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' COMBINED OPPOSITION AND REPLY TO UNITED STATES' MOTION FOR SUMMARY JUDGMENT AND ZHANG'S CROSS-MOTION FOR SUMMARY JUDGMENT** **Judge**: Hon. Araceli Martínez-Olguín **Date**: November 5, 2026 **Time**: 2:00 pm **Place**: Oakland, Courtroom 5 (2nd Floor)

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INTRODUCTION

There is very little light between the arguments made in the United States' motion for summary judgment and Zhang's cross-motion for summary judgment. Both parties agree that a taxpayer can avoid a § 6039F penalty by seeking the safe harbor of reasonable cause. And both parties agree—at least in theory—that a taxpayer may show reasonable cause if they: (i) sought and relied on the advice of a qualified tax professional, or (ii) were ignorant about the law.

But a taxpayer cannot simply float into this safe harbor. The taxpayer must show, at a minimum, that they steered the ship in the right direction before setting sail. Or, to quote Zhang: the taxpayer must exert "effort to [determine his or her] proper tax liability." ECF No. 48 at 18 (quoting Treas. Reg. § 1.6664-4(b)(1)). The Court should grant summary judgment to the United States because Zhang did not try to ascertain whether she needed to report her nearly $300,000 of foreign gifts to the IRS.[1] Instead, she expected TurboTax to prepare and file all required returns without first researching whether it could even do so. This was not reasonable cause.

ARGUMENT

This brief focuses on Zhang's reasonable-cause defense.[2] Before jumping into the specific arguments here, the United States reiterates a few fundamental principles of 26 U.S.C. § 6039F and its reasonable-cause defense. Taxpayers who fail to timely report large foreign gifts to the IRS are liable under § 6039F(c)(1)(B) even if such failure was unintentional. To avoid this penalty, a taxpayer must show that their "failure [was] due to reasonable cause and not due to willful neglect." 26 U.S.C. § 6039F(c)(2). When the Court considers reasonable cause, it must focus on the taxpayer's effort to comply with the Internal Revenue Code. Treas. Reg. § 1.6664-4(b)(1). Any perceived deficiency on the part of the IRS to educate or alert the taxpayer to the filing obligation is not relevant to the reasonable-cause inquiry. *See Riggins v. Comm'r*, 113

[1] This case is ripe for resolution on summary judgment. The parties agree on the material facts and only disagree as to their legal effect.

[2] Zhang conceded in her cross-motion for summary judgment that the IRS complied with 26 U.S.C. § 6751(b), so it is unnecessary to discuss that issue here.

T.C.M. (CCH) 1477, at *5 (June 8, 2017) (holding no reasonable cause where taxpayer claimed she was not required to file a return until advised by the IRS).

To conform with Zhang's presentation of her argument, this section proceeds in two parts. First, a taxpayer cannot rely on ignorance of the law to avoid a § 6039F penalty if they did not do any research to see if they needed to report their large foreign gifts to the IRS. Second, TurboTax never advised Zhang that she did not need to file a Form 3520 for 2017, so there is no reasonable cause.

I. If, as Zhang contends, ignorance of the law alone is sufficient to establish reasonable cause, the defense would swallow the rule.

In her cross-motion for summary judgment, Zhang argues that she is entitled to reasonable cause because she did not know when her Form 3520 was due that she needed to report her nearly $300,000 of foreign gifts to the IRS. There are several issues with Zhang's argument. Chief among them is that Zhang's interpretation would lead the reasonable-cause defense to swallow the rule.

Start with the statute's construction. Section 6039F is a strict-liability statute: It imposes a penalty on *all* taxpayers who fail to timely report large foreign gifts to the IRS regardless of motivation. 26 U.S.C. § 6039F(c)(1). Taxpayers can reach a safe harbor if (but only if) they can show that their failure is due to reasonable cause. *Id.* § 6039F(c)(2).

