No. 24-108

In the Supreme Court of the United States

JOHN PAUL SALVADOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 11 U.S.C. 523(a)(1)(B) renders petitioner's tax debts nondischargeable in bankruptcy, where petitioner did not file a Form 1040 with respect to those debts, if at all, until several years after the Internal Revenue Service had assessed the taxes.

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OPINIONS BELOW

The memorandum opinion of the court of appeals (Pet. App. 1a-4a) is not published in the Federal Reporter but is available at 2024 WL 885041. The memorandum opinion of the bankruptcy appellate panel (Pet. App. 5a-6a) is not published in the Federal Reporter but is available at 2023 WL 166826. The orders of the bankruptcy court (Pet. App. 7a-12a, 13a-14a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 1, 2024. On May 21, 2024, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including July 29, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. A debtor who receives a discharge under Chapter 7 of the Bankruptcy Code is generally discharged from

personal liability for all debts incurred before the filing of the petition. 11 U.S.C. 727(b). Under 11 U.S.C. 523, however, certain debts are excepted from discharge. As relevant here, a discharge does not cover "any debt"—

> (1) for a tax or a customs duty—
>
> * * * * *
>
> (B) with respect to which a return, or equivalent report or notice, if required—
>
> (i) was not filed or given; or
>
> (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition.

11 U.S.C. 523(a)(1)(B). Under that provision, tax debts with respect to which no return was filed are nondischargeable. Tax debts with respect to which a return was filed late are potentially dischargeable, provided the return was filed two years or more before the bankruptcy petition was filed.

In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, § 714(2), 119 Stat. 128-129, Congress added a definition of "return" to an unnumbered hanging paragraph at the end of Section 523(a):

> For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final

> order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

11 U.S.C. 523(a)(*)[1]; Pet. App. 28a-29a. Section 6020(a) of the Internal Revenue Code authorizes the Secretary of the Treasury to prepare a return for a taxpayer if the taxpayer provides "all information necessary for the preparation thereof." 26 U.S.C. 6020(a). Section 6020(b) authorizes the Secretary to prepare a return for a taxpayer without the taxpayer's cooperation, based on the information available to the Secretary at the time. 26 U.S.C. 6020(b).

The "applicable nonbankruptcy law" here is federal tax law. The Internal Revenue Code does not define the term "return." It is well-accepted, however, that a filing can be a "return" for purposes of federal tax law if it provides "sufficient data to calculate tax liability"; it "purport[s] to be a return"; the taxpayer has made "an honest and reasonable attempt to satisfy the requirements of the tax law"; and the taxpayer has "execute[d] the return under penalties of perjury." *Beard* v. *Commissioner*, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986) (per curiam); see *Badaracco* v. *Commissioner*, 464 U.S. 386, 397 (1984); *Zellerbach Paper Co.* v. *Helvering*, 293 U.S. 172, 180 (1934); *Florsheim Bros. Drygoods Co.* v. *United States*, 280 U.S. 453, 461-462 (1930). That is known as the *Beard* test. See, *e.g.*, Pet. App. 2a.

2. Petitioner failed to file a tax return in the time required by law for the years 2003, 2004, 2006, or 2009.

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[1] As the petition does (see Pet. 5 n.3), this brief denotes the BAPCPA definition of "return" in the unnumbered paragraph as Section 523(a)(*).

Pet. App. 8a; see 26 U.S.C. 6072(a), 6081(a); 26 C.F.R. 1.6081-4(a). Without the benefit of filed returns, the Internal Revenue Service (IRS) prepared substitute returns calculating petitioner's tax liabilities and issued petitioner deficiency notices. Pet. App. 8a. Petitioner took no action in response, and, in 2010 and 2013, the IRS assessed the unpaid federal income tax, penalties, and interest against petitioner for the years for which petitioner had failed to file a return and the IRS had assessed the taxes on its own. *Id.* at 9a. The IRS thereafter undertook efforts to collect petitioner's tax liabilities. *Ibid.* Petitioner has claimed that, in May 2015, his attorney submitted a Form 1040 for each of the missing tax years, but the IRS has no record of receiving those forms. *Id.* at 9a & n.3.

a. On October 22, 2019, petitioner filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Central District of California. Bankr. Ct. Doc. 1. Petitioner then brought an adversary proceeding against the United States to determine the dischargeability of his assessed tax debts for 2003, 2004, 2006, and 2009. Pet. App. 8a.

