

No. 23-571

IN THE
Supreme Court of the United States

MADELINE PICKENS,

Petitioner,

v.

UNITED STATES,

Respondent.

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

**BRIEF OF NATIONAL TAXPAYERS UNION
FOUNDATION AS *AMICUS CURIAE*
IN SUPPORT PETITIONER**

JOSEPH D. HENCHMAN
Counsel of Record
TYLER MARTINEZ
NATIONAL TAXPAYERS
UNION FOUNDATION
122 C Street N.W., #700
Washington, D.C. 20001
jbh@ntu.org
(703) 683-5700

December 19, 2023

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE*..... 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

 I. THE NINTH CIRCUIT’S DECISION
 CREATES DANGEROUS DIVISION. 4

 II. THE QUESTION PRESENTED IN
 THIS CASE IS IMPORTANT TO EVERY
 TAXPAYER. 9

CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

<i>926 N. Ardmore Ave., LLC v. Cnty. of Los Angeles</i> , 396 P.3d 1036 (Cal. 2017)	7
<i>Appeal of Clayton-Marcus Co.</i> , 210 S.E.2d 199 (N.C. 1974)	8
<i>Arbern-Wilmington, Inc. v. Dir. of Rev.</i> , 596 A.2d 1385 (Del. 1991)	8
<i>Avnet, Inc. v. Washington Dep’t of Revenue</i> , 384 P.3d 571 (Wash. 2016)	7
<i>Basin Elec. Power Co-op. v. Bowen</i> , 979 P.2d 503 (Wyo. 1999).....	9
<i>Bassett v. DeRentis</i> , 446 A.2d 763 (R.I. 1982).....	8
<i>Beard v. S.C. Tax Comm’n</i> , 95 S.E.2d 628 (S.C. 1956).....	8
<i>Boechler v. Comm’r Int. Rev.</i> , 596 U.S. ___, 142 S.Ct. 1493 (2022).....	1
<i>Boyne USA, Inc. v. Dep’t of Revenue</i> , 490 P.3d 1240 (Mont. 2021)	7
<i>Bullock v. Statistical Tabulating Corp.</i> , 549 S.W.2d 166 (Tex. 1977)	9
<i>Busse v. C.I.R.</i> , 479 F.2d 1147 (7th Cir. 1973)	6
<i>Canty v. Idaho State Tax Comm’n</i> , 59 P.3d 983 (Idaho 2002)	7
<i>CIC Services, LLC v. Int. Rev. Serv.</i> , 593 U.S. ___, 141 S. Ct. 1582 (2021).....	1

<i>City of Phoenix v. Orbitz Worldwide Inc.</i> , 448 P.3d 275 (Ariz. 2019)	7
<i>Clajon Gas Co., L.P. v. C.I.R.</i> , 354 F.3d 786 (8th Cir. 2004)	6
<i>Commonwealth v. Carter</i> , 92 S.E.2d 369 (Va. 1956)	9
<i>Comnty. Telecomm. Corp. v. State Tax Ass’r</i> , 684 A.2d 424 (Me. 1996)	8
<i>Consolidation Coal Co. v. Krupica</i> , 254 S.E.2d 813 (W.Va. 1979)	9
<i>Dep’t of State Rev. v. Crown Dev. Co.</i> , 109 N.E.2d 426 (Ind. 1952)	8
<i>Duke Energy Nat. Gas Corp. v. Comm’r</i> , 172 F.3d 1255 (10th Cir. 1999)	6
<i>Exxon Mobil Corp. & Affiliated Cos. v. C.I.R.</i> , 689 F.3d 191 (2d Cir. 2012).....	5
<i>First Berkshire Bus. Trust v. Comm’r, N.H. Dep’t of Rev. Admin.</i> , 13 A.3d 232 (N.H. 2010).....	8
<i>George v. Scent</i> , 346 S.W. 2d 784 (Ky. 1961).....	8
<i>Gould v. Gould</i> , 245 U.S. 151 (1917)	4, 5, 6
<i>Harrah’s Operating Co. v. State, Dep’t of Taxation</i> , 321 P.3d 850 (Nev. 2014)	7
<i>Hassett v. Welch</i> , 303 U.S. 303 (1938)	5, 6