To try to avoid the § 6039F penalty, Zhang asks the Court to grant her reasonable cause because she was unaware of the foreign gift reporting requirement imposed by § 6039F when her Form 3520 for 2017 was due. But "'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). If it was, § 6039F would essentially be rewritten from a strict-liability statute to one that imposes penalties only on those taxpayers who knew, or ought to have known about, the foreign gift reporting requirement. Such a reading would destroy "the primary operation of the provision." *Comm'r v. Clark*, 489 U.S. 726, 739 (1989).

That said, the United States generally agrees with Zhang that ignorance of the law can *sometimes* constitute reasonable cause. But only where (to quote Zhang) the "other facts and circumstances" support a finding of reasonable cause. ECF No. 48 at 18.

What does this mean? Take *Congdon v. United States* for example. No. 4:09-CV-289, 2011 WL 3880524 (E.D. Tex. Aug. 11, 2011), *report and recommendation adopted*, 2011 WL 3880564 (E.D. Tex. Aug. 31, 2011). In that case, the taxpayer knew he had to file Forms 5471 with the IRS disclosing his ownership of foreign corporations. *Congdon*, 2011 WL 3880524, at *1. The taxpayer prepared Forms 5471 but did not completely fill them out because he wrongly believed that there was no need to include information that was already reported on his income tax return. *Id.* at *3. The IRS assessed penalties against the taxpayer for filing incomplete Forms 5471. On summary judgment, the court held that the taxpayer was entitled to test his reasonable-cause defense at trial largely because the taxpayer tried to fulfill his obligation to file Forms 5471 but made a reasonable mistake of law based on his experience and capabilities. *Id.* at *4.

The lesson from *Congdon* is there is no freestanding right to reasonable cause whenever a taxpayer claims ignorance of an information-filing requirement. *Id.* Instead, a taxpayer can only rely on a mistake or ignorance of the law to establish reasonable cause if the taxpayer first demonstrates that they took meaningful steps towards ascertaining the applicable filing requirement.[3] *United States v. Ott*, No. 18-cv-12174, 2019 WL 3714491, at *2 (E.D. Mich. Aug. 7, 2019) (rejecting reasonable cause because accountholder "has not shown that she took any steps to learn whether she was required to" file FBAR); *see Economy Sav. & Loan Co. v. Comm'r*, 158 F.2d 472, 475 (6th Cir. 1946) (finding reasonable cause where the taxpayer researched but misunderstood what the taxable year was in an ambiguously written statute). In *Congdon*, these steps were, at a minimum: (i) researching whether there was a potential information filing requirement, and, if so, (ii) attempting to comply with it by preparing and filing the information return after reviewing resources like the information return's instructions.

[3] This rule is also consistent with *Olsen v. Commissioner*, which found reasonable cause based on a taxpayer's reliance on TurboTax. T.C. Summ. Op. 2011-131, at *2 (Nov. 23, 2011) As explained below, there, unlike here, the taxpayer took substantial steps towards compliance, so they were entitled to reasonable cause.

This places Zhang in contrast to *Congdon*, because she did not do any research or ask any competent professional whether she needed to report her nearly $300,000 of foreign gifts to the IRS. *See* ECF No. 48 at 11. And simply reviewing the draft personal income tax return prepared by TurboTax is dissimilar to the affirmative steps taken in *Congdon* to create a triable issue of reasonable cause. In the end, Zhang falls into the long line of cases holding an innocent mistake about a filing obligation is not reasonable cause. *See, e.g.*, *Henningsen v. Comm'r*, 243 F.2d 954, 958–59 (4th Cir. 1957) (holding a taxpayer's sincere belief that he was not obligated to file a tax return based on his understanding of his residency "does not of itself constitute reasonable cause"); *Marrin v. Comm'r*, 147 F.3d 147, 152–53 (2d Cir. 1998) (rejecting reasonable-cause defense where taxpayer's mistaken belief that it was unnecessary to file a return was not based on competent advice); *Christman*, 110 Fed. Cl. at 8 (holding taxpayer's faulty presumption about the tax treatment of their trading losses did not constitute reasonable cause). And Zhang's attempt to later correct her mistake does not change the result. *United States v. Hidy*, 471 F. Supp. 3d 927, 933 (D. Neb. 2020).