On November 3, 2021, the bankruptcy court granted summary judgment in favor of the United States. Pet. App. 8a-12a. To determine whether petitioner's purported filings were returns under Section 523(a)(*), the court applied the *Beard* test in accordance with circuit precedent, focusing on the fourth factor—whether the purported filings were "an honest and reasonable attempt to satisfy the requirements of the tax law." *Id.* at 10a (citation and emphasis omitted). The court held that any Form 1040 of petitioner's did not qualify because, even if it was filed as he claimed in 2015, that filing came "well after the IRS assessed deficiencies,"

ibid., and such "belated acceptance of responsibility does not qualify as an honest and reasonable attempt to comply with the tax code," *id.* at 11a (quoting *Fremont* v. *United States (In re Fremont)*, 748 Fed. Appx. 137, 138 (9th Cir. 2019)). Accordingly, the court held that petitioner's 2003, 2004, 2006, and 2009 tax debts were excepted from his Chapter 7 discharge. *Id.* at 12a.

b. The United States Bankruptcy Appellate Panel of the Ninth Circuit affirmed. Pet. App. 5a-6a. In a single paragraph, the panel accepted petitioner's acknowledgment that the bankruptcy court's ruling "is consistent with binding Ninth Circuit authority," and that the panel was "serv[ing] as a mere way station during [petitioner's] campaign seeking a change in the Circuit's precedent." *Id.* at 6a & n.1.

c. The court of appeals affirmed. Pet. App. 1a-4a. The court held that under its precedent, "a document filed by a debtor after the IRS has already assessed his taxes does not generally qualify as a return because such a late filing is not an 'honest and reasonable attempt' to comply with the tax law." *Id.* at 2a (quoting *United States* v. *Hatton (In re Hatton)*, 220 F.3d 1057, 1061 (9th Cir. 2000)). The court also rejected petitioner's petition for initial hearing en banc to reconsider its binding precedent, in which petitioner "urg[ed] th[e] court to adopt the Eighth Circuit's approach from *Colsen* v. *United States (In re Colsen)*, 446 F.3d 836 (8th Cir. 2006)"—a decision that the court noted had "appl[ied] pre-BAPCA law." Pet. App. 3a.

ARGUMENT

The court of appeals' judgment is correct, does not implicate any conflict among the courts of appeals, and does not warrant further review. The court held that petitioner's tax debts for 2003, 2004, 2006, and 2009 are

nondischargeable under 11 U.S.C. 523(a)(1)(B)(i) because any Form 1040 that he filed for any of those years was not filed until "after the IRS had already assessed his tax liability," and it was therefore not a "return" within the meaning of the definition in 11 U.S.C. 523(a)(*). Pet. App. 3a. Although the circuits have differed somewhat in their approaches to questions of dischargeability under Section 523(a)(*), every court of appeals that has addressed the question in the circumstances presented here has reached the same result: When the IRS has already assessed the tax debt for a given year, a debtor cannot thereafter make that debt dischargeable by filing a Form 1040 years later that reports debt the IRS already identified. This Court has consistently denied petitions for writs of certiorari presenting the same question. See *Justice* v. *IRS*, 580 U.S. 1217 (2017) (No. 16-786); *Smith* v. *IRS*, 580 U.S. 1114 (2017) (No. 16-497); *Mallo* v. *IRS*, 576 U.S. 1054 (2015) (No. 14-1072); see also *McCoy* v. *Mississippi State Tax Comm'n*, 568 U.S. 822 (2012) (No. 11-1469) (denying certiorari in a case involving a post-assessment state tax filing). There have been no meaningful developments in the law since those denials, and there is no reason for a different result here.

1. The judgment below is correct under the analysis applied by every court of appeals to consider the issue under the current version of Section 523(a), as well as under the IRS's somewhat different approach.

a. Section 523 of the Bankruptcy Code precludes the discharge of any tax debt "with respect to which a return * * * was not filed." 11 U.S.C. 523(a)(1)(B)(i). And that provision defines something as a "'return'" when it is a "return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing require-

ments)." 11 U.S.C. 523(a)(*). The court of appeals here held that the test from *Beard* v. *Commissioner*, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986) (per curiam), applies when determining whether a filing satisfies that definition. Pet. App. 2a-3a. The court further held that, to the extent that they were filed at all, petitioner "filed his purported returns after the IRS had already assessed his tax liability," which could not qualify them as returns under *Beard* because "such a late filing is not an 'honest and reasonable attempt' to comply with the tax law." *Ibid.* (citation omitted).

