of the § 6039F filing requirement to Zhang's situation. *DJB Holding*, 803 F.3d at 1030.

"Tax preparation software is only as good as the information one puts into it." *Bunney v. Comm'r*, 114 T.C. 259, 267 (2000). If the software never asks (and the taxpayer never provides) the critical information upon which competent advice must be formed, "[t]he software does not constitute professional advice which this Court can rely on in a reasonable cause-good faith

analysis." *Ballard v. Comm'r*, T.C. Summ. Op. 2018-53, at *7 (Nov. 27, 2018); *see also, e.g.*, *Anyika*, 101 T.C.M. (CCH) 1322, at *6. There is no triable issue here because Zhang has no evidence to show that she provided "necessary and accurate information" to TurboTax. *Cooper v. Comm'r*, 877 F.3d 1086, 1096 (9th Cir. 2017) (quoting *DJB Holding*, 803 F.3d at 1030); *accord. Allen*, 925 F.2d at 354.

***

Zhang fails to clear the castle's walls. She cannot show that TurboTax was a competent tax professional upon which she could reasonably rely—at least when it came to her foreign gift reporting requirements. And she admits that she did not give TurboTax the "necessary and accurate information" needed to advise her on this issue. *Id.* The Court should therefore grant summary judgment on this issue.

c. The other facts and circumstances in this case prevent a finding of ordinary business care by Zhang, a highly educated former CPA, to fulfill her filing requirement.

Even if Zhang somehow clears the moat and castle's walls, she cannot get inside the keep because her reliance on TurboTax was not reasonable or in good faith. The fact that a taxpayer, like Zhang, may be able to point to some "advice" from a tax professional "will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a tax advisor) in good faith." Treas. Reg. § 1.6664-4(c)(1). *See generally Neonatology*, 115 T.C. at 98 (explaining the defense requires "good faith reliance" on a professional). Whether such reliance was reasonable or in good faith depends on the "facts and circumstances of the case." *Id.*

Here, the following undisputed facts and circumstances prevent a finding of reasonable reliance on TurboTax. First, Zhang is a former CPA with a master's degree in accounting. Second, Zhang knew that she was subject to other foreign information reporting requirements for this year, namely the FBAR filing requirement, so she should have quickly Googled to see if she needed to report the nearly $300,000 of foreign gifts she received in 2017. If she had, she would have found dozens of online resources alerting her to this filing requirement and walking her through how to prepare the Form 3520. Finally, Zhang, who was preparing the couple's first joint tax return together, should have asked for her husband's previous year filings to ensure that

she reported all relevant income. These circumstances, taken together or separately, prevent a finding of reasonable or good-faith reliance on a professional.

i. Zhang's reliance on TurboTax to cover all reporting obligations of her unique financial situation was unreasonable since she was a former CPA.

Zhang's blind reliance on TurboTax to fulfill her filing requirements was not reasonable because she is a highly educated former CPA. *See* Treas. Reg. § 1.6664-4(c)(1) ("[T]he taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on tax advice was reasonable and made in good faith."). It is undisputed that Zhang graduated from the University of Miami with a master's degree in accounting. It is also undisputed that Zhang passed the CPA exam, including the tax portion, and was a CPA until 2022, when she let the license go inactive to avoid paying the fees for a license she did not need for her current job.

While it is true that Zhang's accounting work since graduating has focused more on auditing and bookkeeping, with her education and sophistication, it was unreasonable for her to assume that she need not double check about the reporting requirements that may apply to the nearly $300,000 of foreign gifts she received in 2017. *See Vezey v. United States*, 191 F.3d 462, at *2 (9th Cir. 1999) (Table) ("[S]ome degree of diligence on the taxpayer's part is required."). Especially since she indisputably knew that she needed to report other foreign assets for which no domestic information reporting was required, namely, foreign bank accounts.

