

No. 25-988

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STEPHANIE MURRIN,  
*Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE,  
*Respondent.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Third  
Circuit**

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**BRIEF OF THE TAX LITIGATION CLINIC OF  
THE LEGAL SERVICES CENTER OF  
HARVARD LAW SCHOOL AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONER**

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## **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Tax Litigation Clinic of the Legal Services Center of Harvard Law School (“the Clinic”) was founded in 2015 to represent low-income taxpayers before the Internal Revenue Service (“IRS”) and in tax matters before the courts, including in deficiency cases, refund suits, and requests for innocent spouse relief in the U.S. Tax Court and other federal courts. The Clinic is housed within the Legal Services Center, a public-interest law firm at Harvard Law School.

The Clinic frequently represents low-income taxpayers who have been victimized by fraudulent tax return preparers. These clients have no role in the fraud, no knowledge of the fraud, and no practical means of detecting the fraud until they receive a notice from the IRS. And under the Third Circuit’s ruling in *Murrin v. Comm’r of Internal Revenue*, 158 F.4th 527 (3d Cir. 2025), these clients could now also face, through no fault of their own, the prospect of an unlimited IRS assessment period accompanied by devastating interest accruals.

Through its day-to-day representation of low-income taxpayers, the Clinic is acutely aware of the pervasive fraud perpetrated by uncredentialed, unregulated tax return preparers and of the severe consequences that fall most heavily on those least able to defend themselves. Under the Third Circuit’s

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. No person other than amici or their counsel made a monetary contribution to this brief’s preparation or submission. Both parties were timely notified more than 10 days in advance of the intent to file this brief.

interpretation of § 6501(c)(1),<sup>2</sup> the IRS has little incentive to take timely action to assess deficiencies arising from preparer fraud or misconduct. As a result, low-income taxpayers already disproportionately harmed by fraudulent preparers may be further harmed by enormous interest accruals if the IRS is permitted to indefinitely delay assessing deficiencies on their returns—a perspective the government has no institutional reason to present.

The Tax Litigation Clinic, on behalf of the low-income taxpayers it serves, is well positioned to share this perspective. To that end, we hope our experience and analysis can be of assistance to the Court in this case.

### **SUMMARY OF ARGUMENT**

Every year, tens of millions of Americans entrust their tax returns to paid preparers. Most of these preparers possess no credentials, have no training, and are subject to almost no regulatory oversight. But when these preparers commit fraud by fabricating deductions, falsifying income, or claiming credits the taxpayer never knew about, the taxpayer is left to face the IRS alone. The ruling of the Third Circuit below exacerbates this known problem by reading § 6501(c)(1) to impose an additional consequence on taxpayers: an unlimited statute of limitations on the assessment of their tax due to someone else's fraud.

Section 6501(c)(1) does not impose this result. The statute extends the standard three-year

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<sup>2</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code, Title 26.

assessment period, *see* § 6501(a), only where there is “a false or fraudulent return with the intent to evade tax,” § 6501(c)(1). That language requires there to be a human actor with a culpable mental state, and the Code identifies that relevant human actor, in § 6501 and elsewhere, as the taxpayer. In holding that the fraudulent intent of a third party is sufficient to extend indefinitely the statute of limitations borne solely by the taxpayer, *see Murrin*, 158 F.4th at 539, the Third Circuit created a split with the Federal Circuit, *see BASR P’ship v. United States*, 795 F.3d 1338, 1343–44 (Fed. Cir. 2015). But not only: the Third Circuit also failed to give proper effect to the text, statutory context, and precedent it invoked.

The Internal Revenue Service’s own inconclusive interpretations of § 6501(c)(1) confirm what this circuit split makes plain: the statute is ambiguous and in need of this Court’s interpretation. Absent this Court’s intervention, whether a taxpayer is afforded the protection to which the Internal Revenue Code entitles them will depend only on whether that taxpayer can afford to litigate in the Federal Circuit.

## ARGUMENT

### I. MILLIONS OF TAXPAYERS ARE EXPOSED TO PREPARER FRAUD THAT THEY CANNOT DETECT, PREVENT, OR CONTROL

Amanda picks up the phone and calls the Clinic.<sup>3</sup> She doesn't understand why the IRS says she owes so much money. She *paid* her taxes. She even hired a professional to prepare the return for her. Over the coming weeks, Amanda discovers what happened. That "professional"? He had no credentials. He charged Amanda \$350 and said she was eligible for an Earned Income Tax Credit (EITC) because she had a stepson. Amanda wasn't eligible; her stepson only lived with her for five months that year, and her preparer knew it. But Amanda trusted her preparer because, after all, it was his business to advise people about their tax returns. She hired a professional tax return preparer *because* she didn't understand the tax system. Now she owes many thousands of dollars to the IRS, at a time when she can barely afford to buy groceries.

