No. 25-988

In the Supreme Court of the United States

STEPHANIE MURRIN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

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

REPLY BRIEF FOR THE PETITIONER

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This case presents a direct and acknowledged conflict over an exceptionally important question of federal tax law: whether the IRS can assess tax indefinitely—even decades after the fact—when a third party knowingly places false or fraudulent entries on the return of a taxpayer who had no "intent to evade" or knowledge of that wrongdoing.

The government's response confirms the need for further review. It does not meaningfully dispute the issue's obvious importance. It does not deny that the issue frequently recurs. It cannot avoid the Third Circuit's candid acknowledgment that its holding

"departs" from the Federal Circuit's decision in *BASR P'ship* v. *United States*, 795 F.3d 1338 (Fed. Cir. 2015), so it is left to suggest that the court was wrong about the conflict it expressly recognized. And, critically, the government admits the conflict produces intolerable results: as the government itself confirms (BIO 16), taxpayers with the means to prepay can proceed in the Court of Federal Claims and obtain *BASR*'s three-year rule, while taxpayers who cannot prepay must litigate in Tax Court and face the opposite rule.

The nation's tax laws require certainty and uniformity. It is untenable for the applicability of a federal statute of limitations—and thus whether the government wins or loses, and taxpayers face stale claims—to depend entirely on whether a taxpayer has sufficient funds to litigate in a favorable forum. This issue was thoroughly vetted below, and it was fully considered by the Federal Circuit in *BASR*. It has drawn the attention of tax experts and key stakeholders, and it is essential to the proper administration of the Code. The government has not identified a single argument that requires additional percolation—or explained how it does any good to let the IRS's statutory deadline vary in materially identical cases simply because some parties can prepay and others cannot.

The Federal Circuit adopted the same taxpayer-intent rule the IRS had followed for more than 75 years—until the IRS reversed course without any intervening amendment to the statutory text. ACTC Br. 13-14. This case is an ideal vehicle for resolving the conflict, and the question presented cries out for immediate review. The petition should be granted.

ARGUMENT

A. There is a direct, acknowledged circuit split.

Contrary to the government's contention, the circuit split is indisputable. The Federal Circuit held that Section 6501(c)(1) applies only when "the taxpayer—*and not a third party*—acts with the requisite 'intent to evade tax.'" *BASR P'ship* v. *United States*, 795 F.3d 1338, 1339 (Fed. Cir. 2015) (emphasis added). By contrast, the Third Circuit held that "taxpayer intent is not required" so long as *someone* has the requisite intent—"whether a taxpayer, accountant, lawyer, or tax preparer evinced such intent is beside the point." Pet. App. 2a, 8a. Those holdings cannot be reconciled no matter how assiduously the government tries to downplay the conflict. BIO 12-15.

The Third Circuit understood as much. It did not distinguish *BASR* as an unrelated tax-shelter case or limit its holding to the lawyer/preparer ground the government now presses. It candidly acknowledged that "our holding today departs from the Federal Circuit's opinion," and "respectfully part[ed] ways." Pet. App. 19a, 20a. That direct, acknowledged conflict is as square as it gets.

The government tries to recast the conflict as a factual distinction, noting that *BASR* involved an attorney connected to the tax shelter underlying the taxpayer's return rather than the person who prepared the return and focusing on the Federal Circuit's footnote reserving the question whether in some circumstances an "authorized agent" or another

person "more closely connected to the tax preparation and filings themselves" might be treated like the taxpayer. BIO 13-14.

That footnote reserving the question of an "authorized agent" or another person "more closely connected to the tax preparation and filings themselves" does not erase the conflict. BIO 13-14. *BASR* held that taxpayer intent is required, leaving open only whether an authorized agent's intent could satisfy that taxpayer-intent requirement. It did not hold that return-preparer fraud triggers Section 6501(c)(1). To the contrary, *BASR* cited *Loving* v. *IRS*, 742 F.3d 1013, 1017 (D.C. Cir. 2014), for the proposition that "tax-return preparers are not agents." *BASR*, 795 F.3d at 1342 n.3. The decision below held that taxpayer intent is irrelevant because Section 6501(c)(1) is "agnostic" about who must intend to evade tax. Pet. App. 2a. The same statutory phrase thus produces opposite rules for similarly situated taxpayers. And that conflict calls for this Court's review.