When she was preparing her 2017 tax return, Zhang checked the following boxes on her Schedule B, noting that she had foreign bank accounts and was required to file an FBAR:

Part III			Yes	No
Foreign Accounts and Trusts (See instructions.)	7a	At any time during 2017, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions	X	
		If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements	X	
	b	If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶ CH China		
	8	During 2017, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions		X

For Paperwork Reduction Act Notice, see your tax return instructions. BAA REV 11/14/17 TTW Schedule B (Form 1040A or 1040) 2017

ZHANG-000345

Zhang Depo. Ex. 3 at 5; *see also* Zhang Depo. 66:12 to 69:5. Zhang filed an FBAR for 2017, *id.* at 69:1–5, which she prepared herself, *id.* at 69:6–7 (testifying that TurboTax did not help prepare the FBAR). The FBAR was due at the same time as Zhang's tax return. *See* New Due Date for FBARs, FinCEN, https://www.fincen.gov/news/news-releases/new-due-date-fbars-0 (Dec. 16, 2016) [https://perma.cc/D98J-N2KX]. Taking this together, it is undisputed that Zhang knew at the time the 2017 Form 3520 was due that she may need to prepare additional forms to report foreign activities and assets beyond those contained in her individual income tax return.

Given Zhang's substantial knowledge and experience, it was unreasonable for her to assume without further research that she need not report to the IRS nearly $300,000 of foreign gifts received in 2017. As described in further detail below, Zhang would have found plenty of resources describing the filing requirement imposed by § 6039F if she had simply done a quick Google search. The failure to do this quick search, or *any* other research to confirm that TurboTax could (or did) prepare all relevant returns for her situation, was not reasonable in light of Zhang's substantial knowledge and education. *See, e.g.*, *Kaufman v. Comm'r*, 784 F.3d 56, 68–69 (1st Cir. 2015) (finding taxpayers no reasonable cause where taxpayers were "highly intelligent, very well-educated people" that did not "take further steps to assess" the accuracy of their professional's advice); *Zdunek v. Comm'r*, T.C. Summ. Op. 2013-23, at *5 (Feb. 20, 2013) (holding the failure to do any research in light of the taxpayer's "substantial experience, knowledge, and education" was not reasonable cause).

Zhang may try and argue that any such research was unnecessary because gift income is not usually reportable. But she indisputably knew that different reporting rules could apply to foreign and domestic activities because she filed an FBAR. Given this, it was unreasonable for her to sit back and assume that she need not inform the United States that she had received nearly $300,000 from abroad. This was not reasonable cause. *See United States v. Ott*, No. 18-cv-12174, 2019 WL 3714491, at *2 (E.D. Mich. Aug. 7, 2019) (holding a far less sophisticated taxpayer failed to show reasonable cause for a non-willful FBAR violation where she never informed her advisor of the foreign accounts).

ii. A simple internet search would have alerted Zhang to the foreign gift reporting requirement imposed by § 6039F.

Another reason why Zhang cannot show relying on TurboTax was reasonable is because if she had done *any* research, she would have easily found plenty of resources describing the reporting requirement imposed by § 6039F. *See United States v. Hidy*, 471 F. Supp. 3d 927, 933 (D. Neb. 2020) (finding no reasonable cause where taxpayers could have "quite easily" learned about their foreign reporting requirements through research or seeking professional advice).

The IRS issued guidance about Form 3520 and the requirement to report foreign gift reporting as early as December 1, 2008. Colter Decl. Ex. A-25 at 2–3 (webpage entitled "IRS Issues Fact Sheet on Foreign Gift Reporting Rules"). This guidance was available on the IRS's website as early as September 2012. Colter Decl. Ex. A-10 (archived copy of IRS webpage as of September 9, 2012). This webpage, entitled "Gifts from Foreign Person," explains that "[i]f you are a U.S. person who received foreign gifts of money or other property, you may need to report these gifts on Form 3520." *Id.* at 2. It also warns that "there are significant penalties for failure to file Form 3520 when it is required," and outlines where and when to file the Form 3520. *Id.* Zhang could have viewed a substantially similar version of this webpage all the way through April 18, 2018 when her 2017 Form 3520 was due. *See* Colter Decl. Exs. A-11 at 2 (archived copy of Gifts from Foreign Person IRS webpage as of February 11, 2016), A-12 at 2 (archived copy of same IRS webpage as of March 17, 2017), A-13 at 2 (archived copy of same IRS webpage as of July 17, 2017), A-14 at 2 (archived copy of the Gifts from Foreign Person IRS webpage as of August 2, 2018).