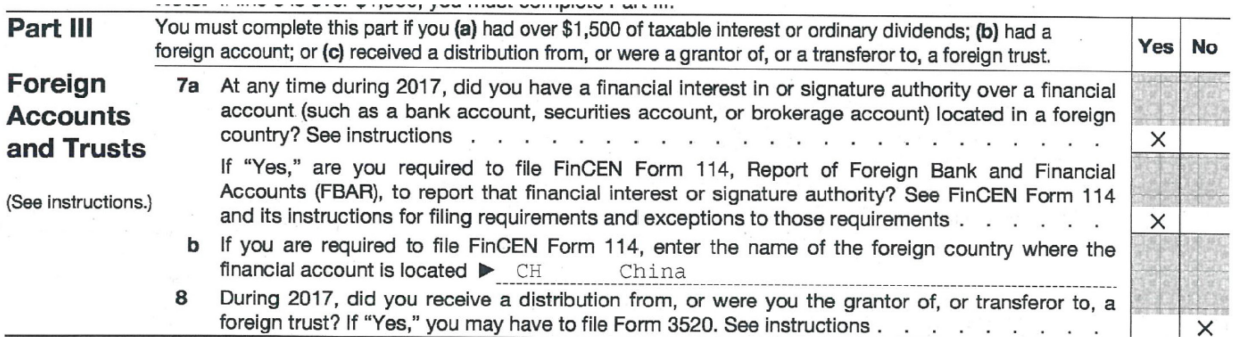
Zhang cannot avoid this result by blaming the IRS for not doing enough to warn her about the foreign gift reporting requirement. Remember, § 6039F imposes a penalty on all taxpayers who fail to timely report large foreign gifts to the IRS without reference to knowledge or motivation. And, as Zhang herself acknowledges, a taxpayer can only show reasonable cause if the *taxpayer*—not the IRS—demonstrates sufficient "effort" to determine her filing obligations. ECF No. 48 at 18 (quoting Treas. Reg. § 1.6664-4(b)(1)). Thus, Zhang's complaint that the IRS did not do enough to inform her about the § 6039F filing requirement misses the mark. *See, e.g.*, *Riggins*, 113 T.C.M. (CCH) 147, at *5. The IRS, after all, had "no duty to inform" Zhang about all possible tax or informational returns that may be required based on her situation.[4] *Gonzales v. United States*, 115 Fed. Cl. 779, 791–92 (2014) (rejecting reasonable

[4] The imposition of such a rule is not only contrary to our system of self-assessment and self-reporting, *see Farhy v. Comm'r* (*Farhy II*), 100 F.4th 223, 226 (D.C. Cir. 2024), it is also bad policy. The Internal Revenue Code's breadth is staggering. Given this, it is the taxpayer—not the IRS—who is best situated to determine which of the Code's provisions may apply to them since they possess the knowledge of the facts that may create a taxable or reportable event. This is

(footnote continued on next page)

cause where taxpayer argued their failure to pay excise tax was because of the IRS's failure to inform them about the tax).

Even though this argument lacks merit, it is worth discussing how the evidentiary foundation of Zhang's argument supports the United States' case, not hers. To make this argument, Zhang largely focuses on the Schedule B of her 2017 individual income tax return (Form 1040). Schedule B included a section asking her if she had any foreign bank accounts and, if so, instructed her to review the form's instructions to determine whether she needed to file an FBAR.



Part III			Yes	No
Foreign Accounts and Trusts (See instructions.)	You must complete this part if you **(a)** had over $1,500 of taxable interest or ordinary dividends; **(b)** had a foreign account; or **(c)** received a distribution from, or were a grantor of, or a transferor to, a foreign trust.			
	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

Figure 1. Deposition of Jinming Zhang ("Zhang Depo.") Ex. 3 [ECF No. 45-5 at 5].