Amanda is not alone. The Clinic frequently represents clients who have been led astray by incompetent or unethical return preparers. In most cases, clients with educational, language, or health barriers may have no ability to detect their preparer's fraud. Indeed, it is not uncommon for a client to challenge the Clinic's analysis—and assume we do

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<sup>3</sup> To protect clients' confidentiality, Amanda's case is fictional. However, it resembles a typical client matter handled by the Clinic.

not understand a certain deduction or credit on their return—because we’ve contradicted their paid preparer. We routinely see self-employed clients advised to report cash payments inaccurately; clients steered into improper Head of Household status; and plenty of cases like Amanda’s, where paid preparers misrepresent eligibility for refundable tax credits.

Our docket at the Clinic represents a microcosm of the broader landscape of low-income taxpayers disastrously impacted by tax preparer fraud or incompetence. In fiscal year 2024, more than 85 million individual taxpayers used paid tax return preparers. *See* U.S. Gov’t Accountability Off., GAO-26-108723, Paid Tax Return Preparers: Opportunities Remain to Improve IRS Oversight 1 (2026), <https://www.gao.gov/assets/gao-26-108723.pdf> [hereinafter Improve IRS Oversight]. That’s nearly 60 percent of all individual return filers. *See id.* But can those tens of millions of Americans rely upon the preparers to whom they give their Social Security numbers, bank account details, and trust? Often, they can’t.

Tax preparer fraud is not rare. Since 2002, the IRS has released a yearly “Dirty Dozen” list of twelve tax scams. The very first list warned of unethical tax preparers deliberately misstating their clients’ eligibility for certain credits,<sup>4</sup> and in twenty-three of the subsequent twenty-four years, the IRS has

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<sup>4</sup> *See IR-2002-12, The “Dirty Dozen”: IRS Warns of 12 Common Scams*, Internal Revenue Serv. 2 (Jan. 31, 2002), <https://www.irs.gov/pub/irs-news/ir-02-12.pdf> (2002 “Dirty Dozen” list).

included at least one kind of preparer fraud on its list.<sup>5</sup>

Tax preparer fraud can take many forms. Some preparers target high-net-worth individuals, charging tens of thousands for supposed tax savings.<sup>6</sup> Others focus on volume and prepare hundreds or even tens of thousands of fraudulent returns in elaborate, multi-year schemes.<sup>7</sup> Fraud can include intentionally taking unwarranted deductions, claiming nonexistent

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<sup>5</sup> See Annette Nellen, *IRS Dirty Dozen Lists for 2026 Back to Their Origin in 2001*, San José State Univ. (2026), <https://www.sjsu.edu/people/annette.nellen/website/DirtyDozenTable.pdf> (collecting data from 2002–2026 IRS “Dirty Dozen” list, plus predecessor list published in 2001).

<sup>6</sup> See, e.g., *Chief Executive Officer of Tax Preparation Firm Charged with Federal Tax Offenses*, U.S. Dep’t of Just. (Dec. 18, 2025), <https://www.justice.gov/usao-sdny/pr/chief-executive-officer-tax-preparation-firm-charged-federal-tax-offenses> (preparer charged fee of \$175,000, or “25% of the tax savings” achieved through fraudulent items).

<sup>7</sup> See, e.g., *Jacksonville Tax Preparer Sentenced to Prison for Preparing over \$1.8 Million in Fraudulent Tax Returns*, Internal Revenue Serv. (Feb. 18, 2026), <https://www.irs.gov/compliance/criminal-investigation/jacksonville-tax-preparer-sentenced-to-prison-for-preparing-over-1-point-8-million-in-fraudulent-tax-returns> (preparer filed over 900 falsified returns between tax years 2020 and 2022); *Bronx Tax Preparer Sentenced to Prison for Filing Tens of Thousands of False Tax Returns Causing \$145 Million in Fraudulent Tax Loss*, Internal Revenue Serv. (May 29, 2025), <https://www.irs.gov/compliance/criminal-investigation/bronx-tax-preparer-sentenced-to-prison-for-filing-tens-of-thousands-of-false-tax-returns-causing-145-million-in-fraudulent-tax-loss> (tax preparation company prepared over 90,000 falsified returns between 2010 and 2020).

dependents, or falsifying clients' income to render them eligible for certain credits. To lure in unsuspecting clients, preparers promise hefty refunds<sup>8</sup> and build flashy social media presences.<sup>9</sup>