This means that when Zhang was preparing her 2017 tax return in early 2018, she would have had several IRS resources about the § 6039F filing requirement at her fingertips. This included the IRS webpage mentioned above that warned that persons who "received foreign gifts" may need to "report these gifts on Form 3520." Colter Decl. Exs. A-13 (archived July 17, 2017), A-14 (archived August 2, 2018). And an IRS webpage entitled "About Form 3520," which explained that U.S. persons needed to file this form to report "[r]eceipt of certain large gifts or bequests from certain foreign persons." Colter Decl. Ex. A-15 at 2 (archived January 13,

2018). Zhang could have also referred to the official 2017 Instructions for Form 3520 if she had any questions about how to prepare this filing. Pestovich Decl. Ex. 2.

And these were not the only readily available resources at this time. Among the many resources available to Zhang when she was preparing her 2017 tax return were:

- An IRS information letter published in March 2013, which explained that a U.S. resident must report foreign gifts exceeding $100,000 in a single year even if such gift is not usually subject to federal income tax, Colter Decl. Ex. A-24 at 4–5 (copy of IRS information letter published on TaxNotes website in March 2013);
- Several articles and webpages published online by accountants and legal professionals discussing the foreign gift reporting requirement imposed by § 6039F, Colter Decl. Exs. A-1 at 4 (article published on September 1, 2016 noting U.S. beneficiaries must file a Form 3520 if they receive $100,000 or more from foreign individuals), A-4 at 3 (article published on June 27, 2013 noting "If you received a gift or bequest from a foreign person or estate of at least $100,000, you must file form 3520"), A-17 (archive of webpage on March 15, 2018 showing an article published on July 7, 2011 explaining the foreign gift reporting requirement), A-18 at 4–5 (article published on June 1, 2013 providing an overview of reporting requirements for foreign income and investment, including foreign gifts), A-19 at 2 (article published in November 2015 explaining recipients are required to report a foreign cash gift under certain circumstances), A-21 at 5–6 (article published on August 28, 2009 detailing the Form 3520 and foreign gift reporting requirement imposed by § 6039F), A-22 at 3 (article published on September 10, 2015 noting transfers from non-U.S. persons must be reported on form 3520);
- Articles published in accounting publications that were republished or readily accessible online, including two articles in The CPA Journal, Colter Decl. Exs. A-2 ("IRS Form 3520, Penalties, and Whether to Make a Protective Filing" published in December 2017), A-9 ("The Many Faces of Form 3520" published in August 2017), and an article in the Estate Planning Journal, Colter Decl. Ex. A-20 (hyperlinking to

an article where "lesser-known tax return filing rules" such as those related to gifts and inheritances are discussed);

- Threads posted to Reddit 11 years ago asking about, and referencing, the requirement to file Form 3520 to report large foreign gifts to the IRS, Colter Decl. Exs. A-5 at 1–2, A-6 at 1; and
- A YouTube video posted by a CPA in October 23, 2016, specifically walking taxpayers through how to fill out the Form 3520 to report their foreign gifts, Colter Decl. Ex. A-27 & PROD-USA-0000178.mp3 (video file submitted pursuant to Civil L.R. 5-1(g)(4)).

This long list shows how unreasonable Zhang's actions were. If she had done even a modicum of research, she would have easily found out that she needed to report her nearly $300,000 of foreign gifts to the IRS. Any reliance on TurboTax was therefore not reasonable or in good faith. *See Williams v. Comm'r*, 108 T.C.M. (CCH) 128, at *11 (Aug. 5, 2014) (rejecting reasonable cause where taxpayer's research should have uncovered relevant reporting rules).

iii. Zhang, who was preparing her first U.S. income tax return, should have obtained a copy of her husband's previous year tax return, which would have included his Form 3520 reporting his foreign gifts.

