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PROPOSED LEGISLATIVE FIX FOR *MURRIN v. COMMISSIONER*: ADDRESSING THE STATUTE OF LIMITATIONS FOR FRAUDULENT RETURNS PREPARED BY THIRD PARTIES

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[1] The comments contained in this paper are the individual views of the authors who prepared them, and do not represent the position of the California Lawyers Association or its Taxation Section.

The authors of this paper may also have clients affected by the statutes applicable to the subject matter of the paper, but the authors have not been engaged by any client to advocate for any of the position outlined herein.

Executive Summary

This paper proposes a legislative amendment to section[2] 6501(c)(1) to resolve the inconsistency between the Tax Court's interpretation of the fraud exception to the statute of limitations on assessment, the plain language of section 6663, and the legislative intent behind tax enforcement statutes. The Tax Court held in *Murrin v. Commissioner*[3] and *Allen v. Commissioner*[4] that the fraud exception in section 6501(c)(1) applies regardless of whether the fraud was committed by the taxpayer or a third party. This interpretation allows the Internal Revenue Service ("IRS") to assess tax at any time when a fraudulent return has been filed, even when the taxpayer was unaware of the fraud.

This approach conflicts with section 6663, which imposes civil fraud penalties only when the taxpayer intends to evade tax. The Federal Circuit in *BASR Partnership v. United States*[5] rejected the broad interpretation of section 6501(c)(1), holding that Congress did not intend for taxpayers to face an unlimited period in which the IRS may assess additional tax when, unbeknownst to the taxpayer, a third party commits fraud in connection with the tax return. The current Tax Court interpretation, although understandable from a textualist perspective, disproportionately burdens innocent taxpayers, depriving them of their section 7803(a)(3) right to finality in tax matters.

The proposed amendment would:

1. Clarify fraud attribution—Specify that the fraud exception under section 6501(c)(1) applies only when the taxpayer intends to evade tax.
2. Alternatively, limit open-ended assessments—Introduce a six-year cap on assessments involving third-party fraud, balancing IRS enforcement needs with taxpayer rights.

By resolving this statutory ambiguity, Congress can ensure that section 6501(c)(1) aligns with fundamental tax fairness principles while maintaining the IRS's ability to address tax fraud effectively.

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[2] Statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times.

[3] T.C. Memo. 2024-10 (January 26, 2024), appeal docketed, No. 24-2037 (3d Cir. Sept. 18, 2024).

[4] 128 T.C. 37 (2007).

[5] 113 Fed. Cl. 181 (2013), *aff'd*, 795 F.3d 1338 Fed. Cir. (2015).

A. Outline of Proposed Topic

The Supreme Court notes that a "statute of limitations is an almost indispensable element of fairness as well as of practical administration of income tax policy."[6] The statute of limitations on assessment is set forth in section 6501(a). The general statute of limitations to assess additional tax is three years from the later of the due date of the return and the date the return is filed. There are several exceptions set forth in section 6501(c), including where there is filing of a "false or fraudulent return with the intent to evade tax." Section 6501(c)(1). Section 6501(c)(1) is silent as to whose intent is relevant in considering whether the exception applies.

Under section 6663, the IRS may assess a civil fraud penalty equal to 75 percent of the portion of any underpayment attributable to fraud. Subsection (c) makes clear that the civil fraud penalty applies only to a taxpayer who engaged in fraudulent conduct.[7]

According to the Tax Court, while section 6663 requires the IRS to prove that the taxpayer committed fraud before assessing a civil fraud penalty, section 6501(c) is agnostic as to intent, thereby resulting in an unlimited statute of limitations where a return is false or fraudulent even when the taxpayer has no knowledge of the fraud. *Allen v. Commissioner;*[8] *Murrin v. Commissioner.*[9]

The Tax Court's interpretation of section 6501(c)(1) creates extraordinary challenges, as taxpayers may be required to defend against allegations of another person's fraud decades after the returns were filed,[10] often without access to necessary documentation or firsthand knowledge of the fraud. Through no fault of their own, the non-culpable taxpayers face penalties and interest that could far exceed the tax.

