

No. 25-988

IN THE
Supreme Court of the United States

STEPHANIE MURRIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for a Writ of Certiorari to the
U.S. Court of Appeals for the Third Circuit

**BRIEF OF THE AMERICAN COLLEGE OF
TAX COUNSEL AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

THOMAS A. CULLINAN
Chamberlain Hrdlicka
191 Peachtree Street, N.E.
Forty-Sixth Floor
Atlanta, GA 30303
(404) 658-5450
tom.cullinan@chamberlainlaw
.com

CAROLINE D. CIRAOLO
Counsel of Record
MICHAEL WAALKES
Kostelanetz LLP
601 New Jersey Avenue
Suite 260
Washington, DC 20001
(202) 875-8000
cciraolo@kostelanetz.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	II
INTEREST OF THE <i>AMICUS</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. THE THIRD CIRCUIT'S INTERPRETATION IS OUT OF STEP WITH KEY PRINCIPLES OF STATUTORY INTERPRETATION	3
II. THE IMPORTANCE OF STATUTES OF LIMITATIONS AND THE SIGNIFICANT CIRCUIT SPLIT COUNSEL IN FAVOR OF CERTIORARI.....	13
CONCLUSION	17

TABLE OF AUTHORITIES

PAGE

CASES

<i>3M Co. v. Browner</i> , 17 F.3d 1453 (D.C. Cir. 1994).....	11
<i>Adams v. Woods</i> , 6 U.S. 336 (1805).....	11, 13
<i>Allen v. Commissioner</i> , 128 T.C. 37 (2007) ..	10, 14, 16
<i>Amy v. Watertown</i> , 130 U.S. 320 (1889).....	11
<i>Anderson v. Pacific Coast S.S. Co.</i> , 225 U.S. 187 (1912)	6
<i>BASR Partnership v. United States</i> , 795 F.3d 1338 (Fed. Cir. 2015).....	5, 9, 10, 11, 14, 15, 16
<i>Chase Securities Corp. v. Donaldson</i> , 325 U.S. 304 (1945)	13
<i>City Wide Transit, Inc. v. Commissioner</i> , 709 F.3d 102 (2d. Cir. 2013).....	8
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998).....	7
<i>Davis v. Commissioner</i> , 184 F.2d 86 (10th Cir. 1950).....	8
<i>Dilks v. Commissioner</i> , 15 B.T.A. 1294 (1929)	4
<i>Finley v. United States</i> , 490 U.S. 545 (1989)	6
<i>Forest Grove School District v. T.A.</i> , 557 U.S. 230 (2009)	6
<i>Fowler v. Commissioner</i> , 155 T.C. 106 (2020)	13
<i>Fulton v. Commissioner</i> , 14 T.C. 1453 (1950).....	5, 14

<i>Gabelli v. Securities & Exchange Commission</i> , 568 U.S. 442 (2013)	11, 12
<i>Golsen v. Commissioner</i> , 54 T.C. 742 (1970).....	16
<i>Griffiths v. Commissioner</i> , 50 F.2d 782 (7th Cir. 1931).....	4
<i>Gutterman Strauss Co. v. Commissioner</i> , 2 B.T.A. 433 (1925).....	5
<i>Inglis v. Commissioner</i> , 14 T.C. 1448 (1950)	5
<i>Lorillard v. Pons</i> , 434 U.S. 575 (1978).....	6
<i>Murrin v. Commissioner</i> , 158 F.4th 527 (3d Cir. 2025).....	3, 15
<i>Murrin v. Commissioner</i> , T.C. Memo. 2024-10	10, 11, 16
<i>Nicholson v. Commissioner</i> , 38 B.T.A. (1938).....	4
<i>Railroad Telegraphers v. Railway Express Agency</i> , 321 U.S. 342 (1944).....	13
<i>Rhone-Poulenc Surfactants & Specialties, LP v. Commissioner</i> , 114 T.C. 533 (2000)	14
<i>Rice v. Commissioner</i> , 190 14 T.C. 503 (1950).....	5
<i>Rothensies v. Electric Storage Battery Co.</i> , 329 U.S. 296 (1946)	13
<i>Sanders v. Commissioner</i> , 161 T.C. 112 (2023)	16
<i>Scheer v. Commissioner</i> , 11 B.T.A. 836 (1928)	5
<i>United States v. Boyle</i> , 469 U.S. 241 (1985).....	7
<i>United States v. Howell</i> , Docket No. 7:06-cr- 00283-CM-1 (S.D.N.Y. 2006).....	10
<i>United States v. Keleta</i> , 949 F.3d 1082 (8th Cir. 2020).....	7