Low-income taxpayers, who may lack the education, experience, or discernment to engage competent tax professionals, are particularly vulnerable because the IRS has very limited authority to ensure tax preparer competency or ethical practice. Under *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014) (Kavanaugh, J.), the agency may impose competency testing only on a narrow class of practitioners licensed and admitted to practice before the IRS. These practitioners, known as Enrolled Agents, must pass a three-part exam and a background check. See 31 C.F.R. §§ 10.1–10.93 (Treasury Circular No. 230). By contrast, anyone may lawfully prepare tax returns for a fee after completing nothing more than a brief online application and paying an \$18.75 fee to obtain

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<sup>8</sup> See, e.g., Campbell Robertson, *Tax Preparers Targeting Poor with High Fees*, N.Y. Times (Apr. 7, 2014), <https://www.nytimes.com/2014/04/08/us/tax-season-brings-big-refunds-and-preparers-clamoring-for-a-slice.html> (describing typical practices of preparers targeting low-income taxpayers).

<sup>9</sup> See, e.g., *IR-2023-49, IRS Opens 2023 Dirty Dozen with Warning About Employee Retention Credit Claims*, Internal Revenue Serv. (Mar. 20, 2023), <https://www.irs.gov/newsroom/irs-opens-2023-dirty-dozen-with-warning-about-employee-retention-credit-claims-increased-scrutiny-follows-aggressive-promoters-making-offers-too-good-to-be-true> (describing rise in social-media-based preparer scams).

a Preparer Tax Identification Number (PTIN).<sup>10</sup> IRS can require no demonstration of competence<sup>11</sup> before these unenrolled preparers can charge taxpayers hundreds of dollars for their services.<sup>12</sup> Thus *Loving* produced the paradoxical result that the IRS may hold licensed professionals to exacting standards while leaving an entire, much larger population of paid preparers effectively unsupervised.

Unenrolled preparers are exceedingly common. IRS Return Preparer Office data indicate that in 2025, there were 574,925 unenrolled tax return preparers, less than 10% of whom had voluntarily submitted to a basic competency examination. See *Improve IRS Oversight* at 2. Although these uncredentialed, unenrolled preparers make up about one-half of all paid preparers, *see id.*, they submit more than three-fourths of third-party-prepared

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<sup>10</sup> See 26 C.F.R. § 1.6109-2(d) (requiring PTIN for all tax return preparers); *PTIN Requirements for Tax Return Preparers*, Internal Revenue Serv., <https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers> (last visited Mar. 19, 2026).

<sup>11</sup> Only a handful of states, such as California and Oregon, impose additional requirements on tax return preparers. See Jessica A. Magaldi et al., *Is It Time for Federal Regulation of the Tax Preparer Industry? New Insights from Legal and Empirical Developments*, 106 *Marquette L. Rev.* 543, 550 (2023).

<sup>12</sup> See Chi Chi Wu, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do*, *Nat'l Consumer L. Ctr.* 15–18 (Nov. 2013), <http://www.nclc.org/images/pdf/pr-reports/report-riddled-returns.pdf> [<https://perma.cc/QG57-C9QP>] (noting that mystery shopper studies have encountered preparation fees exceeding \$500).

returns claiming the Earned Income Tax Credit on behalf of the working poor.<sup>13</sup>

Unsurprisingly, paid preparer competence is an issue. In 2014, the Government Accountability Office (GAO) sent undercover investigators to nineteen randomly selected paid preparers. *See* U.S. Gov't Accountability Off., GAO-14-467T, Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors 1 (2014), <https://www.gao.gov/assets/gao-14-467t.pdf>. Only two of nineteen preparers correctly calculated the refund. *See id.* at 9.<sup>14</sup> A more recent undercover study conducted by the Center for Taxpayer Rights included

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<sup>13</sup> *See* Robert Greenstein et al., *Reducing Overpayments in the Earned Income Tax Credit*, Ctr. on Budget & Pol'y Priorities (Jan. 31, 2019), <https://www.cbpp.org/research/reducing-overpayments-in-the-earned-income-tax-credit> (noting overrepresentation of unenrolled preparers in complex Earned Income Tax Credit claims).