This proposal advocates for a legislative amendment to section 6501(c)(1), ensuring fair tax administration by protecting innocent taxpayers from undue liability while maintaining the IRS's ability to assess taxes in cases where the taxpayer is culpable of fraud.

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6 *Rothensies v. Electric Storage Battery Co.*, 329 U.S. 296, 301 (1946).

7 *Murrin v. Commissioner*, T.C. Memo. 2024-10, at 7 (January 26, 2024), appeal docketed, No. 24-2037 (3d Cir. Sept. 18, 2024).

8 128 T.C. 37 (2007).

9 T.C. Memo. 2024-10 (January 26, 2024), appeal docketed, No. 24-2037 (3d Cir. Sept. 18, 2024).

10 *Murrin v. Commissioner* involved tax years 1993 through 1999, or 25-30 years before the case was decided.

B. Current Law and Rationale for Proposal

1. Introduction

The cases[11] *Allen v. Commissioner,*[12] *Eriksen v. Commissioner,*[13] *Ames-Mechelke v. Commissioner*,[14] *Finnegan v. Commissioner*,[15] and more recently, *Murrin v. Commissioner*,[16] hold that fraud by a third-party tax preparer—unknown to the taxpayer—suspends the statute of limitations indefinitely. The Tax Court's interpretation of section 6501(c)(1) has significant implications for tax administration, tax policy, taxpayer rights, and fundamental fairness, necessitating a clear legislative fix.

There may be thousands of unwary taxpayers who fall victim to a return preparer's greed and face decades-old tax bills with staggering interest.[17] Every year, IRS CI investigates return preparer fraud and refers numerous cases for prosecution. Every case involved potentially hundreds of taxpayers and thousands of tax returns over the years. In one 2023 case, IRS CI stated that two return preparers in North Carolina had filed 1,000 false tax returns with the IRS.[18]

Absent a legislative fix, the IRS could exercise discretion and refrain from pursuing assessments against innocent taxpayers beyond the general statute of limitations, which it has done so in the past. In a 2001 Field Service Advisory[19], the IRS concluded "that the fraudulent intent of the return preparer is insufficient to make section 6501(c)(1) applicable." In doing so, the IRS emphasized that section 6663 serves not only to protect revenue and compensate the government for the costs of investigating taxpayer fraud, but also to punish and deter wrongful conduct.[20] Based on this policy rationale, the IRS recognized that it would be improper to impose the fraud penalty—or

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11 Contrary opinion in *BASR Partnership et al. v. United States*, 795 F.3d 1338 (Fed. Cir. 2015).
12 128 T.C. 37 (2007).
13 T.C. Memo. 2012-194.
14 T.C. Memo. 2013-176.
15 T.C. Memo. 2016-118, *aff'd* 926 F.3d 1261 (11th Cir. 2019).
16 T.C. Memo. 2024-10 (January 26, 2024), appeal docketed, No. 24-2037 (3d Cir. Sept. 18, 2024).
17 National Taxpayer Advocate, *2024 Purple Book*, p. 72 (Legislative Recommendation No. 32, 2023), https://www.taxpayeradvocate.irs.gov/2024PurpleBook ("TAS has handled hundreds of cases involving return preparer fraud or misconduct."). IRS CI, *2023 Annual Report*, p. 14, https://www.irs.gov/pub/irs-prior/p3583--2023.pdf ("In North Carolina, two return preparers filed 1,000 false tax returns with the IRS that claimed approximately $5 million in fraudulent refunds.").
18 IRS CI, *2023 Annual Report*, p. 14, https://www.irs.gov/pub/irs-prior/p3583--2023.pdf ("In North Carolina, two return preparers filed 1,000 false tax returns with the IRS that claimed approximately $5 million in fraudulent refunds.").
19 Field Service Mem. 200104006, 2001 WL 63261. We are cognizant that this document is not to be used or cited as precedent. Instead, we are solely citing to it to illustrate how a policy decision was reached in the past.
20 The IRS points to *Helvering v. Mitchell*, 303 U.S. 391, 401 (1938); *McGee v. Commissioner*, 61 T.C. 249 (1973), *aff'd*, 519 F.2d 1121 (5th Cir. 1975); *Asphalt Indus., Inc. v. Commissioner*, 384 F.2d 229, 234–35 (3d Cir. 1967).

extend the limitations period under section 6501(c)(1)—based solely on a preparer's misconduct, as such wrongful conduct should not adversely affect an innocent taxpayer. This reasoning was reinforced by the existence of specific statutory provisions aimed at deterring preparer misconduct, including sections 6694, 6695, 7206, and 7216.