The IRS's "failure" to include a similar such warning about the foreign gift reporting requirement, Zhang argues, "significantly contributed to [her] not timely filing Form 3520." ECF No. 48 at 21. "It [was] completely reasonable," she claims, "to believe that she did not have an international filing requirement other than an FBAR." *Id.*

But let's not forget that Zhang received nearly $300,000 of foreign gifts in a single year and knew that she may need to report foreign activities or assets to the United States. True, these gifts were probably excluded from Zhang's taxable income, *see* ECF No. 48 at 22, but Zhang knew that different reporting requirements could apply to foreign versus domestic activity because she had to file an FBAR. Zhang also knew (or should have known) that the failure to

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especially true when it comes to foreign activity because offshore activity may never be reported to the IRS.

If the IRS is expected to inform taxpayers of all possible filing obligations that may apply to their given situation, the IRS might as well send a copy of the Internal Revenue Code to taxpayers each year. This might satisfy the paper industry, but it would create an informational paradox where taxpayers have so much information that they can no longer determine what provisions may apply to them.

make one of these reports could carry with it large penalties. *See* Declaration of Connor J. Pestovich Ex. A at 3 (2017 Schedule B Instructions) (warning taxpayers that the failure to file an FBAR can carry with it a civil penalty equal to the greater of $100,000 or 50% of the balance in the account at the time of the violation). So it was unreasonable for Zhang to assume without doing any research that she need not report nearly $300,000 of foreign gifts to the IRS.

Especially since the IRS *did* alert taxpayers to the foreign gift reporting requirement imposed by § 6039F. There is evidence in the record showing that the IRS had information on its website as early as September 2012 detailing § 6039F's foreign gift reporting requirement and the risk of penalties for failing to comply. Declaration of Daytrin Colter ("Colter Decl.") Ex. A-10 [ECF No. 45-30] (archived copy of IRS webpage as of September 9, 2012); *see also* Colter Decl. Ex. A-25 at 2–3 [ECF No. 45-43] (showing the information on this webpage was originally published on December 1, 2008). And 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 [ECF No. 45-31] (archived copy of Gifts from Foreign Person IRS webpage as of February 11, 2016), A-12 at 2 [ECF No. 45-32] (archived copy of same IRS webpage as of March 17, 2017), A-13 at 2 [ECF No. 45-33] (archived copy of same IRS webpage as of July 17, 2017), A-14 at 2 [ECF No. 45-34] (archived copy of the Gifts from Foreign Person IRS webpage as of August 2, 2018). But this was not all, the IRS also published:

- A webpage entitled "About Form 3520," which explained that U.S. persons needed to file this form to report receipt of large gifts from foreign persons, Colter Decl. Ex. A-15 at 2 [ECF No. 45-35] (archived January 13, 2018);
- Instructions for the 2017 Form 3520 which could have answered any questions Zhang may have had about how to prepare the filing, Pestovich Decl. Ex. 2 [ECF No. 45-47]; and
- 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 [ECF

No. 45-42] (copy of IRS information letter published on TaxNotes website in March 2013).

Notably in her cross-motion for summary judgment, Zhang never acknowledges or addresses this evidence. And she never explains why, if the IRS's efforts to inform her about the § 6039F filing requirement is relevant, this plentiful evidence does not mandate summary judgment against her.

Therefore, Zhang's complaint, at bottom, is not that the IRS never gave taxpayers notice of this filing requirement, but that the IRS failed to give notice in the fashion she desired. But the IRS did not have to give notice of this foreign gift reporting requirement at all, so Zhang cannot demand that the IRS give her notice through the Schedule B.[5] *See, e.g.*, *Zellerbach Paper Co. v. Helvering*, 69 F.2d 852, 857 (9th Cir. 1934) (holding taxpayers are "presumed to know the provisions" of the Internal Revenue Code). Nevertheless, the IRS chose to go out of its way to publish guidance and webpages to put the public on notice of this foreign gift reporting requirement. This evidence cannot be ignored, and it severely undercuts Zhang's reasonable cause defense.