<i>United States v. Kubrick</i> , 444 U.S. 111 (1979)	13
<i>United States v. Pratt</i> , Docket No. 14-67-1, 2015 WL 4199052 (E.D. Pa. July 13, 2015).....	8
<i>Wood v. Carpenter</i> , 101 U. S. 135 (1879)	13

STATUTES

26 U.S.C.:	
§ 6501(a).....	3
§ 6501(c).....	6
§ 6501(c)(1).....	3, 5, 6, 8, 9, 10, 13, 14, 15
§ 6663.....	4, 5, 6, 13
§ 6663(a).....	5, 6
§ 7206(2).....	8, 9
§ 7454(a).....	9
28 U.S.C. § 2462.....	11
40 Stat. 1057 (1919).....	4

OTHER AUTHORITIES

I.R.S. Field Service Advice 200126019 (June 29, 2001).....	16
I.R.S., 2024 Data Book, Table 4 (May 2025).....	7

INTEREST OF THE *AMICUS*

The American College of Tax Counsel (the “College”) respectfully submits this brief as *amicus curiae* in support of petitioner Stephanie Murrin.¹

The College is a nonprofit professional association of tax lawyers in private practice, in law school teaching positions, and in government, who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the profession. The purposes of the College are:

- To foster and recognize the excellence of its members and to elevate standards in the practice of the profession of tax law;
- To stimulate development of skills and knowledge through participation in continuing legal education programs and seminars;
- To provide additional mechanisms for input by tax professionals in development of tax laws and policy; and
- To facilitate scholarly discussion and examination of tax policy issues.

The College is composed of approximately 700 Fellows recognized for their outstanding reputations

¹ Pursuant to Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Pursuant to Rule 37.2, counsel for the College provided timely notice of the College’s intent to file this brief.

and contributions to the field of tax law and is governed by a Board of Regents consisting of one Regent from each federal judicial circuit, two Regents at large, the Officers of the College, and the Immediate Past President of the College.

This *amicus* brief is submitted by the College's Board of Regents and does not necessarily reflect the views of all members of the College, including those who are government employees.

SUMMARY OF THE ARGUMENT

When Congress first enacted a permanent federal income tax, it provided taxpayers with a key procedural safeguard. To assess any additional tax, the government needed to do so within a set limitations period after a particular tax return was filed. No such limitations period applied in “the case of false or fraudulent returns with intent to evade the tax.” The natural reading of that language (which courts adopted at the time of its enactment) was that the requisite intent to evade tax was that of the taxpayer. This interpretation remained good law for more than seventy-five years.

In the opinion below, the Third Circuit diverged from this historical understanding and held that a tax preparer's fraudulent intent was sufficient to hold open the limitations period for the taxpayer indefinitely, creating a circuit split with the Federal Circuit. In the Third Circuit's view, if some third party connected to the tax return had intent to evade tax, the Internal Revenue Service (“IRS”) can impose tax (along with statutory interest and penalties) against a taxpayer, years or even decades after a filing. The Third Circuit's interpretation puts taxpayers in the difficult and counterintuitive position of having to

defend a third party against an allegation of fraudulent conduct.

Statutes of limitations are meant to provide parties who act in good faith with finality and repose. Under the Third Circuit's approach, a taxpayer's good faith carries no weight. Instead, Ms. Murrin and taxpayers like her face devastating and unexpected tax bills through no fault of their own. The Court should grant certiorari to settle the law and resolve the circuit split on this important issue of federal tax procedure.