<i>Hudson Cnty. Chamber of Comm. v. City of Jersey City,</i> 708 A.2d 690 (N.J. 1998).....	9
<i>In re City of Wichita,</i> 59 P.3d 336 (Kan. 2002).....	8
<i>Ingersoll Milling Mach. Co. v. Dep't of Rev.,</i> 90 N.E.2d 747 (Ill. 1950).....	8
<i>Ivory Homes, Inc. v. Utah State Tax Comm'n,</i> 266 P.3d 751 (Utah 2011)	9
<i>Kisor v. McDonough,</i> 995 F.3d 1347 (Fed. Cir. 2021)	5
<i>Lee v. Walgreen Drug Stores Co.,</i> 28 So. 2d 535 (Fla. 1942).....	8
<i>McLane Minn., Inc. v. Comm'r of Rev.,</i> 773 N.W.2d 289 (Minn. 2009).....	8
<i>Mich. Bell Tel. Co. v. Dep't of Treasury,</i> 518 N.W.2d 808 (Mich. 1994).....	8
<i>Midland Fin. Corp. v. Wis. Dep't of Rev.,</i> 341 N.W.2d 397 (Wis. 1983).....	9
<i>Miss. River Transmission Corp. v. Weiss,</i> 65 S.W.3d 867 (Ark. 2002)	8
<i>Molycorp, Inc. v. State Corp. Comm'n,</i> 624 P.2d 1010 (N.M. 1981).....	8
<i>Moore v. United States,</i> U.S. No. 22-800.....	1
<i>Naumann v. Iowa Prop. Ass'mnt. Appeal Bd.,</i> 791 N.W.2d 258 (Iowa 2010).....	8
<i>Ne. Pa. Imaging Ctr. v. Pennsylvania,</i> 35 A.3d 752 (Pa. 2011)	8

<i>Polselli v. Internal Revenue Serv.</i> , 598 U.S. 432 (2023)	1
<i>Portland Pipe Line Corp. v. Morrison</i> , 110 A.2d 700 (Vt. 1955).....	9
<i>Prudential Ins. Co. of Am. v. Comm’r of Rev.</i> , 709 N.E.2d 1096 (Mass. 1999)	8
<i>Royal Caribbean Cruises, Ltd. v. United States</i> , 108 F.3d 290 (11th Cir. 1997)	6
<i>Saginaw Bay Pipeline Co. v. United States</i> , 338 F.3d 600 (6th Cir. 2003)	6
<i>Sch. St. Assocs. Ltd. v. District of Columbia</i> , 764 A.2d 798 (D.C. 2001)	8
<i>Sioux Valley Hosp. Ass’n v. State</i> , 519 N.W.2d 334 (S.D. 1994).....	8
<i>State Dep’t of Ass’mnts & Taxation v. Consol. Coal Sales Co.</i> , 855 A.2d 1197 (Md. 2004)	8
<i>State ex rel. Knox v. Union Tank Car Co.</i> , 119 So. 310 (Miss. 1928)	8
<i>State v. Camp</i> , 6 S.E.2d 299 (Ga. 1939).....	8
<i>Suffolk County Fed. Sav. & Loan Ass’n v. Bragalini</i> , 159 N.E.2d 164 (N.Y. 1959)	8
<i>Sullivan v. Union & New Haven Trust Co.</i> , 158 A.2d 174 (Conn. 1960).....	8
<i>Transponder Corp. of Denver, Inc. v. Property Tax Admin’r</i> , 681 P.2d 499 (Colo. 1984).....	8