<sup>14</sup> Other data indicate that unenrolled preparers overclaim tax credits more frequently than other paid preparers. *See* U.S. Gov't Accountability Off., GAO-16-474, Refundable Tax Credits: Comprehensive Compliance Strategy and Expanded Use of Data Could Strengthen IRS's Efforts to Address Noncompliance 43 (2016), <https://www.gao.gov/assets/680/677724.pdf>. For example, in 2008, IRS investigators posed as clients and visited unenrolled preparers. *See* Treasury Inspector Gen. for Tax Admin., *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors*, U.S. Treasury 2 (Sep. 03, 2008). Seventeen of the twenty-eight returns prepared during the operation—over 60%—were inaccurate. *See id.* Of those inaccurate returns, 35% contained “willful or reckless” errors. *See id.*

a scenario in which *none* of the preparers properly calculated the refund due.<sup>15</sup>

Numbers like these are no surprise to our Clinic. Most often, return preparers target the working poor, many of whom do not feel equipped to prepare their own tax returns and so seek out what appears to be professional guidance.<sup>16</sup> It doesn't help that over half of all Americans incorrectly believe that federal income tax preparers are already subject to licensing requirements.<sup>17</sup> The result is perverse: those with the fewest resources face the greatest risk of being exploited by a paid preparer's fraud.

The consequences of the Third Circuit's ruling are concrete. With the benefit of a potentially unlimited assessment period, the IRS may at any

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<sup>15</sup> See *2025 Filing Season Mystery Shopping Visits*, Ctr. for Taxpayer Rights 38 (Mar. 16, 2026), <https://taxpayer-rights.org/wp-content/uploads/2026/03/Mystery-Shopping-Report-03-16-26.pdf>. For further discussion, the Clinic refers the Court to the *amicus* brief of The Center for Taxpayer Rights.

<sup>16</sup> See Paul Weinstein Jr. & Bethany Patten, *The Price of Paying Taxes II: How Paid Tax Preparer Fees are Diminishing the Earned Income Tax Credit (EITC)*, Progressive Pol'y Inst. 3–4 (Apr. 2016), [https://www.progressivepolicy.org/wp-content/uploads/2016/04/2016.04-Weinstein\\_Patten\\_The-Price-of-Paying-Taxes-II.pdf](https://www.progressivepolicy.org/wp-content/uploads/2016/04/2016.04-Weinstein_Patten_The-Price-of-Paying-Taxes-II.pdf) (describing how paid preparers target low-income clientele with promises of quick refunds).

<sup>17</sup> See Michael Best, *Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud*, Consumer Fed'n of Am. 5 (Mar. 2017), [https://consumerfed.org/wp-content/uploads/2017/03/3-22-17-Tax-Poll\\_Report.pdf](https://consumerfed.org/wp-content/uploads/2017/03/3-22-17-Tax-Poll_Report.pdf) (51% of those surveyed believed the federal government required tax preparer licensing).

point assess liabilities for years long past and thereafter levy the taxpayer's bank accounts or wages, capture a portion of the taxpayer's Social Security benefits, or even seize the taxpayer's home. Whatever the collection outcomes, the Third Circuit's rule strips taxpayers of the ability to plan for their financial futures by removing one of the few statutory protections they enjoy against the consequences of widespread and unregulated preparer fraud.

## **II. THE THIRD CIRCUIT MISAPPLIED FUNDAMENTAL PRECEPTS OF STATUTORY CONSTRUCTION**

Section 6501(c)(1) of the Internal Revenue Code provides that “[i]n the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.” § 6501(c)(1). Any interpretation of this provision must, as this Court has repeatedly emphasized, begin with and adhere to this statutory text. *Cf. Bartenwerfer v. Buckley*, 598 U.S. 69, 74 (2023) (“[W]e start where we always do: with the text of the statute.” (quoting *Van Buren v. United States*, 593 U.S. 374, 381 (2021))). Adherence to the statutory text requires that all words and phrases “be given the meaning that proper grammar and usage would assign them.” *Nielsen v. Preap*, 586 U.S. 392, 408 (2019) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 140 (2012)).

The Third Circuit's decision below failed in this task twice over. *First*, relying on this Court's decision in *Bartenwerfer*, the Third Circuit reasoned that, because § 6501(c)(1) is written in the passive voice, it

is therefore “agnostic” as to who must possess the intent to evade tax. *See Murrin*, 158 F.4th at 532 (“Congress’s decision to use passive voice in § 6501(c)(1) further evinces that the statute does not depend on a taxpayer’s intent.”). But the portion of § 6501(c)(1) that the Third Circuit held was written in the passive voice—“intent to evade tax”—is plainly not. *Second*, the Third Circuit failed to give proper effect to the words of the statute that require the presence of human “intent” and that limit the intent inquiry to the taxpayer who is required by law to file the return. *Cf.* § 6501(a) (“[T]he term ‘return’ means the return required to be filed *by the taxpayer*.”) (emphasis added).