In sum, Zhang "has failed to show any efforts—reasonable or otherwise—to determine [her] tax obligations," so she has failed to present a triable issue of reasonable cause. *Gonzales*, 115 Fed. Cl. at 792; *see also, e.g.*, *Ott*, 2019 WL 3714491, at *2. And Zhang cannot avoid this result by trying to shift the blame to the IRS because the critical inquiry is whether Zhang—not the IRS—did enough to try to determine her information-reporting obligations. *Jarnagin v. United States*, 134 Fed. Cl. 368, 377 (2017). Any other holding would effectively write strict liability out of § 6039F and allow its reasonable-cause exception to swallow the rule.

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[5] Even if including the foreign gift reporting requirement on the Schedule B may have helped Zhang here, it does not mean that it would equally help other taxpayers. Not every taxpayer needs to file a Schedule B. So, even if Schedule B contained such a warning, many taxpayers with a foreign gift reporting requirement may still never come across it.

Additionally, Zhang's argument begs the question: "Where does it end?" In addition to large foreign gifts, taxpayers are expected to report a litany of foreign financial activity, including, but not limited to, ownership of foreign corporations and partnerships, and interests in foreign trusts. *See* 26 U.S.C. § 6038, 6677. Does the IRS also need to include reference to these reporting requirements in the Schedule B before the IRS can collect these information-reporting penalties?

II. Zhang cannot claim reasonable reliance on a professional when TurboTax never gave her any substantive advice upon which she relied.

Zhang's alternative argument, that she is entitled to a reasonable-reliance-on-a-professional defense, fails for three reasons. First, Zhang has failed to identify any "advice" from TurboTax that she relied on to decide she need not file a Form 3520 for 2017. Second, it was unreasonable for Zhang to blindly assume, without doing any research, that a mass-market software like TurboTax could ensure that she filed all required returns with the IRS given her unique financial situation. 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.

a. TurboTax did not issue any advice to Zhang.

To show a triable issue of a reasonable-reliance-on-a-professional defense, Zhang must first show that TurboTax gave her some "advice" upon which she relied. *See United States v. Boyle*, 469 U.S. 241, 251 (1985) (emphasizing the word "*advises*"); *see also, e.g.*, *Reynolds v. Comm'r*, 296 F.3d 607, 619 (7th Cir. 2002). Zhang could meet this showing if she had, for example, a "written opinion" by an accountant that she need not report her large foreign gifts. *United States v. Kroll*, 547 F.2d 393, 396 (7th Cir. 1977). But Zhang can point to no such thing here. Instead, she suggests that simply licensing TurboTax and using it to prepare her taxes constitutes "advice." She is wrong.

To be "advice," there must be an affirmative communication "setting forth an analysis or conclusion provided to (or for the benefit of) the taxpayer." *Schweizer v. Comm'r*, 124 T.C.M. (CCH) 232, at *8 (Oct. 6, 2022) (cleaned up); *see also* Treas. Reg. § 1.6664-4(c)(2) (defining "advice"). Or, to use common parlance, Zhang must show that TurboTax gave her an opinion "as to what action to take" for the reporting of her foreign gifts. Advice (n.) sense 2.a, Oxford English Dictionary (June 2026), https://doi.org/10.1093/OED/6324730189.