Like the court of appeals below, the Third and Eleventh Circuits have concluded that the *Beard* test applies when determining whether a filing satisfies the requirements of "applicable nonbankruptcy law (including applicable filing requirements)" under Section 523(a)(*), and they have held that a Form 1040 filed after assessment of a tax is not a "return" under that test. Pet. App. 3a; see *Giacchi* v. *United States Dep't of the Treasury IRS (In re Giacchi)*, 856 F.3d 244, 247-248 (3d Cir. 2017); *Justice* v. *United States (In re Justice)*, 817 F.3d 738, 743 (11th Cir. 2016), cert. denied, 580 U.S. 1217 (2017).[2]

b. The court of appeals did not address a possible alternate basis for reaching the same conclusion. The court did not consider whether the federal deadlines for

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[2] In *Maryland* v. *Ciotti (In re Ciotti)*, 638 F.3d 276 (2011), the Fourth Circuit applied *Beard* as the "applicable nonbankruptcy law" under Section 523(a)(*), but without addressing lateness or "applicable filing requirements." *Id.* at 280 (citation omitted). Rather, the Fourth Circuit held that a "report" of a change of income that Maryland law required to be filed (but that Ciotti had never filed) was a "return, or *equivalent report or notice*," within the meaning of Section 523(a)(1)(B). See *id.* at 280 (quoting and adding emphasis to 11 U.S.C. 523(a)(1)(B) (2006)).

filing a timely return constitute "applicable filing requirements" within the meaning of 11 U.S.C. 523(a)(*). The court therefore did not address whether—entirely apart from the fact that the IRS had already assessed a tax debt when petitioner purportedly filed in 2015—petitioner's undisputed failure to comply with the applicable filing deadlines took his Form 1040 for each of the relevant years outside Section 523(a)(*)'s definition of "return."

While the Eleventh Circuit expressly rejected that alternate analysis in *Massachusetts Dep't of Revenue* v. *Shek (In re Shek)*, 947 F.3d 770, 776-779 (2020), three other courts of appeals have applied it, in lieu of the *Beard* test, to reach the same result as the court of appeals below on facts that were materially similar in all relevant respects. Those courts have concluded that a post-assessment filing is not a "return" as defined in Section 523(a)(*)—not by applying *Beard*, but instead by reasoning that filing deadlines are "applicable filing requirements" that must be "satisfie[d]." *Fahey* v. *Massachusetts Dep't of Revenue* (*In re Fahey*), 779 F.3d 1, 4-5 (1st Cir. 2015) ("timely filing" is "plainly" a "'filing requirement'" for a state tax return); *Mallo* v. *IRS (In re Mallo)*, 774 F.3d 1313, 1321 (10th Cir. 2014) ("§ 523(a)(*) plainly excludes late-filed Form 1040s from the definition of a [federal] return."), cert. denied, 576 U.S. 1054 (2015); *McCoy* v. *Mississippi State Tax Comm'n (In re McCoy)*, 666 F.3d 924, 931-932 (5th Cir.) (similar for state taxes), cert. denied, 568 U.S. 822 (2012). The practical consequence of that interpretation is that a filing that is untimely will never qualify as a "return." Under such a "one-day-late rule," any tax debt for which a Form 1040 was filed late is nondischargeable, since it does not count as a "return" under

Section 523(a)(*) and Section 523(a)(1)(B)(i) bars the discharge of any debt "for a tax * * * with respect to which a return * * * was not filed or given." 11 U.S.C. 523(a)(1)(B)(i).