<i>Travelocity.com, L.P. v. Dir. of Taxation</i> , 346 P.3d 157 (Haw. 2015)	7
<i>Union Oil Co. of Cal. v. Dep't of Rev.</i> , 560 P.2d 21 (Alaska 1977)	7
<i>United Air Lines, Inc. v. State Tax Comm'n</i> , 377 S.W.2d 444 (Mo. 1964)	8
<i>United Dominion Indus., Inc. v. United States</i> , 532 U.S. 822 (2001)	5
<i>United Gas Corp. v. Fontenot</i> , 129 So.2d 776 (La. 1961)	8
<i>United States v. King Trailer Co.</i> , 350 F.2d 947 (9th Cir. 1965)	6
<i>United States v. Marshall</i> , 798 F.3d 296 (5th Cir. 2015)	5
<i>United States v. Merriam</i> , 263 U.S. 179 (1923)	5, 6
<i>W. Auto Supply Co. v. Okla. Tax Comm'n</i> , 328 P.2d 414 (Okla. 1958)	8
<i>W. Gas Res., Inc. v. Heitkamp</i> , 489 N.W.2d 869 (N.D. 1992)	8
<i>White v. Roden Elec. Supply Co., Inc.</i> , 536 S.W.2d 346 (Tenn. 1976)	8
<i>Zimmer v. Hagerman</i> , 91 N.E.2d 254 (Ohio 1950)	8

Statutes

26 U.S.C. § 6324(a)(2)	2, 3, 4, 11
26 U.S.C. § 6501(a)	10

26 U.S.C. § 6501(e)(1)(A) 10
Inflation Reduction Act of 2022, Pub. L. No. 117-169
§ 10301, 136 Stat. 1818, 1831 (2022)..... 10

Rules

S. Ct. R. 10(a) 4
S. Ct. R. 10(c) 9

Other Authorities

Cons. Fin'l Protect. Bureau, *What is a revocable living trust?* (Jun. 27, 2023)
<https://www.consumerfinance.gov/ask-cfpb/what-is-a-revocable-living-trust-en-1775/> 4
Statement of Pete Sepp, President, National Taxpayers Union, Comm. on Finance, U.S. Senate, 7 (May 16, 2023)
<https://www.ntu.org/library/doclib/2023/05/051623-Pete-Sepp-Testimony.pdf> 11

INTEREST OF *AMICUS CURIAE*¹

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts, producing scholarly analyses and engaging in direct litigation and *amicus curiae* briefs upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce. *See, e.g., Moore v. United States*, U.S. No. 22-800 (pending decision); *Polselli v. Internal Revenue Serv.*, 598 U.S. 432 (2023); *Boechler v. Comm'r Int. Rev.*, 596 U.S. ___, 142 S.Ct. 1493 (2022); and *CIC Services, LLC v. Int. Rev. Serv.*, 593 U.S. ___, 141 S. Ct. 1582 (2021). Accordingly, *Amicus* has an institutional interest in this case.

¹ Pursuant to Supreme Court Rule 37, counsel for *Amicus* represents that none of the parties or their counsel, nor any other person or entity other than *Amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for *Amicus* further certifies timely notice was provided to all parties of the intent to file this brief.

SUMMARY OF THE ARGUMENT

The Ninth Circuit's decision below is so egregious as to hit two criteria for review under Supreme Court Rule 10. The decision below creates a deep circuit split among the federal Courts of Appeals. Its holding also stands at odds with how forty-nine state supreme courts handle such matters. And the decision manages to do all this while mishandling a matter of national importance to taxpayers. This Court should grant the writ of certiorari for Ms. Pickens' case.

This Court has long held that ambiguities in tax statutes should be construed in favor of the taxpayer. The circuit courts apply this rule regularly; indeed, this was the rule of the Ninth Circuit until this case. And forty-nine states and the District of Columbia apply this rule as well (Oregon being the sole jurisdiction to not favor the taxpayer). The decision below therefore creates a deep division among the federal courts and the state courts.

On the merits, this case presents a question of importance to taxpayers across the country. The government's legal theory is egregious in practice. As a thinly veiled money grab into whatever deep pockets it can find, the IRS argues that the time limitation in 26 U.S.C. § 6324(a)(2) allows it to go after a widow's inheritance because a trust run by a stepson becomes insolvent. Taxpayers everywhere of almost every income level should worry that the IRS will go after their spouse, kids, or other relatives years later.

This Court should therefore grant review of Ms. Pickens' case and reject the government's money grab.