The undisputed facts establish that Zhang "neither requested nor received any advice one way or the other from [TurboTax] regarding whether [she] was required to file [a Form 3520]." *Jarnagin*, 134 Fed. Cl. at 379. In fact, Zhang admits that TurboTax never mentioned Form 3520 or the requirement to report foreign gifts and never gave her the opportunity to disclose that she

received foreign gifts or income. S*ee* Zhang Depo. 50:11–16, 70:8–11 [ECF No. 45-2]. This dooms her case, because the mere fact that a tax professional "prepared a tax return does not mean that he or she has opined on any or all of the items reported therein." *DJB Holding Corp. v. Comm'r*, 803 F.3d 1014, 1030 (9th Cir. 2015) (quoting *Neonatology Assocs., P.A. v. Comm'r*, 115 T.C. 43, 100 (2000)); *accord, e.g.*, *Schweizer*, 124 T.C.M. (CCH) 232, at *8 ("[P]rofessional who simply prepares a return by inputting data without exercising judgment is not considered to render 'advice' that justifies reasonable reliance.").

This result is consistent with *Olsen v. Commissioner*, T.C. Summ. Op. 2011-131 (Nov. 23, 2011)—the principal case Zhang relies on in her cross-motion for summary judgment. In *Olsen*, the Tax Court found a taxpayer had reasonable cause for an understatement of tax penalty where the taxpayer failed to fully report his interest income due to a data entry error. *Id.* at *2. This result was driven largely by the "unique facts and circumstances" of that case. *Id.* at *3. There, unlike here, the taxpayer took meaningful steps to report the interest income. *See* Treas. Reg. § 1.6664-4(b)(1) ("[T]he most important factor is the extent of the taxpayer's honest effort to assess the taxpayer's [filing obligations]."). For example, he upgraded his tax-preparation software to ensure it could handle a Schedule K-1 and input the name, tax identification number, and interest income he received from the trust. Unbeknownst to him, however, the interest income did not correctly display on his Form 1040's Schedule E. These facts, material to the holding of *Olsen*, make it unlike the situation presented here. Instead, this case is more like *DJB Holding*, where the Ninth Circuit rejected reasonable cause because there was no evidence that the taxpayer ever asked their tax professional for an opinion on the relevant issue. 803 F.3d at 1030.

Zhang cannot go to trial on her reasonable-reliance-on-a-professional defense because she cannot show that TurboTax, after being informed of the circumstances, told her that she did not have to file a Form 3520 in 2017. *See id.*; *see also, e.g.*, *Reynolds*, 296 F.3d at 619.

b. Zhang has not shown that it was reasonable to assume that a one-size-fits-most return preparation software could give her advice about reporting nearly $300,000 of foreign gifts.

Even if the Court were inclined to agree with Zhang that she received some advice from TurboTax, she could not reasonably rely on it 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. *Neonatology*, 115 T.C. at 99. Second, it was unreasonable for Zhang to rely on any advice because the software never asked about, and Zhang never disclosed, that she received foreign gifts in 2017. *Id.*

i. It was unreasonable for Zhang to assume TurboTax was competent to give advice about reporting large foreign gifts to the IRS without first doing some research.

To show a triable reasonable-reliance-on-a-professional defense, Zhang must show that the TurboTax was "a competent professional who had sufficient expertise to justify reliance." *Id.* Put differently, Zhang must show that she researched TurboTax and understood it to be capable of fulfilling her foreign gift reporting requirements before she used it for 2017. *See* 14A Mertens Law of Federal Income Taxation § 55:45 (May 2026 update) (explaining reasonable cause "focuses on what the taxpayer knew or should have known at the time the advice was obtained"). Zhang essentially admits that she cannot make this showing.

In her cross-motion for summary judgment, Zhang says the "problem in this case is that the TurboTax software did not have the capability to alert [her to] any information filing requirements such as the Form 3520," and goes on to allege that the blame should be assigned to TurboTax—not her. ECF No. 48 at 26 (citing Intuit Depo. 52:5–14). But if anyone is to blame, it is she. Zhang had a unique financial situation (few people receive nearly $300,000 of foreign gifts in a single year) and yet she never checked if TurboTax could fulfill the reporting obligations that might arise in her peculiar circumstances.

