

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 22 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JONES, BELL, ABBOTT, FLEMING &
FITZGERALD L.L.P.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 18-55934

D.C. No. 2:17-cv-07752-PA-RAO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted October 15, 2019**

Before: FARRIS, LEAVY, and RAWLINSON, Circuit Judges.

Jones, Bell, Abbot, Fleming & Fitzgerald L.L.P. appeals from the district court's judgment dismissing its 28 U.S.C. § 1346(a)(1) action arising from the Internal Revenue Service's ("IRS") assessment of a tax penalty for the late filing of appellant's 2015 partnership return. We have jurisdiction under 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo a district court's judgment under Federal Rule of Civil Procedure 52(c). *Price v. U.S. Navy*, 39 F.3d 1011, 1021 (9th Cir. 1994). We affirm.

The district court properly determined that appellant's evidence was insufficient to show that it timely mailed an application for a tax return filing extension. *See Lewis v. United States*, 144 F.3d 1220, 1222-23 (9th Cir. 1998) (a taxpayer must provide "credible evidence" of timely mailing of a document in order to raise a rebuttable presumption that the document was timely received by the addressee). The district court therefore properly concluded that the IRS properly assessed a penalty against appellant for not timely filing its 2015 partnership return.

AFFIRMED.