Before her 2017 tax return, Zhang had never prepared or filed a U.S. income tax return. Zhang Depo. 35:6–14, 38:17–21. It was also the first time Zhang had ever filed a joint income tax return with her husband. Given this, Zhang reasonably should have obtained a copy of her husband's previous year's tax return to ensure that she did not overlook any of her husband's sources of income.

Especially since Intuit—the company that sells TurboTax—specifically advised taxpayers to gather their previous year's tax return before using TurboTax. In a blog post on January 16, 2018 (which is around the time Zhang was preparing her 2017 return using TurboTax), Intuit listed "[c]opies of the prior year's income tax returns" as a document "necessary to prepare your income tax return." Jim Wang, Your Personal Tax Prep Checklist – Check Off These Document Before Starting Your Taxes, Intuit TurboTax Blog (Jan. 16, 2018),

https://blog.turbotax.intuit.com/tax-planning-2/your-personal-tax-prep-checklist-check-off-these-documents-before-starting-your-taxes-32999/ [https://perma.cc/46HF-WKPW].

If Zhang had asked her husband for a copy of his previous year's tax return, she would have received a copy of the Form 3520 he filed in 2016. Zhang Depo. 52:7 to 53:1. This would have put her on notice that she may also need to file a Form 3520 reporting her large foreign gifts. Trying to prepare a couple's first joint tax return without first reviewing the other spouse's previous tax return may not cross the line into willful neglect, but it surely cannot constitute reasonable cause when combined with the other facts and circumstances laid out above.

***

In sum, Zhang cannot enter the keep because simply relying on TurboTax's "advice" was not reasonable or in good faith given Zhang's education and sophistication. When she prepared her 2017 return, she knew that she needed to report other foreign assets and that TurboTax could not help her fulfill those obligations. Knowing this, it was unreasonable for Zhang to take no steps to confirm her belief that she need not disclose nearly $300,000 of foreign gifts to the IRS. *Dieringer v. Comm'r*, 917 F.3d 1135, 1145 (9th Cir. 2019) (explaining the most important factor for reasonable-cause defense to accuracy-related penalty is "the extent of the taxpayer's effort to assess the taxpayer's proper tax liability"). The Court should grant summary judgment to the United States.

CONCLUSION

To paraphrase the Ninth Circuit: Given the vagaries of our famously labyrinthine tax laws, one might assume that a taxpayer who has bought return-preparation software to help prepare all required returns would be insulated from penalties stemming from that software's non-preparation of a required return, but such an assumption is wrong. *See Knappe v. United States*, 713 F.3d 1164, 1171 (9th Cir. 2013). "It requires no special training or effort to ascertain a deadline and make sure that it is met." *Boyle*, 469 U.S. at 252. There is no question that Zhang had to report her nearly $300,000 of foreign gifts to the IRS on a Form 3520. That TurboTax did not prepare this Form 3520 does not excuse her for failing to comply with the law. To hold otherwise would allow the reasonable-cause exception to swallow the rule.

For these and all other reasons stated above, the Court should grant summary judgment in favor of the United States.

Dated: June 25, 2026.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

JOSHUA WU
Deputy Assistant Attorney General, Tax Litigation Branch

/s/ Connor J. Pestovich
CONNOR J. PESTOVICH (NM Bar 159189)
Trial Attorney
Tax Litigation Branch
Civil Division, Department of Justice
P.O. Box 683
Washington, D.C. 20044
Phone: (202) 616-2378
Fax: (202) 307-0054
Connor.Pestovich@usdoj.gov

Counsel for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties that have appeared in this case.

/s/ Connor J. Pestovich
CONNOR J. PESTOVICH
Trial Attorney, Tax Litigation Branch
U.S. Department of Justice