B. Immediate review is necessary and warranted.

1. The government argues that review is not necessary because the conflict is "shallow and recent." BIO 15. That misses the point. The question is whether further percolation would aid this Court's review. It would not. For the first time in the fraud exception's long history, the Tax Court adopted the government's new rule in *Allen* v. *Comm'r of Internal Revenue*, 128 T.C. 37 (2007). The Federal Circuit rejected that rule in *BASR* after carefully examining

Section 6501(c)(1)'s text, structure, history, relationship to other fraud-related Code provisions, and administrative consequences. And the Third Circuit considered the same question and "depart[ed]" from *BASR*. Pet. App. 15a-20a. That is enough. The question is legal, recurring, and outcome-determinative.

Bartenwerfer v. *Buckley*, 598 U.S. 69 (2023), does not counsel delay. It construed a different statute in a different context, rested on agency and partnership principles not present here, and did not decide whose intent matters under Section 6501(c)(1).[1]

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[1] Specifically, *Bartenwerfer* construed a Bankruptcy Code provision barring discharge of debt for money "obtained by" fraud. 598 U.S. at 72. That phrase was passive and operated against a background rule making partners and principals liable in defined circumstances for fraud committed by partners or agents. *Id.* at 75-82. Section 6501(c)(1) is different. Here, while Section 6501(c)(1) uses the passive voice in remedial clauses providing that tax "may be assessed" and a collection proceeding "may be begun," the disputed phrase, "intent to evade tax," is a noun phrase requiring a human actor with a culpable mental state. Harvard Br. 12-14. That in turn requires identifying whose intent matters. *Bartenwerfer* does not answer that question here. Nor can the government import *Bartenwerfer*'s agency and partnership backdrop here. The concurrence emphasized that *Bartenwerfer* did *not* involve "fraud by a person bearing no agency or partnership relationship to the debtor." *Id.* at 83-84 (Sotomayor, J., concurring). This case lacks that relationship: return preparers are not agents with authority to bind taxpayers by virtue of preparing returns. *Loving*, 742 F.3d at 1017. Nor, for that matter, did *Bartenwerfer* announce a new passive-voice rule unavailable to the Federal Circuit in BASR. Indeed, the Third Circuit's passive-voice analysis relied not only on *Bartenwerfer*, but also on *Dean* v. *United States*, 556 U.S. 568 (2009), which predated *BASR*. Pet. App. 15a-17a.

Further percolation would not illuminate *Bartenwerfer*'s effect; it would simply require other courts to choose between *BASR* and the decision below.

The conflict affects the uniform operation of a critical safeguard protecting innocent taxpayers against stale assessments. The competing positions have been fully developed. Waiting for additional courts to choose sides would not clarify the issue; it would leave similarly situated innocent taxpayers subject to different limitations rules under the same federal statute. The lower courts and taxpayers do not need more time. They need this Court's answer.

2. The government responds that any taxpayer can invoke *BASR* by paying the asserted liability and filing a refund suit in the Court of Federal Claims. BIO 16. That is part of the problem, not a solution to it. Because the Court of Federal Claims has nationwide jurisdiction, an innocent taxpayer with sufficient resources can pay first, sue for a refund, and invoke the three-year limitations period under Federal Circuit law. See 28 U.S.C. §§ 1346(a)(1), 1491(a); *Flora* v. *United States*, 362 U.S. 145, 175 (1960). An equally innocent taxpayer without such resources must litigate in Tax Court, which follows the law of the circuit to which an appeal would lie, and may face assessment at any time. See *Golsen* v. *Comm'r of Internal Revenue*, 54 T.C. 742, 756-57 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

That is no ordinary split because taxpayers with means can choose the Federal Circuit's rule, and those without cannot. That in turn puts the costs of

percolation on those least able to bear it, "saddl[ing] the least culpable taxpayers with the heaviest financial burden." Center Br. 2. The applicability of a nationwide rule of repose should not vary by forum or taxpayers' ability to prepay, and the fact that a taxpayer with means can escape application of the Third Circuit's rule is a reason to grant review, not deny it.