ARGUMENT

I. THE THIRD CIRCUIT'S INTERPRETATION IS OUT OF STEP WITH KEY PRINCIPLES OF STATUTORY INTERPRETATION

1. Generally, the IRS has three years to assess additional tax and penalties against a taxpayer. 26 U.S.C. ("section" or "I.R.C.") § 6501(a). Section 6501(c)(1) provides the IRS with an unlimited period to assess additional tax "[i]n the case of a false or fraudulent return with the intent to evade tax." In the opinion below, the Third Circuit affirmed an atextual reading of section 6501(c)(1), thus allowing for an infinite limitations period to apply whenever "someone planned to avoid duties owed by an individual or entity to the Government" with respect to a particular tax return. *Murrin v. Commissioner*, 158 F.4th 527, 532 (3d Cir. 2025).

That reading of the statute should not stand for three reasons: (1) because it conflicts with the plain meaning and historical understanding of the original enactment; (2) it produces illogical results; and (3) it

violates a clear statement canon of statutory interpretation with respect to the imposition of penalties.

We begin with the text of the original enactment. Congress enacted the fraud exception to the normal statute of limitations on assessment of tax as part of section 250 of the Revenue Act of 1918. *See* 40 Stat. 1057 (1919). Section 250 provided in relevant part that in “the case of false or fraudulent returns with intent to evade the tax” the amount of tax due “may be determined at any time.” *Id.* at 1083. Congress enacted the civil fraud penalty in the same section using the same words: if an understatement of tax was “false or fraudulent with intent to evade the tax,” a 50% penalty applied.² *Id.*

Although neither provision expressly stated whose intent mattered, the IRS (and its predecessor) and the courts historically interpreted them the same way, such that neither applied unless *the taxpayer* intended to evade the tax. *See, e.g., Griffiths v. Commissioner*, 50 F.2d 782, 786 (7th Cir. 1931) (focusing on taxpayer’s state of mind and concluding that his lack of “willful negligence” would preclude the IRS from overcoming a limitations defense under section 250(d)); *Nicholson v. Commissioner*, 38 B.T.A. 190, 197 (1938) (“[T]he pertinent words of the controlling statute are ‘with intent to evade tax.’ This must mean the tax of the petitioner, T. G. Nicholson.”); *Dilks v. Commissioner*, 15 B.T.A. 1294, 1301 (1929) (“The disclosure, in our judgment, negatives any intention on the part of the petitioner to file a false and

² Today, the penalty is codified at section 6663 and is imposed at a 75% rate.

fraudulent return with intent to evade tax and, on the contrary, evidences an honesty of belief that the sum received was not taxable.”); *Scheer v. Commissioner*, 11 B.T.A. 836, 840 (1928) (“We can not find as a fact that petitioner wilfully filed a false and fraudulent return with the intent to evade tax.”); *Gutterman Strauss Co. v. Commissioner*, 2 B.T.A. 433, 438 (1925) (“We are unable, however, to find any evidence of fraud on the part of either the officers or employees, and the proposed penalty of 50 per cent of the additional tax should therefore not be assessed.”). Courts declined to find fraud in cases where a taxpayer was unaware of fraudulent items placed on his or her return by a tax professional—including a particularly notorious line of fraud penalty cases involving a later-indicted tax preparer who routinely inflated the business expenses of his airline pilot clients. See *Inglis v. Commissioner*, 14 T.C. 1448, 1452–53 (1950); *Fulton v. Commissioner*, 14 T.C. 1453, 1456–57 (1950); *Rice v. Commissioner*, 14 T.C. 503, 505, 507–08 (1950). Indeed, the IRS still agrees that the fraud *penalty* can only apply if the taxpayer intended to evade the tax. See *BASR P’ship v. United States*, 795 F.3d 1338, 1345 (Fed. Cir. 2015) (“[T]he Government contends that § 6663(a)’s fraud penalty applies only when the taxpayer, not a third party, commits fraud.”). It is difficult to reconcile that view with the IRS’s more recent position that the fraud exception can apply whenever “someone” intended to evade the tax, given that Congress enacted the fraud penalty and fraud exception to the statute of limitations at the same time, as part of the same statutory provision, using identical words.

Congress has since recodified and repackaged parts of section 250, such that the fraud exception and

fraud penalty now appear in different Code sections. See I.R.C. § 6501(c)(1); I.R.C. § 6663.³ However, none of these reenactments suggest any congressional intent to change the original meaning of those provisions, as settled by courts in the early days of the income tax. See *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) (“Congress is presumed to be aware of . . . judicial interpretation[s] of a statute and to adopt that interpretation when it re-enacts a statute without change.” (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)); *Finley v. United States*, 490 U.S. 545, 554 (1989), *abrogated by statute*, 28 U.S.C. § 1367 (“Under established canons of statutory construction, ‘it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed.’” (quoting *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187, 199 (1912))).