**A. The Relevant Clause of § 6501(c)(1) Is Not Written in the Passive Voice**

Grammatical voice describes the relationship of a verb to the words that complete that verb’s meaning. As compared to active voice, in which the grammatical subject carries out the action of the verb, passive voice turns the actor into the object by whom the verb’s action is received. In English grammar, the “unfailing test” of passive voice is whether a clause contains a *be*-verb and a past participle. Bryan A. Garner, *Garner’s Modern English Usage* 676 (4th ed. 2016).

The Third Circuit was wrong to regard “intent to evade tax” as “written in the passive voice.” *Murrin*, 158 F.4th at 535. Because this noun phrase contains no *be*-verb and no past participle, it is not written in the passive voice. This conclusion also holds if one considers the entire clause at issue here. “In the case of a false or fraudulent return with the intent to evade tax,” § 6501(c)(1), contains no *be*-verb and no past

participle, and therefore does not employ the passive voice.

Moreover, the two portions of § 6501(c)(1) that do employ the passive voice clearly indicate their relevant actors. If the introductory conditions of § 6501(c)(1) are satisfied, the statute provides that “the tax may *be assessed*, or a proceeding in court for collection of such tax may *be begun* without assessment, at any time.” § 6501(c)(1) (emphases added). In neither of these instances does the passive voice reflect an actor “agnosticism.” *Cf. Bartenwerfer*, 598 U.S. at 76. Rather, the statutory context “confine[s]” this passive construction to a single actor: the Internal Revenue Service. *Cf. id.*; § 6201(a) (stating that only the Secretary of the Treasury, and by extension the I.R.S., has the authority “to make the inquiries, determinations, and assessments of all taxes”).

**B. The Relevant Clause of § 6501(c)(1) Demands a Human Actor, and the Statute Identifies That Actor as the Taxpayer**

To indefinitely extend the assessment period, § 6501(c)(1) prescribes two discrete requirements. First, there must be a “false or fraudulent return.” § 6501(c)(1). And second, there must be “intent to evade tax.” *Id.* The Third Circuit below conflated these requirements by holding that the second “intent” requirement “attach[es]” to the first “false or fraudulent return” requirement. *Murrin*, 158 F.4th at 533. Because this reading impermissibly renders much of the statutory language superfluous, it cannot stand.

The word “with” that immediately follows the “false or fraudulent return” requirement and immediately precedes the “intent to evade tax” requirement in § 6501(c)(1) signals that this latter requirement “still has work to do.” *Nielsen*, 586 U.S. at 414. “Intent” denotes a mental state that some actor must possess in order to trigger the indefinite assessment period under § 6501(c)(1). Under the Third Circuit’s reading, “intent to evade tax” is implied by the fact of a “false or fraudulent return,” but a tax return is a document. A tax return has no mental state of which to speak, and it therefore cannot possess the “intent” that § 6501(c)(1) requires.

Because the Third Circuit ran these two distinct requirements together, it also failed to note that Congress did indicate whose conduct and intent are at issue under § 6501(c)(1). Section 6501(a) provides that “the term ‘return’ means the return required to be filed by the taxpayer.” Thus, even if the “intent to evade tax” requirement “attach[es]” to the “false or fraudulent return” requirement, as the Third Circuit held, *see Murrin*, 158 F.4th at 533, then the most natural reading of the statute is that the “intent” inquiry attaches to the person who, under § 6501(a), is required to file the return: the taxpayer.

**C. The Third Circuit’s Reading of § 6501(c)(1) Conflicts with the Code’s Uniform Usage of “Intent to Evade Tax”**

“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (quoting *Davis v. Mich. Dep’t of*

*the Treasury*, 489 U.S. 803, 809 (1989)). Beyond § 6501(c)(1) itself and a similar provision for partnership returns,<sup>18</sup> the phrase “intent to evade tax” appears eleven times in the Internal Revenue Code. And each time Congress uses this phrase, it limits inquiry into that intent to the particular person<sup>19</sup> liable for the tax. The Third Circuit’s holding that “intent to evade tax” in § 6501(c)(1) also captures third-party intent is without parallel elsewhere in the Internal Revenue Code.

The following table summarizes the remaining provisions of the Internal Revenue Code that invoke “intent to evade tax”:

<b>IRC Provision</b>	<b>Statutory Language</b>	<b>Relevant Actor</b>
§ 547(g)	“No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a	A taxpayer

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<sup>18</sup> Under § 6235(c)(1), “[i]n the case of a false or fraudulent partnership return with intent to evade tax, [an] adjustment may be made at any time.” No court yet has been asked to construe this provision.

<sup>19</sup> Section 7701(a)(1) defines “person” broadly to include “an individual, a trust, estate, partnership, association, company or corporation.”