3. The question is important, and the practical risk is substantial, common, and nationwide. Tens of millions of taxpayers use paid preparers, who may have their own financial motives for engaging in fraud. Harvard Br. 4-10; Center Br. 8-12; ACTC Br. 7-8. Many taxpayers do so precisely because they cannot navigate the Code themselves. As this Court has recognized, "[m]ost taxpayers are not competent to discern error in the substantive advice of an accountant or attorney," and "[o]rdinary business care and prudence" do not require them to second-guess professional tax advice. *United States* v. *Boyle*, 469 U.S. 241, 251 (1985). The decision below turns that ordinary, reasonable reliance into indefinite exposure: innocent taxpayers may believe the ordinary limitations period has expired, only to face assessment decades later because, unbeknownst to them, a preparer acted with fraudulent intent. (Indeed, decades later, an innocent taxpayer may have little practical ability to disprove allegations about a preparer's state of mind.)

The government says fraudulent returns can be difficult to detect. BIO 10-11. But Congress gave the IRS powerful tools for pursuing preparer fraud, including preparer penalties, injunctions,

disgorgement, criminal prosecution, and other remedies directed at preparers and promoters. Center Br. 13-19. Those tools target culpable actors. The government's reading of Section 6501(c)(1) does something different: it shifts the consequences of the preparer's fraud to the innocent taxpayer, and exposes taxpayers nationwide to indefinite assessment based on misconduct they often cannot detect. Center Br. 3-16.

4. This case is an ideal vehicle for this Court's review, and not even the government suggests otherwise. The facts are stipulated, and the legal question is dispositive. Petitioner did not place false or fraudulent entries on her returns, cause them to be placed there, or know about them. Pet. App. 2a-3a, 43a. Her tax preparer did. The government has conceded that she did not intend to evade tax. But because of her return preparer's action, the IRS contends it was authorized to act more than two decades later even though it knew about her preparer's misconduct long before it bothered to take action. On those undisputed facts, the limitations question is dispositive: if taxpayer intent is required, the assessment is time-barred; if preparer intent suffices, the assessment is not.

The government identifies no factual complication, preservation problem, alternative ground, or vehicle defect. The conflict is acknowledged, the issue recurring, and the consequences nationwide. A national tax limitations statute should have one meaning—not one rule for taxpayers who can afford to prepay and another for those who cannot.

C. The government's premature arguments on the merits do not justify denial.

The government devotes much of its opposition to the merits. BIO 8-12. Its views are more appropriate for plenary review, but the government's merits defense only confirms the need for this Court's immediate guidance.

1. The government argues that Section 6501(c)(1) does not expressly specify that the relevant intent must be the taxpayer's. BIO 8-10. But statutory interpretation requires reading the entire provision in context. *Nat'l Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 666 (2007). Section 6501(a) establishes the baseline limitations period for "the return required to be filed by the taxpayer." Section 6501(c)(1) then creates an extraordinary exception for "a false or fraudulent return with the intent to evade tax" that, if applicable, leaves the government subject to no limitations period of any kind.

Reading that exception as applying so long as anyone has the requisite fraudulent intent makes little sense. A return may be false, but only a person can act with intent. And where Congress makes a taxpayer's federal tax liability assessable "at any time," the intent that matters is most naturally the intent of the taxpayer whose liability and repose are at stake.

That taxpayer-focused reading makes good sense. Had Congress intended the exception to apply broadly beyond the particular taxpayer, it would have used different words to cover that scenario, as it did in

other tax provisions that apply to attempts "to evade or defeat" any tax, 26 U.S.C. § 7201, or to a person who "aids or assists" the preparation or presentation of a fraudulent return, 26 U.S.C. § 7206(2). That distinction is the point: Congress knew how to reach third-party assistance when it wanted to. Indeed, the verb "evade" normally means to avoid an obligation *of the evader*—that is, one's own obligation. It is unnatural to posit, as the government does, that a third party intending to defeat *someone else's* tax obligation acts with the "intent to evade tax." One would not ordinarily say, for example, that someone trying to help someone else evade arrest is acting with intent to evade arrest. Moreover, remember the context here matters: the return is the taxpayer's return. The tax is the taxpayer's tax. The filing obligation is the taxpayer's obligation. The most natural reading is that the intent that matters for purposes of lifting the three-year limitations period is the taxpayer's too.