Further, both section 6501(c)(1) and section 6663 share the same key textual characteristics: “in both provisions a form of the word ‘fraud’ describes the tax return, rather than a person (§ 6501(c)(1): ‘fraudulent’; § 6663(a): ‘due to fraud’).” *BASR P’ship*, 795 F.3d at 1345. To view the two provisions as diverging in meaning defies logic, given their shared contextual and interpretive history.

The Third Circuit largely ignored the historical context and focused instead on the *current* text of section 6501(c). The Third Circuit compounded its error by citing the fraud penalty—now separately found in section 6663—to illustrate “that Congress

³ Section 6663 now provides for the penalty “[i]f any part of any underpayment of tax required to be shown on a return is due to fraud.”

knows how to limit statutes to taxpayer conduct when it wants to do so.” But section 6663 provides no such support. The Third Circuit should have read the provisions together, not apart.

Next, the Third Circuit’s analysis violates the well-settled principle that courts should not interpret statutes in ways that lead to nonsensical results. *See, e.g., Clinton v. City of New York*, 524 U.S. 417, 429 (1998). In 2024, roughly 57% of all individual income tax returns (over 85 million returns) were prepared by a paid tax return preparer.⁴ Inevitably, some tax preparers with bad intent file returns on behalf of their clients. Indeed, tax preparers often have their own financial motives for engaging in fraud, such as earning fees based on a set percentage of the tax refund received by a client. Taxpayers in turn often lack the ability to identify when a tax preparer is engaging in fraud. What might appear to the IRS (and its sophisticated fraud detection algorithms) as one data point in a pattern of garden variety fraud often presents as normal tax jargon to a layperson.⁵ Most taxpayers are ill equipped to detect when a preparer has, say, falsely overclaimed depreciation on a business asset or overinflated earned income for purposes of a credit. *See United States v. Boyle*, 469 U.S. 241, 251 (1985) (“Most taxpayers are not

⁴ *See* I.R.S., 2024 Data Book, Table 4 (May 29, 2025), available at <https://www.irs.gov/statistics/soi-tax-stats-number-of-returns-filed-electronically-by-type-of-return-and-state-irs-data-book-table-4>.

⁵ *See, e.g., United States v. Keleta*, 949 F.3d 1082, 1089–90 (8th Cir. 2020) (describing a pattern of suspicious items on tax returns that resulted in preparer being flagged by the IRS’s Scheme Development Center).

competent to discern error in the substantive advice of an accountant or attorney.”). Given taxpayers’ limited ability to self-protect from preparer fraud, it defies belief that Congress ever intended to allow the IRS an unlimited time to assess tax against a victim of fraud. *See Davis v. Commissioner*, 184 F.2d 86, 88 (10th Cir. 1950) (“To hold a taxpayer guilty of fraud, . . . without actual knowledge that a return is false, and after a full disclosure to the expert preparing the same, would be untenable.”).

The College urges the Court to consider the harm caused to taxpayers, as illustrated in *City Wide Transit, Inc. v. Commissioner*, 709 F.3d 102 (2d. Cir. 2013), *rev’g* T.C. Memo 2011-279, where Manzoor Beg, a tax advisor, filed fraudulent employment tax returns for a bus company responsible for transporting children with disabilities, and then embezzled the funds designated to pay the IRS. The IRS argued, and City Wide unfortunately conceded, that Mr. Beg’s fraudulent intent could hold open the time that the IRS had to assess tax against City Wide. For taxpayers like City Wide, assessments of tax, penalties, and interest after the expiration of the general three-year limitations period constitute a significant financial hardship. In the College’s collective experience, such cases are sadly all too common: when a preparer files a fraudulent return without the taxpayer’s knowledge, it often comes enmeshed with other acts of embezzlement or fraud that financially harm the taxpayer. *See, e.g., United States v. Pratt*, No. 14-67-1, 2015 WL 4199052 (E.D. Pa. July 13, 2015) (section 7206(2) conviction of preparer who prepared false returns for clients and embezzled portions of the resulting refunds).