IRC Provision	Statutory Language	Relevant Actor
	finding that any part of the deficiency is due to fraud with intent to evade tax . . . .”	
§ 852(e)(4)	“The provisions of this subsection shall not apply if the determination contains a finding that the failure to meet any requirement of this part was due to fraud with intent to evade tax.”	A regulated investment company
§ 856(g)(4)(B)	“[The savings clause applies] if . . . the inclusion of any incorrect information in the return of the trust for the taxable year . . . is not due to fraud with intent to evade tax.”	A real estate investment trust

IRC Provision	Statutory Language	Relevant Actor
§ 860(i)	“No deficiency dividend deduction shall be allowed . . . if the determination contains a finding that any part of any deficiency . . . is due to fraud with intent to evade tax or to willful failure to file an income tax return . . . .”	A qualified investment entity (regulated investment company or REIT), <i>see</i> § 860(b)
§ 965(h)(4)	“This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.”	A U.S. shareholder of a deferred foreign income corporation
§ 1062(b)(3)	“This section shall not apply if the deficiency is due to negligence, to	A taxpayer who elects installment payments on gain from a

IRC Provision	Statutory Language	Relevant Actor
	intentional disregard of rules and regulations, or to fraud with intent to evade tax.”	qualified farmland sale
§ 6161(b)(3)	“No extension shall be granted under this subsection for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.”	A taxpayer seeking an extension of time to pay a deficiency
§ 6166(e), (h)(1)	“This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.”	An estate (executor) seeking to prorate an estate tax deficiency to installments

<b>IRC Provision</b>	<b>Statutory Language</b>	<b>Relevant Actor</b>
§ 6167(d)	“This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.”	A corporation recovering foreign expropriation losses
§ 7422(e)	“The taxpayer shall have the burden of proof with respect to the issues raised by . . . counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax.”	A taxpayer in a refund suit where the United States counterclaims fraud
§ 7454(a)	“In any proceeding involving the issue whether the petitioner	A petitioner (taxpayer) accused of fraud with intent to evade tax in a

IRC Provision	Statutory Language	Relevant Actor
	has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary.”	proceeding before the Tax Court

In each of these provisions, there is a clearly identifiable actor whose intent triggers the application of the statute. The final two provisions, which each describe when a taxpayer may be held liable for fraud, *see* §§ 7422(e), 7454(a), are particularly instructive. Neither provision contemplates that a taxpayer may be held liable for the fraud of a third party. Instead, they explicitly limit the inquiry to whether a “taxpayer,” *see* § 7422(e), or a “petitioner,” *see* § 7454(a), has committed “fraud with intent to evade tax.” If “fraud with intent to evade tax” could attach to someone other than the taxpayer under the Code, then Congress would have provided for the burden of proof on allegations of third-party fraud. It did not.

Even the Third Circuit recognized that its reading of § 6501(c)(1) conflicted with other Code provisions that, despite lacking the limiting language of § 6501(c)(1), it described as intended to punish taxpayer fraud. *See Murrin*, 158 F.4th at 534–35. Unlike § 6501(c)(1), which requires the presence of “intent” to indefinitely extend the assessment statute

of limitations, § 6663(a) imposes penalties “[i]f any part of any underpayment of tax required to be shown on a return is due to fraud.” Despite this less-specific language, the Third Circuit maintained that the § 6663(a) inquiry did not extend beyond the taxpayer, while holding that the more explicitly limited language of § 6501(c)(1) would capture a broader range of non-taxpayer conduct. *See Murrin*, 158 F.4th at 535–36.

The Third Circuit knew that its holding below would drive a disharmony into the Internal Revenue Code. Nevertheless, the Third Circuit so held, *see id.*, and left courts and practitioners with a lack of clarity about how to interpret identical statutory language across the Code and leaving some 85 million taxpayers nationwide with unlimited exposure to belated tax assessment.

**D. The Third Circuit Extended  
*Bartenwerfer* Beyond Its Limiting  
Principle to Create Indefinite  
Liability for All Taxpayers**

This Court’s decision in *Bartenwerfer* does not decide this case because the operative language of § 6501(c)(1) is not written in the passive voice. Moreover, the background considerations of common-law fraud that animate *Bartenwerfer* do not tip the textual ambiguity of § 6501(c)(1) in the Government’s favor.