The IRS changed its policy a few years later, however, taking the position that a return may be considered "false or fraudulent with intent to evade tax" under section 6501(c)(1) even where the taxpayer had no knowledge of, or intent to participate in, the fraud. The Tax Court adopted this broader interpretation in *Allen v. Commissioner*.[21]

2. Current Legal Framework

a. IRC § 6501(c)(1)

Under section 6501(c)(1), the IRS may assess tax at any time if there is a "false or fraudulent return with the intent to evade tax." This provision does not specify whether the "intent to evade" must be that of the taxpayer or whether it includes fraud by third parties involved in the return's preparation.

In *Allen*,[22] the petitioner, a truck driver, engaged a tax preparer who fraudulently inflated deductions on his returns. Although the petitioner lacked fraudulent intent, the IRS argued that the preparer's misconduct rendered the returns fraudulent under section 6501(c)(1), allowing it to issue a notice of deficiency beyond the normal three-year period. Agreeing with the IRS, the Tax Court held that the fraud of the preparer sufficed to extend the limitations period indefinitely.

The Tax Court focused on the statutory language of section 6501(c)(1), which permits indefinite suspension of the statute of limitations when a return is "false or fraudulent with intent to evade tax." The court reasoned that the provision does not expressly require the fraud to originate with the taxpayer. It concluded that the fraudulent intent of the tax preparer alone satisfies the statute, emphasizing the importance of preserving the IRS's ability to detect and address fraud regardless of its source. The holding reflects the court's interpretation that Congress intended a broad scope for the tolling provision.

A few years later, in *City Wide Transit, Inc.*,[23] the Second Circuit addressed fraudulent returns prepared by an accountant for a transportation company. The Tax Court held that the IRS failed to prove that admittedly false and fraudulent employment tax returns prepared by a CPA were filed with the intent to evade tax; thus, the assessment was time-barred. The Second Circuit reversed, finding that although the

21 128 T.C. 37, 40 (2007).
22 *Id*.
23 709 F.3d 102 (2d Cir. 2013).

CPA filed false returns to embezzle money from the company, he filed the returns with an intent to evade tax. While the court had to decide whether the IRS met the standard to show that the return preparer had the specific intent to evade taxes, the taxpayer conceded the legal question of whether the return preparer's intent was sufficient to trigger section 6501(c)(1).[24] Thus, while similar in fact pattern, the case is not instructive as to whether a third party's intent is sufficient to toll the statute of limitations.

In *BASR Partnership v. United States*,[25] the Federal Circuit took a different approach, holding that the indefinite extension of the statute of limitations under section 6501(c)(1) applies only if the taxpayer—not a third-party preparer or advisor—acts with fraudulent intent. The case involved a partnership relying on advice from external counsel who engaged in fraudulent tax shelter planning. The court affirmed that the IRS was time-barred from adjusting the partnership's return.

The Federal Circuit rejected the Tax Court's holding in *Allen*, instead favoring a narrower reading of section 6501(c)(1). The court emphasized that the statutory phrase "intent to evade tax" should be interpreted as referring to the taxpayer's intent. It underscored principles of fairness, suggesting that holding taxpayers indefinitely liable for the fraudulent acts of unrelated third parties would contravene basic tax principles. The court also relied on legislative history to assert that Congress likely did not intend to penalize taxpayers for actions outside their control.

In *Finnegan v. Commissioner*,[26] the taxpayer stipulated that the statute was open if section 6501(c)(1) applied and that the IRS failed to meet its burden of proving that their return preparer prepared their returns with the intent to evade tax. The Tax Court held the IRS had met its burden of proof and, thus, the statute of limitations was tolled under section 6501(c)(1).

On appeal, the taxpayers argued that *Allen* was wrongly decided, that the return preparer's fraud did not toll the statute and that the Tax Court erred in finding that the IRS met its burden of proving fraudulent intent. Affirming the Tax Court, the Eleventh Circuit held that the taxpayers waived the argument that *Allen* was wrongly decided and affirmed the finding that the IRS met its burden of proof.