The Third Circuit's interpretation of section 6501(c)(1) also perversely incentivizes tax preparers or advisers with fraudulent intent to sacrifice their victims to save themselves. A tax advisor or return preparer under investigation or indictment often has an inherent interest in cooperating with the authorities and conceding that a tax position is fraudulent. While doing so may allow the professional to mitigate criminal prosecution or obtain a reduction at sentencing, such an admission leaves a taxpayer with an uphill evidentiary battle to dispute fraud many years later. Unfortunately, this delay has become somewhat standard operating procedure for the IRS.

BASR P'ship is an apt case study. There, Erwin Mayer was indicted in 2009 for (among other things) filing fraudulent tax returns in connection with his tax shelter promotion activities. A year later, Mr. Mayer signed a plea agreement that required him to fully cooperate with the government. Mr. Mayer spent the next five years cooperating extensively with the government—spending thousands of hours reviewing documents, preparing summary exhibits for prosecutions of his co-defendants, and testifying in two criminal trials. Ultimately, his cooperation included attesting in a 2010 declaration that he intended “to fraudulently evade the federal income tax” liabilities of the other taxpayers invested in the tax shelter—setting the table for the IRS's assertion of its unlimited limitations period theory. *BASR P'ship*, 795 F.3d at 1341 n.2.

At that point, in the wake of a federal indictment, the declaration came at no cost to Mr. Mayer. But Mr. Mayer's admissions deeply disadvantaged the taxpayers at issue, who had no opportunity to cross-

examine or challenge its veracity. Put simply, Mr. Mayer’s admissions effectively shifted the burden of disproving fraud onto taxpayers. *See* I.R.C. § 7454(a) (placing burden of proof in establishing fraud on the IRS); *see also* *BASR P’ship*, 795 F.3d at 1345 (characterizing government’s position as “allow[ing] the IRS to shift back its statutory burden of proof—and force the taxpayer to disprove fraud”).

The same dynamic is present in Ms. Murrin’s case. Ms. Murrin’s tax preparer, Duane Howell, prepared and filed income tax returns for 1993 through 1999 on her behalf that (without Ms. Murrin’s knowledge) included false or fraudulent entries. In 2006, Mr. Howell was indicted and pled guilty to aiding and assisting in the preparation of false tax returns in violation of section 7206(2). *See United States v. Howell*, Docket No. 7:06-cr-00283-CM-1 (S.D.N.Y. 2006). In 2019, the IRS issued a notice of deficiency to Ms. Murrin for tax years 1993 through 1999, determining additional tax due, accuracy-related penalties, and more than twenty-years’ worth of underpayment interest for each year. This litigation followed. All parties concede that the IRS is time-barred from assessment unless section 6501(c)(1) applies. Both the Tax Court⁶ and the Third Circuit below agreed with the IRS that section 6501(c)(1) “contains no requirement that the intent to evade belong to the taxpayer,” thus allowing Mr. Howell’s intent to suspend the limitations period of assessment with respect to Ms. Murrin’s own tax. *Murrin v. Commissioner*, T.C. Memo. 2024-10, at *6. As

⁶ Applying *stare decisis*, the Tax Court relied in part upon its own prior decision in *Allen v. Commissioner*, 128 T.C. 37 (2007).

explained above, that result cannot be what Congress intended.

Third and finally, the Third Circuit's holding would permit the IRS to assess accuracy-related penalties, ranging from 20% to 40% of the tax due, more than twenty years after the returns were filed. As is demonstrated by its actions in *Murrin* and *BASR*, the IRS often asserts that the victimized taxpayer owes not only more tax, but penalties as well. To claim the extraordinary power to penalize taxpayers for an unlimited period, the IRS must point to a clear statement of statutory authority. Section 6501(c)(1) falls well short of the mark.