In *Bartenwerfer*, this Court considered a provision of the Bankruptcy Code providing that a debt “obtained by . . . fraud” may not be discharged, 11 U.S.C. § 523(a)(2)(A), and held that this exception prevented an individual from discharging debt obtained through her partner’s fraud, *see*

*Bartenwerfer*, 598 U.S. at 83. This Court highlighted that the statute incorporated the common law of fraud, *see id.* at 76, and that “a faultless individual is responsible for another’s debt only when the two have a special relationship,” *id.* at 82, such as a partnership or agency relation, *see id.* These background limitations prevent liability from being “imposed willy-nilly on hapless bystanders.” *Id.*

But return preparers are neither partners nor agents of the taxpayer. Unlike taxpayers and their return preparers, partners share the gains from their joint enterprise, and they are jointly liable for any losses. *See Partnership*, Black’s Law Dictionary (12th ed. 2024); Uniform Partnership Act § 401(a) (2013). Likewise, return preparers are not the agents of the taxpayer because “[t]hey do not possess legal authority to act on the taxpayer’s behalf.” *Loving*, 742 F.3d at 1017 (Kavanaugh, J.). Under the IRS’s own rules, only someone who has obtained the taxpayer’s power of attorney may represent that taxpayer before the agency. 26 C.F.R. § 601.504(a); *see also id.* § 601.501(b)(10) (representation before the IRS “include[s] the preparation and filing of necessary documents”).

Because the IRS lacks authority to regulate unenrolled preparers, *see Loving*, 742 F.3d at 1022, any taxpayer who relies on such a preparer to comply with annual tax filing requirements does so without assurance that their preparer is reliable. *See supra* Part I. And for this reliance, the Third Circuit’s reading of § 6501(c)(1) exacts a heavy tax: indefinite liability for taxpayers nationwide.

The Third Circuit’s reading converts § 6501(c)(1)’s narrow exception to the Code’s three-year

assessment statute of limitations into a new, broad-sweeping rule. Under this rule, countless taxpayers now face unlimited exposure to liability for the independent actions of their tax return preparer. None of this Court’s decisions compel this result, and the statutory text of § 6501(c)(1) cannot bear the weight that the decision below has placed upon it.

### **III. THE IRS’S INABILITY TO SETTLE THE MEANING OF § 6501(c)(1) DEMANDS THIS COURT’S INTERVENTION**

If the text of § 6501(c)(1) were “plain,” as both the Federal Circuit, *see BASR P’ship*, 795 F.3d at 1343–44, and the Third Circuit, *see Murrin*, 158 F.4th at 531–34, held, then reasonable legal minds would not disagree as to the statute’s meaning. Nevertheless, they have so disagreed. *Compare BASR P’ship*, 795 F.3d at 1343–44 (holding that the statutory scheme dictates the plain meaning of § 6501(c)(1) and “confines the ‘intent to evade tax’ inquiry to the taxpayer’s intent”) (citing *Yates v. United States*, 574 U.S. 528, 537 (2015)), *with Murrin*, 158 F.4th at 532 (“[T]he plain and ordinary meaning of the phrase ‘intent to evade tax’ reveals no taxpayer-only limitation.”).

The government’s own history of interpreting § 6501(c)(1) likewise belies the argument that the text of § 6501(c)(1) is “plain.” Within a span of six months, on identical facts, and with an unchanged statutory context, the Internal Revenue Service twice issued internal guidance on the “plain text” of § 6501(c)(1) that answered the same question presented here both ways. At no point since has the IRS reconciled its conflicting interpretations of § 6501(c)(1).

The IRS’s inability to settle the meaning of this ambiguous provision signals that the question presented here is an issue of pure statutory construction that calls for this Court’s review. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (it is the province and duty of the judiciary to provide the “best reading” of an ambiguous statute).

**A. The IRS’s Own Interpreters Have Never Agreed on the Meaning of § 6501(c)(1)**

In 2001, the IRS Office of Chief Counsel issued two internal Field Service Advisory Memoranda interpreting the same clause of § 6501(c)(1) at issue here. Both memoranda concerned a tax preparer who, acting alone, fraudulently placed claims for diesel fuel excise tax credits on the returns of several taxpayers employed as truck drivers. In each case, as here, the question was whether third-party preparer fraud alone could trigger an unlimited assessment period under § 6501(c)(1). Despite being issued months apart under identical factual and legal circumstances, these memoranda reached contradictory conclusions. *Compare* IRS Field Service Advisory 200104006, 2001 WL 63261 (Jan. 26, 2001) [hereinafter FSA 200104006], *with* IRS Field Service Advisory 200126019, 2001 WL 729653 (June 29, 2001) [hereinafter FSA 200126019].