Underscoring the identical outcomes under the two tests, the First Circuit recently addressed a debtor's argument that the court should not apply the "one-day-late rule" by holding that the outcome would be the same "even under the alternative test" that would "turn on the application of the [*Beard* test's] four requirements." *Kriss* v. *United States (In re Kriss)*, 53 F.4th 726, 728 (2022).

c. Where it is not bound by contrary circuit precedent, the IRS relies on a somewhat different interpretation of Section 523(a), albeit one that produces the same result (*i.e.*, that petitioner's tax debt is nondischargeable) under the circumstances presented here. It is therefore misleading for petitioner to contend (Pet. 11, 21, 29) that "[t]he IRS agrees with petitioner's position," "has also taken the * * * position that petitioner presses here," and believes that "a late-filed Form 1040, even one filed *after* the IRS assesses the filer's taxes, is still a tax return" under Section 523(a)(*).

In the IRS's view, the dischargeability of a tax debt in this circumstance turns on whether the debt is one "with respect to which a return * * * was * * * filed." 11 U.S.C. 523(a)(1)(B)(i); see Office of Chief Counsel, IRS, *Notice No. CC-2010-016: Litigating Position Regarding the Dischargeability in Bankruptcy of Tax Liabilities Reported on Late-Filed Returns and Returns Filed After Assessment* 1-3 (Sept. 2, 2010) (reprinted at Pet. App. 31a-37a). If a taxpayer files a Form 1040 late but before the IRS has made an assessment—*e.g.*, if a taxpayer misses the April 15 deadline by a few days—

the IRS regards the taxpayer as having filed a "return" with respect to the entire tax debt for that year. Under that view, the entire debt can be discharged so long as the debtor waits more than two years to file a bankruptcy petition. See Pet. App. 35a; 11 U.S.C. 523(a)(1)(B)(ii). By contrast, if the debtor fails to file a Form 1040 before the IRS assesses tax on its own, but the debtor subsequently files a Form 1040 reporting additional tax liability, "only the portion of the tax that was not previously assessed" would be potentially dischargeable under Section 523(a)(1)(B)(ii). Pet. App. 36a. The portion that was assessed before the Form 1040 was filed "would be a debt for which no return was 'filed' within the meaning of section 523(a)(1)(B)(i), because at the time of assessment the debtor had not met the filing requirements for that portion of the tax and the assessed portion was not calculated based upon the tax reported." *Id.* at 36a-37a.

In other words, the IRS does not treat filing deadlines as "applicable filing requirements" that must be "satisfie[d]" to count as a "return" defined by Section 523(a)(*). 11 U.S.C. 523(a)(*); see Pet. App. 34a-35a. In the IRS's view, construing Section 523(a)(*)'s definition to mean that a late-filed Form 1040 can, solely on account of its lateness, never be a "return" would cause that definition to function at cross-purposes with 11 U.S.C. 523(a)(1)(B)(ii), which refers to late-filed "return[s]" and expressly contemplates that a debt with respect to which such a return was filed may be dischargeable. The IRS's approach also avoids rendering superfluous Congress's statement that a "return" does not "include a return made pursuant to section 6020(b)." 11 U.S.C. 523(a)(*). Because Section 6020(b) returns are, by definition, late, that statement would be unnecessary if

late-filed documents were categorically excluded from Section 523(a)(*)'s definition of "return." See 26 U.S.C. 6020(b)(1).

Under the IRS's approach, however, an untimely filing does not permit the debt to be discharged under Section 523(a)(1)(B)(i) unless the filing serves the fundamental purpose of a federal tax return: "self-report[ing] to the IRS sufficient information that the return[] may be readily processed and verified." *Moroney* v. *United States (In re Moroney)*, 352 F.3d 902, 906 (4th Cir. 2003). "The very essence of our system of taxation lies in the self-reporting and self-assessment of one's tax liabilities." *Ibid.*; see, *e.g.*, *United States* v. *Galletti,* 541 U.S. 114, 122 (2004); *United States* v. *Boyle*, 469 U.S. 241, 249 (1985); *Commissioner* v. *Lane-Wells Co.*, 321 U.S. 219, 223 (1944). A Form 1040 can sometimes serve that self-reporting purpose even though it is filed after the deadline. But a tax form that is filed *only after assessment by the IRS* serves no such purpose with respect to any liability that has already been assessed at the time of filing. *Moroney*, 352 F.3d at 906.