This substantive canon of interpretation has deep roots in the common law. *See 3M Co. v. Browner*, 17 F.3d 1453, 1457 (D.C. Cir. 1994). As Chief Justice John Marshall once famously explained, “in a country where not even treason can be prosecuted after a lapse of three years” holding “an individual . . . forever liable to a pecuniary forfeiture” “would be utterly repugnant to the genius of our laws.” *Adams v. Woods*, 6 U.S. 336, 342 (1805). This Court has followed that principle time and again to narrowly construe statutes to impose some limit on the time in which the government may enforce penalties, absent a clear textual statement otherwise. *See, e.g., Gabelli v. SEC*, 568 U.S. 442, 452 (2013); *Amy v. Watertown*, 130 U.S. 320, 24 (1889) (reasoning that judicial interpretation suspending a limitations period is to be done only “with great caution” in light of “[t]he general rule . . . that the language of the act must prevail”).

This Court's decision in *Gabelli* is instructive. There, the government advanced an atextual interpretation of 28 U.S.C. § 2462, which provides a

five-year limitations period for “the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise.” The SEC sought to bring a civil penalty enforcement action outside of the five-year period, arguing that its claims accrued only when discovered by the agency because “a defendant’s deceptive conduct may prevent a plaintiff from even *knowing* that he or she has been defrauded.” *Gabelli*, 568 U.S. at 449. This Court disagreed, concluding that this expansive theory simply did not apply to government actions for civil penalties. *Id.* (“[W]e have never applied the discovery rule in this context, where the plaintiff is not a defrauded victim seeking recompense, but is instead the Government bringing an enforcement action for civil penalties.”). The Court rested its holding on a plain reading of the statute but took care to point out the harms in allowing the government—no ordinary litigant—an indeterminate time to collect penalties: “grafting the discovery rule onto § 2462 would . . . leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future.” *Id.* at 452.

No clear expression of congressional intent exists here. The Third Circuit’s holding vests the IRS with unlimited time to assess penalties (and interest on those penalties) more than twenty years after the conduct being penalized occurred. Under this reasoning, Ms. Murrin, and taxpayers who follow her, would “remain forever liable to a pecuniary forfeiture.” *Adams*, 6 U.S. at 342.

II. THE IMPORTANCE OF STATUTES OF LIMITATIONS AND THE SIGNIFICANT CIRCUIT SPLIT COUNSEL IN FAVOR OF CERTIORARI

1. “Statutes of limitations, which ‘are found and approved in all systems of enlightened jurisprudence,’ represent a pervasive legislative judgment that . . . ‘the right to be free of stale claims in time comes to prevail over the right to prosecute them.’” *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (first quoting *Wood v. Carpenter*, 101 U. S. 135, 139 (1879), then quoting *Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 349 (1944)). Limitations periods “spare . . . the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost.” *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). In federal tax procedure, “[t]he statute of limitations on assessment is ‘an almost indispensable element of fairness as well as of practical administration of an income tax policy.’” *Fowler v. Commissioner*, 155 T.C. 106, 110 (2020) (quoting *Rothensies v. Elec. Storage Battery Co.*, 329 U.S. 296, 301 (1946)). Absent the limitations period on assessment, “both the taxpayer and the Government [must] stand ready forever and a day to produce vouchers, prove events, establish values and recall details of all that goes into an income tax contest.” *Rothensies*, 329 U.S. at 301.

For more than seventy-five years, the IRS viewed section 6501(c)(1) as being triggered only when the taxpayer filing the tax return at issue had the intent to evade tax. See I.R.S. Field Serv. Adv. 200126019 (June 29, 2001); see also *BASR P’ship*, 795 F.3d at 1348 (“The IRS obviously changed its position on the

interpretation of § 6501(c)(1) at some point between 2001 and 2005, when the IRS issued the deficiency notices that led to the *Allen* litigation.”). The Tax Court followed suit, interpreting section 6501(c)(1) and section 6663 *in pari materia*. See *Rhone-Poulenc Surfactants & Specialties, LP v. Commissioner*, 114 T.C. 533, 547 (2000). The IRS then abandoned that position in favor of its current approach. The resulting litigation—culminating in this case—has left U.S. taxpayers in significant uncertainty as to their indefinite exposure to additional assessments of tax.