There is a division between the Tax Court and the Federal Circuit regarding the application of section 6501(c)(1). The Tax Court (*Allen v. Commissioner*, *Murrin v. Commissioner*) has held that fraud by a third-party tax preparer is sufficient to toll the statute of limitations. Conversely, the Federal Circuit (*BASR Partnership v. United States*) has required that taxpayers themselves possess fraudulent intent to trigger the tolling provision. There is, however, a notable caveat, which the government ensured to

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24 *Id*.
25 113 Fed. Cl. 181 (2013), *aff'd*, 795 F.3d 1338 Fed. Cir. (2015).
26 T.C. Memo. 2016-118, *aff'd* 926 F.3d 1261 (11th Cir. 2019).

point out in its answering brief in *Murrin*.[27] The three-judge panel in *BASR* was divided: the authoring judge concluded that only the taxpayer's intent could suspend the limitations period; a concurring judge left open the possibility that fraud by an authorized agent might also suffice; and the dissenting judge would have followed *Allen*.[28]

b. IRC § 6663

Fraud is intentional wrongdoing designed to evade tax believed to be owed.[29] The existence of fraud is a question of fact to be resolved upon consideration of the entire record.[30] Fraud is not to be presumed or based upon mere suspicion.[31] The IRS has the burden of proving fraud, and that burden must be carried by clear and convincing evidence.[32] However, because direct proof of a taxpayer's intent is rarely available, fraudulent intent may be established by circumstantial evidence.[33] The IRS satisfies its burden of proof by showing that "the taxpayer intended to evade taxes known to be owing by conduct intended to conceal, mislead, or otherwise prevent the collection of taxes."[34] The taxpayer's entire course of conduct may be examined to establish the requisite intent, and an intent to mislead may be inferred from a pattern of conduct.[35]

The Tax Court recognized in *Murrin v Commissioner* that section 6663(a) applies to a specific, culpable taxpayer, stating that "[f]rom its introduction in 1918, this penalty has been accompanied by a reasonable cause and good faith exception currently embodied in section 6664(c)(1), which provides that '[n]o penalty shall be imposed under section . . . 6663 . . . if it is shown that there was a reasonable cause . . . and that the taxpayer *acted in good faith*.' (Emphasis added.) This is further supported by evidence that the fraud penalty applies exclusively to taxpayer fraud—for example, section 6663(c), which limits the penalty in cases of joint returns to those who actually committed fraud."[36]

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27 Brief of Respondent-Appellee, at 62-63, *Murrin v. Commissioner*, No. 24-2037 (3d Cir. filed Nov. 15, 2024).

28 *BASR Partnership v. United States*, 113 Fed. Cl. 181 (2013), aff'd, 795 F.3d 1338 Fed. Cir. (2015), at 1343.

29 *Neely v. Commissioner*, 116 T.C. 79, 86 (2001).

30 *Estate of Pittard v. Commissioner*, 69 T.C. 391, 400 (1977).

31 *Petzoldt v. Commissioner.* 92 T.C. 661, 700 (1989).

32 Section 7454(a), T.C. Rule 142(b).

33 *Petzoldt,* at 699.

34 *Parks v. Commissioner,* 94 T.C. 654, 661 (1990).

35 *Webb v. Commissioner*, 394 F.2d 366, 379 (5th Cir. 1968), *aff'g* T.C. Memo. 1966-81; *Stone v. Commissioner*, 56 T.C. 213, 224 (1971).

36 T.C. Memo. 2024-10 (January 26, 2024), appeal docketed, No. 24-2037 (3d Cir. Sept. 18, 2024).

c. Issues Highlighted in *Murrin*

Stephanie Murrin's tax preparer, Duane Howell, prepared fraudulent joint returns for her and her husband for tax years 1993 through 1999, and did so with the intent to evade tax. The Murrins were not aware of the fraudulent nature of their returns, and they signed the returns believing them to be accurate. Howell pled guilty in 2007 to conspiring to obstruct the IRS and preparing numerous false and fraudulent tax returns for individuals and partnerships. He admitted to falsifying expenses on partnership returns, creating fictitious losses that flowed through to individual clients' returns, and fraudulently reducing their tax liabilities. He also admitted to conspiring to claim fraudulent deductions for contributions to self-employment retirement plans and to filing false tax returns for himself and his partnerships.