Zhang admits that she did not research whether TurboTax could prepare all possible returns related to her unique situation before deciding to use TurboTax. ECF No. 48 at 11; Zhang Depo. 45:19 to 46:4 [ECF No. 45-2]. And she admits that Intuit never represented to her that TurboTax could help her prepare a Form 3520. Zhang Depo. 46:19 to 47:3 [ECF No. 45-2]. Without this evidence, Zhang cannot show that her failure to timely file a Form 3520 was

"anything but the result of [her] own negligence." *Lam v. Comm'r*, 99 T.C.M. (CCH) 1347, at *3 (Apr. 19, 2010).

If Zhang did this research, she would have quickly discovered that TurboTax lacked "the requisite expertise to opine on the" foreign gift reporting requirement imposed by § 6039F. *Neonatology*, 115 T.C. at 99; *see* Intuit Depo. 49:13 to 50:9 [ECF No. 45-15]; Intuit Depo. Ex. 3 at 3 [ECF No. 45-16]. And 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); *accord Jarnagin*, 134 Fed. Cl. at 377.

The United States quickly addresses two of Zhang's other objections. First, it is irrelevant whether Zhang did what millions of other taxpayers did by relying on TurboTax to fulfill her tax obligations. Defaulting to a widely used tax-preparation software is not the same as researching whether any filing obligations might attach to receiving $300,000 of foreign gifts. To hold otherwise would "encourage[e] a lax attitude toward filing" information returns. *Boyle*, 469 U.S. at 249. Second, to the extent Zhang reasonably believed that TurboTax should have ensured her compliance with § 6039F, her claim lies against Intuit—not the United States. *See id.* at 250. *See generally Int'l Engine Parts, Inc. v. Feddersen & Co.*, 888 P.2d 1279 (Cal. 1995) (acknowledging the availability of a malpractice claim against tax professionals).

In sum, Zhang has failed to show that TurboTax had sufficient qualifications or expertise in foreign gift reporting such that it was reasonable to blindly assume that the software would ensure she properly reported her nearly $300,000 of foreign gifts. *See Allen v. Comm'r*, 925 F.2d 348, 354 (9th Cir. 1991); *see also 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).

ii. It was unreasonable to assume that TurboTax advised Zhang on her foreign gift reporting requirements when it did not ask about these foreign gifts.

The Court should also reject Zhang's reasonable cause defense because 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. In her cross-motion for summary judgment, Zhang contends that she should essentially be excused from this showing because "it does not appear that [she] could have provided" TurboTax with information about her foreign gifts since the software could not prepare Forms 3520. ECF No. 48 at 28. But it is for this exact reason that it was unreasonable for Zhang to believe TurboTax advised her about her foreign gift reporting requirement.

The reasonable-reliance-on-a-professional defense is available only when taxpayers obtain competent advice, i.e., advice "based upon all pertinent facts and circumstances." Treas. Reg. § 1.6664-4(c)(1)(i). Knowing that she cannot point to anything in the record showing that she informed TurboTax about the existence, amounts, or timing of her foreign gifts, *see* Zhang Depo. 50:11–16 [ECF No. 45-2], Zhang asks the Court to overlook this deficiency because TurboTax was incapable of collecting this information. If accepted, this argument will create a perverse incentive for taxpayers with complicated tax situations to use professionals or return-preparation software not up to the task of their situation.

Take this example: A taxpayer could set up a corporation in the Caymans to shelter their offshore income from the IRS's purview. If, as Zhang contends, reasonable cause is available when return-preparation software cannot ask about this foreign activity, the taxpayer is incentivized to buy the most ill-equipped return-preparation software to complete their tax return. The less it asks, especially for foreign activity and income, the better. That way, if they are penalized down the line for not reporting their ownership of the corporation, *see* 26 U.S.C. § 6038, the taxpayer can simply avoid this penalty by arguing the return-preparation software never gave them the opportunity to provide this information. This cannot be the law.