Contrary to petitioner's suggestion (Pet. 16), the IRS's approach is not an "implicit[] reject[ion]" of the *Beard* test as adopted by the majority of circuits both before and after BAPCPA. Rather, the IRS's approach is compatible with the *Beard* test in concluding that a Form 1040 that does not serve the self-assessment purpose may not be discharged under Section 523(a)(*). See Pet. App. 35a-37a (describing IRS approach); *Moroney*, 352 F.3d at 906 (applying *Beard*).

d. Petitioner contends (Pet. 4) that a tax debt is dischargeable regardless of how late the applicable return was filed under tax law, "so long as the return was filed at least two years before the bankruptcy petition was

filed." Petitioner therefore urges this Court to adopt a rule of dischargeability that neither the IRS nor any court of appeals has accepted under the current version of Section 523(a). In petitioner's view, any taxpayer could "seek the safe haven of bankruptcy by failing to file tax returns, waiting to see if the IRS assesses taxes on its own, and then submitting statements long after the IRS has been put to its costly proof." *Moroney*, 352 F.3d at 907. The taxpayer would need only to wait two years before seeking bankruptcy protection, and could then obtain a discharge of the entire tax debt, including previously assessed amounts. It is unlikely that Congress intended such a result. As to any previously assessed debts, a taxpayer's post-assessment filing does not further the self-reporting function that a tax return is intended to serve. An assessed tax debt of that nature is therefore naturally viewed as one "with respect to which a return * * * was not filed." 11 U.S.C. 523(a)(1)(B)(i).

2. Contrary to petitioner's assertions (*e.g.*, Pet. 12-13, 21), there is no conflict among the circuits as to whether a tax filing made years after assessment of a tax qualifies as a "return" as defined in Section 523(a)(*). As set forth above, three circuits have held that a late filing never qualifies as a "return" because filing deadlines are "applicable filing requirements." See *Fahey*, 779 F.3d at 5; *Mallo*, 774 F.3d at 1321; *McCoy*, 666 F.3d at 931-932. Three circuits have held more narrowly that a post-assessment filing did not qualify as a "return" under the *Beard* test—often without deciding whether filing deadlines are "applicable filing requirements," and thus without resolving whether a late filing would invariably be disqualified on lateness grounds alone. See *Smith* v. *United States IRS (In re Smith)*, 828 F.3d 1094, 1096-1097 (9th Cir. 2016), cert.

denied, 580 U.S. 1114 (2017); *Justice*, 817 F.3d at 746; *Giacchi*, 856 F.3d at 247-248; see also *Kriss*, 53 F.4th at 728-729 (noting the identical outcome under either the one-day-late rule or the *Beard* test). But every circuit to have addressed the question since Section 523(a)(*) took effect has reached the same result as the court below on these facts: All agree that a Form 1040 filed years after the IRS assessed the tax debt is not a "return" as defined by Section 523(a)(*), and thus cannot lead to a discharge.

Petitioner contends (Pet. 14) that those decisions are at odds with *Colsen* v. *United States (In re Colsen)*, 446 F.3d 836 (8th Cir. 2006). In *Colsen*, the Eighth Circuit read *Beard* to mean that a Form 1040 could qualify as a "return," even if the taxpayer filed it after assessment, so long as the return "contained data that allowed the IRS to calculate [a] tax obligation more accurately." *Id.* at 840-841. The post-assessment filing in *Colsen* resulted in a partial abatement of liability, but the court held that the entire debt was dischargeable. *Ibid.* No other circuit has agreed with that position.

Nevertheless, the different outcome in *Colsen* does not establish a circuit conflict on the question presented here, because *Colsen* was decided under pre-BAPCPA law.[3] The Eighth Circuit in *Colsen* declined to apply the recently enacted definition of "return" in Section

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[3] *Colsen* created a circuit conflict under the pre-BAPCPA version of the statute, with the other circuits applying *Beard* to hold that a post-assessment filing does not qualify as a "return." See *In re Payne*, 431 F.3d 1055, 1057-1059 (7th Cir. 2005); *Moroney*, 352 F.3d at 905-907; *United States* v. *Hatton (In re Hatton)*, 220 F.3d 1057, 1060-1061 (9th Cir. 2000); *United States* v. *Hindenlang (In re Hindenlang)*, 164 F.3d 1029, 1034-1035 (6th Cir.), cert. denied, 528 U.S. 810 (1999). But that conflict has no prospective importance and is not presented here because the amended statute is applicable.

