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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN SPOTTISWOOD,
Plaintiff,
v.
UNITED STATES,
Defendant.

Case No. [17-cv-00209-MEJ](#)
**ORDER RE: MOTIONS FOR
SUMMARY JUDGMENT**
Re: Dkt. Nos. 16, 18

INTRODUCTION

Plaintiffs John Spottiswood and Nancy Miyasaki seek an abatement and refund of penalties for the late filing and failure to pay their 2012 federal taxes. *See* Compl., Dkt. No. 1. Pending before the Court are the parties’ cross-motions for summary judgment. *See* Dkt. Nos. 16-17 (Gov. Mot. & Mem.); Dkt. Nos. 18-19 (Pls.’ Mot. & Mem.); Dkt. No. 20 (Gov. Reply). The Court ordered the parties to be prepared to discuss several issues at the April 19, 2018 hearing on their cross-motions, and the parties submitted additional concise briefing addressing the Court’s points. *See* Prep. Order, Dkt. No. 25; Gov.’s Resp., Dkt. No. 26; Pls.’ Resp., Dkt. No. 27.

Having considered the parties’ positions, the relevant legal authority, and the record in this case, the Court **GRANTS** the Government’s Motion and **DENIES** Plaintiffs’ Motion for the following reasons.

UNDISPUTED MATERIAL FACTS

The following facts are undisputed (*see* Gov. Mem.; Pls.’ Mem.):

In 2013, Plaintiff Spottiswood prepared a joint federal income tax return for himself and his wife, Plaintiff Miyasaki, for the 2012 tax year using TurboTax, a consumer tax software. On that return, Spottiswood made a mistake when inputting a dependent’s Social Security number.

1 The 2012 joint Form 1040 containing that error was transmitted to TurboTax on or about April 12,
2 2013 to be electronically submitted to the IRS for electronic filing.

3 On April 12, 2013, the IRS rejected Plaintiffs' 2012 joint Form 1040 for electronic filing.
4 That day, the IRS notified TurboTax the Form 1040 had been rejected for electronic filing due to
5 an error: the dependent's Social Security number and last name did not match IRS records.

6 On or about April 12, 2013, TurboTax sent an email to Spottiswood notifying him the IRS
7 had rejected the 2012 joint federal income tax return with error R0000-504-02, meaning that the
8 dependent's Social Security number and last name on the return did not match what the IRS has in
9 its records.

10 Within the TurboTax software, there was a "check e-file status" screen for the 2012 joint
11 Form 1040. Spottiswood did not check the "check e-file status" until many months later. The
12 notification provided notice that the return had been rejected because a dependent's Social
13 Security number or last name did not match what the IRS had in its records.

14 Spottiswood submitted a statement to the IRS on April 27, 2015, in which he stated:

15 When I was investigating the issue, I discovered the following by
16 logging back into my Turbo Tax 2012 software. [] I discovered that
17 my return, which I thought had been successfully e-filed, had
18 actually been rejected. If I had realized that there was a chance of
19 rejection I would have mailed in my return, but e-filing seemed like
20 an easier option and it was free with the software. Intuit may have
informed me in the fine print that I needed to log back in to make
sure that my return had not been rejected, but if so I did not read this
fine print. Had I logged back in a few days later I would have
realized that the return had been rejected. But I did not log back in
until 18 months later.

21 Spottiswood also prepared a joint 2012 California State Income Tax Return for himself and
22 his wife using TurboTax but did not electronically file the 2012 state tax return. Rather, he used
23 the U.S. mail.

24 Plaintiffs filed an abatement request with the IRS in August 2016. The request was
25 prepared by their attorney and filed via IRS Form 843. In the statement attached to that request, a
26 representation was made that Plaintiffs' 2012 state tax return had been electronically filed using
27 TurboTax without issue. This representation was not accurate.

28 On their 2012 joint federal income tax return, Plaintiffs reported owing \$395,619 in federal

1 income taxes. Plaintiffs failed to notice that \$395,619 had not been withdrawn from their Bank of
2 America checking account because they had an unusually high account balance.

3 Plaintiffs filed their 2012 joint Form 1040 on January 7, 2015, and paid the \$395,619 in
4 income tax liability in full. On February 16, 2015, the IRS assessed a late filing penalty of
5 \$89,014.27; a penalty for late payment of tax in the amount of \$41,539.99; and \$26,216.81 in
6 interest for late payment.

7 Plaintiffs paid the interest on the late payment, but seek abatement of the two penalties
8 imposed by the IRS for the late filing of their tax return, and for the late payment of their taxes.

9 **LEGAL STANDARD**

10 Summary judgment is proper where the pleadings, discovery and affidavits demonstrate
11 that there is “no genuine dispute as to any material fact and [that] the movant is entitled to
12 judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party moving for summary judgment
13 bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits that
14 demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
15 317, 323 (1986). Material facts are those that may affect the outcome of the case. *Anderson v.*
16 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is
17 sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

18 Where the moving party will have the burden of proof on an issue at trial, it must
19 affirmatively demonstrate that no reasonable trier of fact could find other than for the moving
20 party. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where
21 the nonmoving party will bear the burden of proof at trial, the moving party can prevail merely by
22 pointing out to the district court that there is an absence of evidence to support the nonmoving
23 party’s case. *Celotex*, 477 U.S. at 324-25.