Turning back to the obvious, if TurboTax did not know about the foreign gifts, how could it ever advise her about whether those gifts needed to be reported to the IRS? *See Neonatology*, 115 T.C. at 99. TurboTax is not omniscient and cannot reasonably be expected to ask about a

$100,000-plus foreign gift reporting requirement that would apply to only a small sliver of its 34 million users. The fact that Zhang did not provide any of the "information the accountant would need in order to opine on the" applicability of the § 6039F filing requirement shatters her case. *DJB Holding*, 803 F.3d at 1030. Without any evidence that Zhang "provided necessary and accurate information" about her foreign gifts to TurboTax, any "advice" rendered by TurboTax about her § 6039F filing requirement was uninformed and could not be reasonably relied on. *See, e.g.*, *Cooper v. Comm'r*, 877 F.3d 1086, 1096 (9th Cir. 2017) (quoting *DJB Holding*, 803 F.3d at 1030).

c. Zhang did not exercise reasonable care to fulfill her foreign gift reporting requirement given her knowledge and experience as a highly educated accounting professional.

Even if Zhang makes it this far, the Court should still grant summary judgment for the United States because Zhang's reliance on TurboTax was not in "good faith." *Neonatology*, 115 T.C. at 98.

To keep this case in perspective: Zhang is a highly educated taxpayer and former CPA, who knew she had to report her foreign bank accounts, yet never thought to research whether a similar reporting requirement might apply to the nearly $300,000 of foreign gifts she received in 2017. *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). True, Zhang was more of a bookkeeper than a tax professional, but far less sophisticated taxpayers than Zhang have been denied reasonable cause for similar foreign reporting penalties on summary judgment. *See Ott*, 2019 WL 3714491, at *2; *Hidy*, 471 F. Supp. 3d at 929 (acknowledging neither accountholder had any training in accounting or tax preparation).

And we cannot ignore the fact that Zhang could have found out about this foreign gift reporting requirement very easily. The year before, her husband filed a Form 3520 reporting his foreign gifts. Zhang Depo. 52:10 to 53:1. If Zhang followed TurboTax's advice and asked for her husband's "prior year's income tax return[]" before she started preparing the couple's 2017 tax return, she would have likely discovered this Form 3520. 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].

Zhang, for her part, contends that this argument "assumes facts not in the record," because it assumes that her husband would voluntarily disclose the Form 3520. But this misunderstands the United States' argument. The United States simply contends that a reasonable person in her circumstances—i.e., preparing a joint return with her husband for the first time—would have asked for her husband's prior year tax return. *See id.*; *cf.* Treas Reg. § 1.6694-2(e)(4) (explaining tax-return preparers should generally review the "prior year's return"). The failure to at least ask for her husband's prior year tax return was a deviation from "ordinary business care." *Boyle*, 469 U.S. at 246.

Nor can we ignore that the answer to any question Zhang might have had about the foreign gift reporting requirement was an internet search away. The United States already mentioned the IRS resources available before April 2018 discussing the foreign gift reporting requirement imposed by § 6039F, but there were also: (i) articles and webpages published by tax professionals, (ii) articles in accounting publications, (iii) threads posted on Reddit, and (iv) at least one YouTube video posted by a CPA. ECF No. 45 at 27–28 (outlining this evidence). Zhang's naked reliance on TurboTax was not reasonable or in good faith because she could have "quite easily" learned about the foreign gift reporting requirement by looking at any of these abundant resources. *Hidy*, 471 F. Supp. 3d at 933.

CONCLUSION

Zhang cannot meet her "heavy burden" to escape the § 6039F penalty assessed against her. *Boyle*, 469 U.S. at 245. Both parties agree that whether a taxpayer is entitled to reasonable cause turns primarily on "the extent of the taxpayer's effort to [determine his or her] proper tax liability." ECF No. 48 at 18. Zhang knew that she had to report her foreign bank accounts to the United States. Yet she never thought to research whether there may be a similar reporting requirement for the nearly $300,000 of foreign gifts she received. This was not reasonable cause.

For these and all other reasons above, the Court should grant the United States' motion for summary judgment and deny Zhang's cross-motion for summary judgment.

Dated: July 17, 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 July 17, 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