The surrounding Code provisions reinforce the same taxpayer-focused reading. Harvard Br. 14-21; *BASR*, 795 F.3d at 1344–46. Section 7454(a) places the burden on the government when the issue is whether "the petitioner has been guilty of fraud with intent to evade tax," and Section 6663 uses similar fraud language even though the government agrees that the civil fraud penalty requires taxpayer fraud. The government never explains (BIO 11-12) why the same fraud concept would mean one thing in one context (requiring fraud by the taxpayer for penalties and burden of proof), but something else entirely in another (permitting anyone's fraud to eliminate the taxpayer's limitations defense). That makes even less

sense given that Congress enacted the fraud exception and the civil fraud penalty together in Section 250 of the Revenue Act of 1918, using the same "intent to evade tax" formulation.[2] ACTC Br. 4-6.

2. Nor can the government justify its reading by characterizing Section 6501(c)(1) as a mere collection provision. BIO 12. Assessment "at any time" is not a modest consequence: it eliminates repose decades after the ordinary limitations period expired—long after records disappear, memories fade, and innocent taxpayers reasonably believe their liabilities are settled. This was no routine tax collection. The stipulated underpayment was $65,318, the accuracy-related penalties were $13,064, and estimated interest was roughly $250,000. Pet. App. 3a, 20a.

3. The government's attempt to limit its rule compounds the problem, rather than curing it. The government says that Congress was "agnostic" about the relevant actor, yet insists that Section 6501(c)(1) reaches only third parties who had "a hand in the

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[2] The government's reliance on *Badaracco* v. *Comm'r of Internal Revenue*, 464 U.S. 386, 394-96 (1984), and *City Wide Transit, Inc.* v. *Comm'r of Internal Revenue*, 709 F.3d 102 (2d Cir. 2013), does not help it here. BIO 10-11. *Badaracco* held that taxpayers who themselves filed fraudulent returns could not restore the ordinary limitations period by later filing nonfraudulent amended returns. *Badaracco* did not address the question here: whether an innocent taxpayer loses the limitations defense because a return preparer acted with fraudulent intent. And in *City Wide Transit,* the Second Circuit accepted the taxpayer's concession that preparer fraud could trigger Section 6501(c)(1), while expressly reserving whether some "factual situations might arise that sever the tax*payer's* liability from the tax-*preparer's* wrongdoing." 709 F.3d at 107 n.3.

preparation or filing" of a return. BIO 10. But that concept (whatever it may mean) appears nowhere in the statute. If the provision is not limited to taxpayer intent, it supplies no reason to stop with return preparers. Federal tax law does not confine a "tax return preparer" to the person who signs the return or enters numbers on a form; it also includes certain nonsigning preparers whose advice bears on a substantial portion of the return. 26 U.S.C. § 7701(a)(36); Treas. Reg. § 301.7701-15. If a signing preparer's fraud counts, why not a nonsigning preparer whose advice supplies a substantial portion of the return? Why not an adviser, promoter, or lawyer whose work supports a return position? The Code does not draw the line on which the government depends to make its position seem reasonable. Instead, the government proposes an atextual, case-by-case standard that makes things worse, not better, by inviting intolerable unpredictability in applying an unlimited limitations period.

The government's premature arguments on the merits offer no good reason to deny review. Its reading of Section 6501(c)(1) would make an innocent taxpayer's repose turn on another person's undisclosed intent, then leave courts to invent limits Congress did not supply. *BASR* rejected that rule; the Third Circuit adopted it. A national tax limitations statute should not mean one thing for taxpayers who can afford to prepay and another for taxpayers who cannot. That acknowledged conflict over when the government may invoke an unlimited assessment period warrants this Court's review.

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The petition should be granted.

Respectfully submitted.

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