ARGUMENT

At the center of this case is how to interpret 26 U.S.C. § 6324(a)(2), which provides that estates taxes may be paid by someone “who receives, or has on the date of the decedent’s death, property included in the gross estate.” Such a person must pay taxes on “the extent of the value, at the time of the decedent’s death, of such property.” *Id.* Arguably, § 6324(a)(2) is ambiguous—the decision below was split with a strong dissent from Judge Ikuta on how to apply the language in this case. *Compare* App. 16a (“We conclude that the most natural reading of the statutory text... supports the United States’ interpretation.”) *with* 65a (Ikuta, J., dissenting) (“The majority and the government effectively concede that their interpretation of § 6324(a)(2) is not logical...”).

Normally, the courts read ambiguous tax statutes in favor of the taxpayer. This is good policy because the government should clearly set out who owes taxes, when they owe taxes, and how much to pay. This Court, therefore, has long held that ambiguity favors the taxpayer. The Circuits and almost every state have long applied that rule. The Ninth Circuit now departs from its earlier adherence to that rule on a novel legal theory from the government. This dangerous decision, split from the rest of the weight of tax law, must be addressed.

This case also presents an important legal question to resolve, to the benefit of many taxpayers and their end-of-life planning. Living trusts, such as the one at issue here, are a common method of assuring assets go where a decedent wants. App. 6a–

7a; see also Cons. Fin'l Protect. Bureau, *What is a revocable living trust?* (Jun. 27, 2023) <https://www.consumerfinance.gov/ask-cfpb/what-is-a-revocable-living-trust-en-1775/>. But the government's ability here to go after funds transferred and settled fifteen years earlier is dangerous. Reading 26 U.S.C. § 6324(a)(2) narrowly to reject this open-ended tax liability is key for assuring taxpayers that the government cannot go after them years later.

I. THE NINTH CIRCUIT'S DECISION CREATES DANGEROUS DIVISION.

The Ninth Circuit held below that the long-standing rule of tax statutory construction in favor of the taxpayer applies only to criminal prosecution as an extension of the doctrine of lenity. See App.45a. In addition to being directly contrary to this Court's holdings, the Ninth Circuit's decision below creates a major circuit split and warrants review under Supreme Court Rule 10(a). It also creates a rift between federal tax cases and state tax cases—including within the Ninth Circuit—warranting this Court's review.

Section 6324(a)(2) should probably be read to apply only at the time of the disbursement of funds after someone dies or a trust ends. It could certainly be argued that the language is ambiguous. But the United States Courts of Appeals have long held together that ambiguous tax statutes must be read to favor the taxpayer.

This Court has long held that ambiguities in tax statutes be construed in favor of the taxpayer. In *Gould v. Gould*, 245 U.S. 151, 153 (1917), this Court

recognized that “the established rule” in “the interpretation of statutes levying taxes” is to not go “beyond the clear import of the language used” in the statute. Thus, “[i]n case of doubt [tax statutes] are construed *most strongly against the government*, and in favor of the citizen.” *Id.* (collecting cases since 1842) (emphasis added). That holding was affirmed just a few years later. *United States v. Merriam*, 263 U.S. 179, 188 (1923) (applying *Gould*, 245 U.S. at 153) (“If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.”); see also *Hassett v. Welch*, 303 U.S. 303, 314 (1938) (applying *Gould*, and holding that “if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer...”). Members of this Court continue to apply this rule. See, e.g., *United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 838–39 (2001) (Thomas, J., concurring) (collecting cases including *Merriam*).

The Federal Circuit in 2021 mostly recently applied this rule. See, e.g., *Kisor v. McDonough*, 995 F.3d 1347, 1369 (Fed. Cir. 2021) (applying *Gould* and *Merriam*). The other circuits agree:

- Second Circuit: *Exxon Mobil Corp. & Affiliated Cos. v. C.I.R.*, 689 F.3d 191, 199 (2d Cir. 2012) (applying *Merriam* and noting the Circuit is “particularly mindful” of this rule);
- Fifth Circuit: *United States v. Marshall*, 798 F.3d 296, 319 (5th Cir. 2015) (recognizing that “[r]eliance on legislative history is suspect even if a tax statute is ambiguous because” of the “longstanding canon of construction that if the words of a tax statute are doubtful, the doubt must be resolved against the

government and in favor of the taxpayer.””) (collecting cases, including *Merriam*);