523(a)(*) because the bankruptcy petition in that case "was filed before the Act's effective date." 446 F.3d at 839; see *Fahey*, 779 F.3d at 10 (distinguishing *Colsen* on this basis); *Mallo*, 774 F.3d at 1320 (same); *McCoy*, 666 F.3d at 930 (same). Under the current statutory language, *Colsen*'s interpretation of the *Beard* test is no longer sufficient to conclude that a post-assessment filing leads to a discharge: "In addition to meeting the requirements of applicable nonbankruptcy law, to qualify as returns under § 523(a), tax forms [now] must comply with applicable filing requirements." *Mallo*, 774 F.3d at 1320. The Eighth Circuit has not addressed whether a post-assessment filing satisfies "applicable filing requirements." Accordingly, it remains an open question in that circuit whether a Form 1040 filed after assessment qualifies as a "return" under Section 523(a)(*).[4]

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[4] Contrary to petitioner's assertion (Pet. 18-19), the United States' agreement in a single bankruptcy petition that certain tax debts were dischargeable when the debtor filed post-assessment returns was not an endorsement of *Colsen*. Nor is it a basis for concluding that *Colsen* is binding in post-BAPCPA cases in the Eighth Circuit. Indeed, in the case that petitioner cites, the bankruptcy court expressly stated that, although the issue whether a late-filed return qualifies as a "return" under Section 523(a)(*) was "not in dispute" in that case, "[t]here is no controlling post-BAPCPA Eighth Circuit law on th[e] issue." *McGrew* v. *IRS (In re McGrew)*, 559 B.R. 711, 716 (Bankr. N.D. Iowa 2016). Other bankruptcy courts within the Eighth Circuit have not applied *Colsen*'s analysis to post-BAPCPA cases. See, *e.g.*, *Kline* v. *IRS (In re Kline)*, 581 B.R. 597, 603-604 (Bankr. W.D. Ark. 2018) (holding that a state filing deadline is an "applicable filing requirement[]" under § 523(a)(*)). And the United States has taken the position that *Colsen* is not applicable in other cases as well. See, *e.g.*, Bankr. Ct. Doc. 47, at 12-26, *United States* v. *Ervin*, No. 16-ap-3128 (Bankr. D. Minn. Nov. 22, 2016); see also Bankr. Ct. Doc. 86, at 1-2, *Ervin*, *supra* (16-ap-3128) (granting

To the extent that petitioner suggests (Pet. 9, 14, 15) that Judge Easterbrook has endorsed petitioner's interpretation, that is incorrect. Although Judge Easterbrook agreed with what later became the *Colsen* interpretation of the pre-BAPCPA version of Section 523(a), he expressly noted that "[a]fter the 2005 legislation, an untimely return can not lead to a discharge." *In re Payne*, 431 F.3d 1055, 1060 (7th Cir. 2005) (Easterbrook, J., dissenting). The Eighth Circuit found "Judge Easterbrook's arguments persuasive" in *Colsen*, 446 F.3d at 840, and did not suggest that it would disagree with his reading of the post-BAPCPA version of the statute. Thus, at a minimum, this Court should not grant certiorari on the question presented here before the Eighth Circuit has the opportunity to revisit its pre-BAPCPA precedent in light of the intervening amendments.

3. The fact that the circuit courts have adopted somewhat different approaches when interpreting Section 523(a)(*) provides no basis for further review in this case. As explained above, the judgment below is correct under either approach adopted by the courts of appeals, as well as under the IRS's approach. Because neither the agency nor any court of appeals has adopted petitioner's interpretation of the current version of Section 523(a), further review is not warranted. Though commentators have been noticing differences in the lower courts' approaches for more than a decade, see Pet. 19-20, this Court has repeatedly denied petitions presenting the identical question, see *Justice*, *supra* (No. 16-786), *Smith*, *supra* (No. 16-497), and *Mallo*, *supra* (No.

United States' partial motion for summary judgment and holding that debts with post-assessment returns are excepted from discharge under Section 523(a)(1)(B)).

14-1072), as well as a petition presenting the same question in the context of a post-assessment state-income-tax filing, *McCoy*, *supra* (No. 11-1469). There has been no meaningful change that would warrant a different result here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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