At first, the IRS argued, and the Tax Court agreed, that the fraud exception could apply only where the bad actor was the taxpayer’s agent in preparing the return.⁷ See *Allen*, 128 T.C. at 41 (“Petitioner cannot hide behind an agent’s fraudulent preparation of his returns and escape paying tax if the Government is unable to investigate fully the fraud within the limitations period.”); *cf. Fulton*, 14 T.C. at 1457 (“[R]espondent, on whom rested the burden of proof of fraud, has not proven that it was within the actual or apparent scope of Nimro’s authority as petitioner’s agent to prepare and file a false and fraudulent return.”). The government then abandoned that limitation, expansively arguing that “the ‘intent to evade tax’ referenced in § 6501(c)(1) can be untethered to the filing of the return itself—*i.e.*, can be the intent of someone proffering investment advice, but not making decisions regarding or making representations on the tax returns themselves.” *BASR P’ship*, 795 F.3d at 1342 n.3. Now, the Third Circuit

⁷ While more limited than the view adopted by the Third Circuit, this theory still sweeps up potentially millions of annual income tax returns prepared by paid preparers.

has held that the exception applies if “someone planned” to evade tax. Obviously recognizing that holding would be untenable in situations where the bad actor was more remote, the Third Circuit suggested it might be appropriate to place some limitation on whose intent matters but left it to future courts to draw the line. *Murrin*, 158 F.4th at 534 n.7 (“We need not determine the outer bounds of how an ‘intent to evade tax’ applies in every context, however, because Murrin stipulated that her tax preparer intended to evade her taxes.”).

Despite its attempt to sidestep the requisite degree of association, the Third Circuit’s reasoning rests entirely on the view that the exception applies if “someone” – anyone – intended to evade the tax. Where should a future court draw the line? How about a general partner in a partnership that issues investors Schedules K-1 with inflated expense figures? *Cf. BASR P’ship*, 795 F.3d at 1355 (O’Malley, J. concurring). Or a TikTok influencer who dispenses to viewers false advice on how to claim depreciation on a personal residence? Does their fraudulent intent indefinitely infect the returns of the taxpayers who rely upon their representations in good faith? The impossibility of line-drawing aptly demonstrates the absurdity in the Third Circuit’s interpretation of section 6501(c)(1).

2. The need to resolve the correct interpretation of section 6501(c)(1) is even more imperative now that it is subject to a clear circuit split. The Federal Circuit held that section 6501(c)(1) is triggered only when the taxpayer has intent to evade tax. *See BASR P’ship*, 795 F.3d at 1350. The Third Circuit and the Tax Court reached the opposite conclusion. Further to the point, this is no ordinary circuit split. The split runs parallel

to the U.S. tax system's two-track structure for disputing additional tax owed.

Most taxpayers choose to contest an IRS determination of a deficiency by proceeding—on a prepayment basis—in the Tax Court, which has nationwide jurisdiction. Other taxpayers with financial means may choose to pay the full amount in dispute and then sue for a refund in either the district court or Court of Federal Claims (the latter of which also has nationwide jurisdiction). In practice, taxpayers sometimes choose to take the refund route in the Court of Federal Claims to avoid unfavorable controlling precedent of the Tax Court or of the circuit in which they reside. *See Sanders v. Commissioner*, 161 T.C. 112, 118 (2023) (explaining Tax Court's case-specific practice of adhering to precedent of the circuit to which case is appealable) (citing *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971)).

The split at issue in this case provides taxpayers with a significant opportunity to forum shop at will. A taxpayer who is a victim of a fraudulent preparer—and can afford to fully pay the tax, interest, and any penalties due—may file suit in the Court of Federal Claims. Doing so would all but ensure that the taxpayer prevails on a limitations defense under *BASR*. In contrast, a taxpayer without means must litigate in Tax Court, where *Allen*, *Murrin*, and other precedent foreclose their limitations defense.

The circuit split here facilitates a system of haves and have-nots. The Court should step in and resolve the split, placing taxpayers on the same level playing field regardless of financial means.

CONCLUSION

The College respectfully requests that the Court grant the Petition.

Respectfully submitted,

Caroline Ciralo
Counsel of Record
Michael Waalkes
Kostelanetz LLP
601 New Jersey Avenue
Suite 260
Washington, DC 20001
(202) 875-8000
cciralo@kostelanetz.com

Thomas A. Cullinan
Chamberlain Hrdlicka
191 Peachtree Street, N.E.
Forty-Sixth Floor
Atlanta, GA 30303
(404) 658-5450
tom.cullinan@chamberlainla
w.com
Counsel for Amicus Curiae

March 23, 2026