- Sixth Circuit: *Saginaw Bay Pipeline Co. v. United States*, 338 F.3d 600, 604 (6th Cir. 2003) (recognizing that “if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer”);
- Seventh Circuit: *Busse v. C.I.R.*, 479 F.2d 1147, 1150–51 (7th Cir. 1973) (applying *Merriam* and holding that “[w]e do not consider that the law in this area of statutory construction has changed appreciably”);
- Eighth Circuit: *Clajon Gas Co., L.P. v. C.I.R.*, 354 F.3d 786, 789 (8th Cir. 2004) (applying the Sixth Circuit’s decision in *Saginaw Bay*, among others);
- Tenth Circuit: *Duke Energy Nat. Gas Corp. v. Comm’r*, 172 F.3d 1255, 1260 n.7 (10th Cir. 1999) (applying *Hassett*); and
- Eleventh Circuit: *Royal Caribbean Cruises, Ltd. v. United States*, 108 F.3d 290, 294 (11th Cir. 1997) (per curiam) (collecting cases, including *Gould*, and applying “the general rule of construction that ambiguous tax statutes are to be construed against the government and in favor of the taxpayer”).

The Ninth Circuit thus created a federal Circuit split. It stands against the Federal, Fifth, Sixth, Seventh, Eighth, Tenth and Eleventh Circuits. The decision below also, incidentally, overturned the Ninth’s own well-established rule. *Compare* 44a–46a *with United States v. King Trailer Co.*, 350 F.2d 947, 948 (9th Cir. 1965) (applying *Merriam* and holding that “even should a reasonable doubt exist, our duty is to resolve

it in favor of the taxpayer”). This is untenable for the future of tax litigation.

The decision below also creates drives a wedge with forty-nine states, including most of the Ninth Circuit’s jurisdiction, that construe ambiguous tax statutes in favor of the taxpayer. Montana’s Supreme Court in 2021 held that “tax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Boyne USA, Inc. v. Dep’t of Revenue*, 490 P.3d 1240, 1243 (Mont. 2021) (citation omitted, cleaned up). Two years before that, Arizona applied the pro-taxpayer rule. *See City of Phoenix v. Orbitz Worldwide Inc.*, 448 P.3d 275, 282 (Ariz. 2019). The California Supreme Court reaffirmed that, “a [tax] statute whose language is unclear should be construed to favor the taxpayer.” *926 N. Ardmore Ave., LLC v. Cnty. of Los Angeles*, 396 P.3d 1036, 1041 (Cal. 2017). Washington held similar as recently as 2016. *See Avnet, Inc. v. Washington Dep’t of Revenue*, 384 P.3d 571, 574 (Wash. 2016). Hawaii reaffirmed this basic holding in 2015. *See, e.g., Travelocity.com, L.P. v. Dir. of Taxation*, 346 P.3d 157, 190 n.47 (Haw. 2015). Nevada’s Supreme Court reaffirmed the principle as well in 2014. *Harrah’s Operating Co. v. State, Dep’t of Taxation*, 321 P.3d 850, 852 (Nev. 2014). Idaho applies this rule as well. *See, e.g., Canty v. Idaho State Tax Comm’n*, 59 P.3d 983, 987 (Idaho 2002). Alaska follows this rule as well. *See, e.g., Union Oil Co. of Cal. v. Dep’t of Rev.*, 560 P.2d 21, 25 (Alaska 1977) (“[W]e follow the general rule of construction of tax statutes which requires that, where possible, doubts be resolved in favor of the taxpayer.”). Oregon is the only state in the country to not apply this statutory construction rule. Forty-nine states and the District of