In 2019, twenty years after the last year in issue and a dozen years after Howell's guilty plea, the IRS issued a notice of deficiency to the Murrins, relying on the *Allen* court's interpretation of section 6501(c)(1). The IRS argued that Howell's fraud triggered this provision, even though it was undisputed that the Murrins were unaware of the misconduct.

While the Tax Court recognized that sections 6501(c)(1) and 6663(a) deal with fraud, it found that section 6663(a) serves to punish the culpable taxpayer. By contrast, section 6501(c)(1) is designed to give the IRS unlimited time to determine and assess the correct tax liability in the case of a false or fraudulent return, regardless of the culpable party. As a result, the extended statute of limitations under section 6501(c)(1) applies whenever a fraudulent return with intent to evade tax is filed, regardless of whether the fraud was committed by the taxpayer. Reaffirming its prior ruling in *Allen v. Commissioner***,** the Tax Court emphasized that the provision's use of the passive voice in section 6501(c)(1) suggests that Congress intended to extend the statute of limitations for fraudulent returns regardless of who committed the fraud.

d. Taxpayer Bill of Rights

The Taxpayer Bill of Rights states that taxpayers have the right to know the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt.[37] Allowing the IRS to assess additional tax at any time violates this right for taxpayers who are not responsible for the fraud.

[37] IRS Pub. 1, *Your Rights as a Taxpayer* (Rev. 9-2017), see https://www.irs.gov/taxpayer-bill-of-rights#finality.

3. Tax Court Interpretation Causes Inequity in the Tax System

Tax professionals have criticized the application of an unlimited statute of limitations under section 6501(c)(1) in cases where the taxpayer had no knowledge of the fraud. As highlighted in the amicus briefs filed with the Third Circuit in *Murrin v. Commissioner* by Bryan Camp[38] and the American College of Tax Counsel,[39] this approach creates significant inequities and procedural challenges. Both briefs emphasize how this interpretation unduly burdens innocent taxpayers and undermines fundamental principles of fairness in tax administration.

a. Taxpayers' Right to Finality Violated

While section 6501(a) provides a three-year statute of limitations for assessments, under the Tax Court's jurisprudence, section 6501(c)(1) allows indefinite extensions when fraud is involved, even if the taxpayer was unaware of the misconduct.

Camp convincingly argues that this creates an unjust scenario where taxpayers must defend against allegations of fraud decades after the fact, often without access to relevant evidence or witnesses.[40]

Similarly, the American College of Tax Counsel highlights how such an interpretation leaves taxpayers perpetually exposed to liability, contravening their right to closure under section 7803(a)(3).[41]

b. Undue Burden on Taxpayer

It is inequitable to hold unsuspecting taxpayers accountable for the misconduct of tax return preparers and other third parties whose fraudulent conduct resulted in inaccuracies on the taxpayer's returns.[42] Such taxpayers are put "in the difficult and counterintuitive position of having to defend a third party against an allegation of fraudulent conduct."[43]

In its amicus brief in *Murrin,* the American College of Tax Counsel cites *BASR*[44] as an example in which a tax professional, under investigation at the time, had an

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38 Brief of Prof. Bryan T. Camp for Stephanie Murrin as Amicus Curiae Supporting Appellant, *Murrin v Commissioner*, Docket No. 24-2037 (3d Cir. 2024) (Murrin, Camp Amicus Brief).

39 Brief of American College Of Tax Counsel for Stephanie Murrin as Amicus Curiae Supporting Appellant, *Murrin v Commissioner*, Docket No. 24-2037 (3d Cir. 2024) (Murrin, Tax Counsel Amicus Brief).