In FSA 200104006, the IRS acknowledged that “section 6501(c)(1) does not expressly require that the ‘intent to evade tax’ be the personal intent of Taxpayer,” 2001 WL 63261, but “conclude[d] that the fraudulent intent of the return preparer is insufficient to make section 6501(c)(1) applicable,” *id.* The IRS reached this conclusion by reasoning that

Congress used “fraud” consistently across the Code. *See id.* Moreover, the IRS declined to apply § 6501(c)(1) without taxpayer intent despite the rule that statutes of limitations “must receive a strict construction in favor of the Government.” *Id.* (quoting *Badaracco v. Commissioner*, 464 U.S. 386, 391 (1984)). That the IRS reached this conclusion while acknowledging a rule of construction that cut in its favor confirms that the agency itself understood § 6501(c)(1) to present a case of genuine ambiguity, not a case in which the government’s preferred reading was plainly compelled.

A mere six months later, the IRS reversed course. In FSA 200126019, the IRS concluded that “fraud by an agent falls within the exception of § 6501(c)(1)” and, therefore, that “Taxpayer must bear responsibility for the actions of Preparer.” 2001 WL 729653. This reversal rested on the premise that the preparer-taxpayer relationship was governed by agency law. But, “[p]ut simply, tax preparers are not agents.” *Loving*, 742 F.3d at 1017 (Kavanaugh, J.). Preparers “do not possess legal authority to act on the taxpayer’s behalf” by virtue of their preparer status and “cannot legally bind the taxpayer.” *Id.* These unreconciled positions confirm that § 6501(c)(1) presents a genuine question of statutory construction that is apt for this Court to resolve.

**B. Subsequent IRS Guidance Has Treated the Fraud Inquiry as Personal to the Taxpayer**

In the quarter-century since these dueling Field Service Advisories, the IRS has never reconciled their contradictory positions. To the contrary, subsequent internal guidance has consistently

treated the § 6501(c)(1) fraud inquiry as personal to the taxpayer.

The Office of Chief Counsel has advised the Service “not [to] rely[] on an unlimited statute of limitations” under § 6501(c)(1) where taxpayers erroneously claim exemptions due to “improper advice given by certain tax professionals.” IRS Chief Counsel Advice 200503031, 2005 WL 122080 (Jan. 21, 2005). It has directed its staff that “[f]raud should not be asserted where the taxpayer did not intend to deceive.” *Id.* (citations omitted); *see also* IRS Chief Counsel Advice 200504028, 2005 WL 190322 (Jan. 28, 2005) (underscoring “the subjective nature of the ‘intent to evade tax’ language” in § 6501(c)(1)). For this reason, the IRS has likewise declined to impute fraud between spouses not jointly and severally liable on their gift tax returns, *see* IRS Chief Counsel Advice 200205027, 2002 WL 127461 (Feb. 1, 2002), and between co-shareholders in an S corporation not jointly and severally liable on their income tax returns, *see* IRS Chief Counsel Advice 201238026, 2012 WL 4261126 (Sept. 21, 2012).

### **C. The Interpretation of § 6501(c)(1) Is a Task for This Court**

The IRS has never put taxpayers and practitioners on notice—through revenue rulings, Treasury regulations, or other published guidance—that third-party preparer fraud, standing alone, is sufficient to trigger an indefinite period of assessment under § 6501(c)(1). That regulatory silence speaks to the nature of the question presented: it requires no judgment about how the tax system should be designed or administered. It presents only a narrow

question of statutory interpretation that this Court is best positioned to resolve.

Yet as matters stand, whether the assessment statute of limitations protects a taxpayer depends on the fortuity of their forum. A taxpayer who petitions the Tax Court without prepayment of their assessed tax liability receives no protection from preparer fraud, but a taxpayer who can afford to “pay first and litigate later” in the Court of Federal Claims does. See *Flora v. United States*, 357 U.S. 63, 75 (1958) (holding that rule of “pay first and litigate later” governs tax litigant access to federal district courts), *aff’d*, 362 U.S. 145 (1960). The same statute cannot be read to grant taxpayers different levels of protection based solely on their ability to pay before they litigate.

At our Clinic, the taxpayers who face the consequences of preparer fraud are overwhelmingly those who cannot afford to prepay a deficiency and punch their ticket to litigate under the more favorable precedent of the Court of Federal Claims. For these taxpayers, the Third Circuit’s ruling eliminates one of the few protections that the Internal Revenue Code affords them.

This case is the proper vehicle to resolve this split. It rises and falls on the “best reading” of § 6501(c)(1) that, now, only this Court can provide. *Loper Bright*, 603 U.S. at 400.

## CONCLUSION

For the reasons stated above, this Court should grant the petition for a writ of certiorari in this case and hold that indefinite extension of the assessment statute of limitations under § 6501(c)(1) of the

Internal Revenue Code requires the intent of the taxpayer.

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