Columbia protect the taxpayer from ambiguous revenue statutes.²

² For the other state supreme courts applying this rule, *see also* *Miss. River Transmission Corp. v. Weiss*, 65 S.W.3d 867, 873 (Ark. 2002); *Transponder Corp. of Denver, Inc. v. Property Tax Admin'r*, 681 P.2d 499, 503 (Colo. 1984); *Sullivan v. Union & New Haven Trust Co.*, 158 A.2d 174, 175 (Conn. 1960); *Arbern-Wilmington, Inc. v. Dir. of Rev.*, 596 A.2d 1385, 1387 (Del. 1991); *Sch. St. Assocs. Ltd. v. District of Columbia*, 764 A.2d 798, 805 (D.C. 2001); *Lee v. Walgreen Drug Stores Co.*, 28 So. 2d 535, 536 (Fla. 1942); *State v. Camp*, 6 S.E.2d 299, 216-17 (Ga. 1939); *Ingersoll Milling Mach. Co. v. Dep't of Rev.*, 90 N.E.2d 747, 751 (Ill. 1950); *Dep't of State Rev. v. Crown Dev. Co.*, 109 N.E.2d 426, 428 (Ind. 1952); *Naumann v. Iowa Prop. Ass'mnt. Appeal Bd.*, 791 N.W.2d 258, 262 (Iowa 2010); *In re City of Wichita*, 59 P.3d 336, 343 (Kan. 2002); *George v. Scent*, 346 S.W. 2d 784, 789 (Ky. 1961); *United Gas Corp. v. Fontenot*, 129 So.2d 776, 781 (La. 1961); *Prudential Ins. Co. of Am. v. Comm'r of Rev.*, 709 N.E.2d 1096, 1100 (Mass. 1999); *Commty. Telecomm. Corp. v. State Tax Ass'r*, 684 A.2d 424, 426 (Me. 1996); *State Dep't of Ass'mnts & Taxation v. Consol. Coal Sales Co.*, 855 A.2d 1197, 1207 (Md. 2004); *Mich. Bell Tel. Co. v. Dep't of Treasury*, 518 N.W.2d 808, 811 (Mich. 1994); *McLane Minn., Inc. v. Comm'r of Rev.*, 773 N.W.2d 289, 296 (Minn. 2009); *State ex rel. Knox v. Union Tank Car Co.*, 119 So. 310, 312 (Miss. 1928); *United Air Lines, Inc. v. State Tax Comm'n*, 377 S.W.2d 444, 448 (Mo. 1964); *W. Auto Supply Co. v. Okla. Tax Comm'n*, 328 P.2d 414, 420 (Okla. 1958); *First Berkshire Bus. Trust v. Comm'r, N.H. Dep't of Rev. Admin.*, 13 A.3d 232, 235 (N.H. 2010); *Suffolk County Fed. Sav. & Loan Ass'n v. Bragalini*, 159 N.E.2d 164, 166 (N.Y. 1959); *Appeal of Clayton-Marcus Co.*, 210 S.E.2d 199, 202 (N.C. 1974); *Molycorp, Inc. v. State Corp. Comm'n*, 624 P.2d 1010, 1011 (N.M. 1981); *W. Gas Res., Inc. v. Heitkamp*, 489 N.W.2d 869, 873 (N.D. 1992); *Zimmer v. Hagerman*, 91 N.E.2d 254, 256 (Ohio 1950); *Ne. Pa. Imaging Ctr. v. Pennsylvania*, 35 A.3d 752, 758 (Pa. 2011); *Bassett v. DeRentis*, 446 A.2d 763, 764-65 (R.I. 1982); *Beard v. S.C. Tax Comm'n*, 95 S.E.2d 628, 634 (S.C. 1956); *Sioux Valley Hosp. Ass'n v. State*, 519 N.W.2d 334, 336 (S.D. 1994); *White v. Roden Elec. Supply Co., Inc.*, 536 S.W.2d 346, 348 (Tenn. 1976); *Bullock v.*

The Ninth Circuit in this case shed a very important taxpayer protection: that ambiguous tax statutes should be construed against the government. In so doing, the decision below created a major fissure in both federal and state case law. This leaves taxpayers unsure of whether the government will be able to use novel theories in the future based on ambiguous provisions of the government's own making. This Court should take up this case to reaffirm and strengthen its long-standing rules of construction that protect taxpayers.