40 Murrin, Camp Amicus Brief, at 6-8.

41 Murrin, Tax Counsel Amicus Brief, at 6-8.

42 Murrin, Tax Counsel Amicus Brief, at 7-9.

43 Murrin, Tax Counsel Amicus Brief, at 3.

44 113 Fed. Cl. 181 (2013), *aff'd*, 795 F.3d 1338 Fed. Cir. (2015).

incentive to act against the taxpayer's interest.[45] In 1999, as the Pettinati family prepared to sell their printing business, Mayer, a tax attorney, pitched a "tax-advantaged investment opportunity" to minimize the family's tax burden. The family engaged Mayer and his firm, which recommended a series of transactions designed to reduce the taxable gain from the sale of the printing business. These transactions culminated in BASR Partnership owning all of the company's stock, which it then sold to the buyer. Mayer and two other attorneys from his firm provided a tax opinion letter asserting the legitimacy of these transactions.

In 2009, Mayer came under criminal investigation for promoting abusive transactions and filing fraudulent tax returns using the tax shelters. In 2010, Mayer entered into a plea agreement and declared that he "fraudulently evade[d] the federal income tax" owed by the partners of BASR Partnership.[46]

In *BASR*, the question was whether the extended statute of limitations for tax assessments due to fraud applies when the fraudulent intent is attributed to a third party. The Federal Circuit held that the extended limitations period is triggered only when the taxpayer has the intent to evade tax, not when the fraud is committed by a third party.[47]

In contrast, the Tax Court in *Murrin*,[48] relying on *Allen*,[49] emphasized the government's disadvantage in detecting fraud, regardless of who committed it. Supporters of the Tax Court's view may invoke the Supreme Court's emphasis on textual analysis. However, this line of reasoning appears to focus on the wrong party. It implies that someone else holds a more advantageous position in concealing fraud, but that person is not necessarily the taxpayer but the tax professional committing the fraud. If the government is at a disadvantage in uncovering fraud, then so is the taxpayer, unless the taxpayer actively colludes or behaves conspicuously with the tax professional.[50] Thus, the mere difficulty in detection should not justify extending the limitations period absent direct fraudulent intent by the taxpayer.

The American College of Tax Counsel further underscores the unfair reliance on third-party admissions of fraud, often made in unrelated criminal or civil cases.[51] They observe that a third party accused of fraud—such as a return preparer—may have a strong incentive to admit to fraudulent conduct in connection with the taxpayer's return, even if contrary evidence exists. The taxpayer, however, is not a party to those

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45 Murrin, Tax Counsel Amicus Brief, at 4.
46 *BASR Partnership v United States*, 795 F.3d at 1341 Fn.2; Murrin, Tax Counsel Amicus Brief, at 4.
47 *BASR Partnership v United States*, 795 F.3d at 1346–47.
48 T.C. Memo. 2024-10, at 8–9.
49 128 T.C. 37, 40 (2007).
50 Murrin, Tax Counsel Amicus Brief, at 5-6.
51 Murrin, Tax Counsel Amicus Brief, at 4-7.

proceedings and cannot contest or control such admissions. As a result, the taxpayer may be subjected to an indefinite statute of limitations under section 6501(c)(1) based solely on the untested or self-interested concession of a third party, without any meaningful opportunity to challenge the underlying allegation of fraud.

c. Taxpayers Further Harmed by Enforcement Delays

Additionally, the unlimited statute disproportionately harms taxpayers.

Camp persuasively argues that the IRS often focuses its initial efforts on preparers or promoters, leaving taxpayers unaware of potential liabilities for years, thereby eroding evidence and procedural fairness.[52]

The American College of Tax Counsel aptly notes that, in *Murrin*, the IRS delayed its assertion of fraud penalties for over two decades, despite early awareness of the preparer's misconduct. This delay not only violated the purpose of the statute of limitations but also placed taxpayers at a severe disadvantage.[53]

d. Eroding Public Confidence in Tax Administration

Finally, the broader implications of the Tax Court's interpretation of section 6501(c) undermine public confidence in tax administration. Camp highlights how low-income taxpayers, often reliant on low-cost preparers, are disproportionately affected by these indefinite liabilities.[54] The American College of Tax Counsel emphasizes that taxpayers acting in good faith should not face the perpetual threat of liability due to fraud by third parties.[55]

Holding a taxpayer liable indefinitely despite the taxpayer's innocence, can lead to exorbitant interest assessments—particularly when the taxpayer had no knowledge of the fraud and did not cause the delay in assessment.[56] While there is no dispute that such taxpayers would not be subject to the civil fraud penalty, interest accruing over decades can easily exceed 75 percent of the tax due.