24 If the moving party meets its initial burden, the opposing party must then set forth specific
25 facts showing that there is some genuine issue for trial in order to defeat the motion. Fed. R. Civ.
26 P. 56(c)(1); *Anderson*, 477 U.S. at 250. All reasonable inferences must be drawn in the light most
27 favorable to the nonmoving party. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir.
28 2004). However, it is not the task of the Court to scour the record in search of a genuine issue of

1 the burden of showing they “exercised ordinary business care and prudence [but were] unable to
2 file the return within the prescribed time.” *Id.* at 244. The same standard applies whether
3 taxpayers seek abatement of the late-filing or the late-payment penalties. *See Baccei v. United*
4 *States*, 632 F.3d 1140, 1148 (9th Cir. 2011); *see also* IRC § 6651(a)(1); Treas. Reg. § 301.6651-
5 1(c)(1) (implementing regulations defining “ordinary business care and prudence” as having
6 “made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability
7 and nevertheless was unable to pay all or a portion of the tax when it became due.”).

8 Plaintiffs initially argued both the late payment and the late filing penalties the IRS
9 imposed upon them should be abated. *See* Pls.’ Mem.

10 **A. Abatement of Late Payment Penalty**

11 Plaintiffs admit Spottiswood’s conduct after submitting his 2012 return via TurboTax was
12 “generally not in keeping with the [applicable] reasonable cause standard.” Pls.’ Mem. at 5 (citing
13 *Boyle*). They concede that they should be held liable for the late payment penalty. Pls.’ Resp. ¶ 4;
14 *see also* Apr. 19, 2018 FTR at 10:14 (Plaintiffs’ counsel stating, “I think that they should be
15 subject to the late payment penalty; . . . based on the conduct I think that’s totally appropriate. So
16 it’s really just the late filing penalty that we are disputing, and any other penalties other than that
17 would be appropriate. . . .). Accordingly, there is no triable issue that Plaintiffs are liable for the
18 late payment penalty and any associated interest.

19 **B. Abatement of Late Filing Penalty**

20 1. Whether 2012 Tax Return Was Timely Filed

21 Plaintiffs’ theory of the case is that the document they submitted to the IRS in 2013 should
22 not have been rejected because it qualified as a tax return. *See* Pls.’ Mem.

23 A document is sufficient to be considered a tax return if it: (1) is sufficient to calculate the
24 tax liability; (2) purports to be a return; (3) evinces an honest and reasonable attempt to satisfy the
25 requirements of tax law; and (4) is executed by the taxpayer under penalty of perjury. Pls.’ Mem.
26 at 7 (citing *Beard v. Comm’r*, 82 T.C. 766, 777 (1984) (articulating “[t]he Supreme Court test to
27 determine whether a document is sufficient for statute of limitations purposes”)).

28 While it is undisputed the IRS rejected the document Plaintiffs submitted in 2013 due to

1 Plaintiffs’ error in inputting a dependent’s Social Security number, Plaintiffs argue the document
2 met all of the *Beard* requirements, and as such should have been accepted for filing. Pls.’ Mem. at
3 5-9.¹ Plaintiffs argue that the IRS would have accepted a paper-filed return containing the same
4 error, and that the IRS unlawfully applied a more stringent standard to their electronically-
5 submitted return. Pls.’ Mem. at 7-8. Plaintiffs’ only support for this argument is a document
6 entitled “Internal Revenue Manual Part 3. Submission Processing Chapter 11. Returns and
7 Documents Analysis Section 3. Individual Income Tax Returns.” *See* Pls.’ Opp’n at 1 (“Plaintiffs
8 submit Exhibits 1 through 3”); *id.*, Ex. 2. This document is not authenticated, and Plaintiffs
9 establish no foundation for the document. The document shows a transmittal date of November
10 17, 2017, and Plaintiffs do not establish any foundation showing the IRS followed the procedures
11 described therein when Plaintiffs attempted to submit their tax return more than four years prior to
12 that date. Plaintiffs also establish no foundation to show their interpretation of the procedures
13 described in the document is correct. Plaintiffs fail to create a triable issue that the same mistake
14 contained in their submission would have been treated differently if it had been presented as a
15 paper filing, and that the IRS’ rejection of their submission because it contained an erroneous
16 Social Security number was not lawful.

17 The IRS rejected their filing because it contained an error; the IRS thus could not calculate
18 Plaintiffs’ tax liability. Plaintiffs fail to create a triable issue that they timely filed their 2012 tax
19 return.

21
22 ¹ Plaintiffs’ assertion that the document “contained sufficient data to calculate the couple’s tax
23 liability” (Pls.’ Mem. at 7) is purely conclusory. Their support for this argument is based entirely
24 on an unauthenticated copy of a document faxed by the IRS to an unidentified recipient on May
25 23, 2016. *Id.* (citing Pls.’ Opp’n at 1 (“Plaintiffs submit Exhibits 1 through 3”); *id.*, Ex. 1).
26 Plaintiffs do not set out facts showing the document is a true and correct copy of the data they
27 submitted to the IRS in 2013; indeed, it does not appear to be, given that the document displays
28 information received on January 26, 2015. *See, e.g.*, Pls.’ Opp’n, Ex. 1, *passim* (“TRDB-DT-
RCVD:2015-01-26”). Nor do they set out facts showing the information contained in this
document would be sufficient to calculate their tax liability. They thus have not created a triable
issue of fact that the document they attempted to submit to the IRS in 2013 qualifies as a tax return
under *Beard*, such that the IRS should have accepted it for filing under their theory of the case.
The United States does not actually challenge this point, arguing only that the first *Beard* factor
was not met because the IRS could not calculate Plaintiffs’ tax liability because the return had not
been accepted for filing. Def.’s Reply at 4.