II. THE QUESTION PRESENTED IN THIS CASE IS IMPORTANT TO EVERY TAXPAYER.

This case presents the quintessential issue of national importance that needs clarity from this Court. *See* S. Ct. R. 10(c). Taxpayers everywhere need to know what their tax liability is and when that window closes. If left to stand, the IRS now can go looking for deep pockets years after a trust or other instrument pays out. The decision of the court below,

Statistical Tabulating Corp., 549 S.W.2d 166, 169 (Tex. 1977); *Ivory Homes, Inc. v. Utah State Tax Comm'n*, 266 P.3d 751, 759–60 (Utah 2011); *Portland Pipe Line Corp. v. Morrison*, 110 A.2d 700, 701 (Vt. 1955); *Commonwealth v. Carter*, 92 S.E.2d 369, 373 (Va. 1956); *Consolidation Coal Co. v. Krupica*, 254 S.E.2d 813, 816 (W.Va. 1979); *Midland Fin. Corp. v. Wis. Dep't of Rev.*, 341 N.W.2d 397, 400 (Wis. 1983). A couple states consider legislative intent but still start with the rule that ambiguous tax statutes are construed in favor of the taxpayer. *See Hudson Cnty. Chamber of Comm. v. City of Jersey City*, 708 A.2d 690, 697–98 (N.J. 1998); *Basin Elec. Power Co-op. v. Bowen*, 979 P.2d 503, 509 (Wyo. 1999).

in blessing this system, was so anti-taxpayer as to cause concern for tax filers across America.

Tax law requires some stability. That is the reason that, at some point, the IRS can no longer audit a taxpayer's filings. The Service generally has only three years to open an audit. 26 U.S.C. § 6501(a). Adjustments for underreporting can happen for up to six years. *See, e.g.*, 26 U.S.C. § 6501(e)(1)(A).

But in this instance the IRS went after a widow fifteen years after her husband's death and a dozen years after she received her share of the trust's property. Pet. 11; *cf.* App. 8a, 11a, and 12a. The government failed to monitor its payment plan agreement with John Michael Paulson, an alleged spendthrift trustee who has defaulted, and is now imposing the costs of this failure on any deep pockets it can find. Pet. 10; *cf.* App. 11a.

No wonder taxes are scary to the average person. Tax law is complex, and its impact is in nearly every area of a person's public life. Worse, the taxpayer must present their entire financial life to the IRS. But *every* taxpayer deserves to know when their liability will end.³

³ This issue may get worse with the recent influx of enforcement cash from the Inflation Reduction Act of 2022 ("IRA"), which included \$80 billion for the IRS. Inflation Reduction Act of 2022, Pub. L. No. 117-169 § 10301, 136 Stat. 1818, 1831 (2022). The great majority of the IRA's spending for tax work—\$45.6 billion—is slated for enforcement, with another \$25 billion for operational support for enforcement and other duties. *Id.* at 1832. Only \$3 billion was to improve taxpayer services, like answer the phones, reply to letters, and taxpayer assistance. *Id.* The funding shows the priorities of the IRS going forward. *See*, Statement of Pete Sepp, President, National

This case is a clean vehicle to resolve the underlying interpretation of 26 U.S.C. § 6324(a)(2). Ms. Pickens was not in charge of the trust, had no ability to compel proper tax payments (indeed, she had to fight for her own funds), and reversing the Ninth Circuit's decision below will mean she owes nothing. *See* Pet. 34-35. With such compelling facts and clean procedural posture, this Court should resolve the merits of Ms. Pickens' claims.

The specter of tax enforcement, combined with tax law's complexity, garners a visceral reaction in ordinary citizens and businesses. Any ambiguity should favor the taxpayer. This is all the more so when it is clear that the government is simply looking for deep pockets when the trust's assets ran out. Ms. Pickens is a bystander in a tax action that should focus on the spendthrift trustee, not the widow.

Taxpayers Union, Comm. on Finance, U.S. Senate, 7 (May 16, 2023) <https://www.ntu.org/library/doclib/2023/05/051623-Pete-Sepp-Testimony.pdf>.

CONCLUSION

For the foregoing reasons, *Amicus* requests that this Court grant a writ of certiorari and reverse the decision below.

Respectfully submitted,

JOSEPH D. HENCHMAN

Counsel of Record

TYLER MARTINEZ

NATIONAL TAXPAYERS

UNION FOUNDATION

122 C Street N.W., #700

Washington, D.C. 20001

jbh@ntu.org

(703) 683-5700

December 19, 2023