In the published decisions, the return preparer whose fraud kept the statute open was convicted of tax crimes involving the preparation of false and fraudulent returns.[57] This principle would hold true for similar tax shelters, even where the promoters have

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52 Murrin, Camp Amicus Brief, at 8-10.
53 Murrin, Tax Counsel Amicus Brief, at 10-12.
54 Murrin, Camp Amicus Brief, at 9-11.
55 Murrin, Tax Counsel Amicus Brief, at 12-15.
56 For the Murrins, interest for 1993 is more than quadruple the tax liability; interest for 1999 is more than double the tax liability.
57 *BASR Partnership*, *supra*, was decided on a motion for summary judgment that section 6501(c)(1) only applies where there is taxpayer fraud.

not faced prosecution, as the IRS need only show by clear and convincing evidence that the returns were fraudulent and the preparer intended to evade tax.

Importantly, amending the returns would not remedy this issue. As the Supreme Court held in *Badaracco v. Commissioner*,[58] an amended return cannot retroactively cure the fraudulent nature of the original return. Even if the case against the fraudulent preparer is resolved through court action or administrative measures, such as a Form 870-AD or a Closing Agreement, the taxpayer's return remains indefinitely subject to assessment.

4. Conclusion

The *Murrin* case underscores the urgent need for legislative clarity to balance the IRS's enforcement goals with taxpayer rights. By specifying the scope of section 6501(c)(1) and addressing third-party fraud, Congress can foster a fairer and more effective tax system.

C. <u>Problems Addressed</u>

This proposal suggests amending section 6501(c)(1) to explicitly address the scope of fraud and its application to return preparers:

1. **Defining Fraud Attribution:**
    - Revise section 6501(c)((1) to read: "In the case of a false or fraudulent return, ***where the taxpayer intends 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." (emphasized language replacing current "with the intent to evade tax").

If that option is not feasible, we propose extending the period of limitations—rather than leaving it unlimited—to a maximum of six years:

2. **Limiting Open-Ended Assessments:**
    - Impose a six-year cap on the extended period in cases involving third-party fraud to balance the IRS's enforcement ability with taxpayer protections.

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58 464 U.S. 386, 393-396 (1984).

D. Merits of Proposal

The proposed changes have the following merits:

1. **Defining Fraud Attribution:**
    - Amend section 6501(c)(1) to clarify that tax may be assessed at any time where the taxpayer intends to evade tax.

Restricting the application of the exception under section 6501(c)(1) to cases in which the taxpayer intended to evade tax aligns with the related penalty statute (i.e., section 6663), which expressly requires fraudulent intent by a taxpayer before a civil fraud penalty is assessed. The proposal finds support in the Federal Circuit's decision in *BASR and* protects taxpayers who are unaware of fraudulent actions by their return preparers, advisors, or other third parties. Finally, the proposal preserves taxpayer rights under sections 6501(a) and 7803(a)(3).

2. **Limiting Open-Ended Assessments:**
    - Impose a six-year cap on the extended period in cases involving third-party fraud to balance the IRS's enforcement ability with taxpayer protections.

Alternatively, capping the extension period for assessments at six years strikes a balance between IRS enforcement needs and taxpayer protections. As demonstrated in *Murrin* and *City Wide Transit, Inc.*, the current lack of temporal limits can lead to excessive delays, harming unwitting taxpayers through lost evidence and diminished procedural fairness. The American College of Tax Counsel underscores how such delays can violate the taxpayer's right to finality, as codified in section 7803(a)(3), especially when IRS investigations extend far beyond the standard three-year period.[59] A limited extension of the statute of limitations on assessments would preserve the IRS's ability to address complex cases while mitigating the disproportionate hardships of indefinite liability.

E. Collateral Consequences

The proposal would primarily bar the assessment of tax, penalties, and interest against the taxpayer where a third party, not the taxpayer, engaged in fraudulent conduct. Alternatively, it provides the IRS a six-year period to deal with third-party fraud to collect taxes based on a fraudulent return.

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59 Murrin, Tax Counsel Amicus Brief, at 8-10.