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Taxation - Internal Revenue Code - Waiver of Sovereign Immunity

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TAXATION—INTERNAL REVENUE CODE—WAIVER OF SOVEREIGN IMMUNITY—The United States Supreme Court held that a non-taxpayer has standing to bring a tax refund action under the Internal Revenue Code and that the term "taxpayer" in the Internal Revenue Code is not limited to the party assessed a tax.

United States v. Williams, 115 S. Ct. 1611 (1995).

Lori Williams ("Williams") and her husband Jerrold Rabin ("Rabin") jointly owned their home.[1] Rabin incurred federal employment tax liabilities which he failed to satisfy.[2] As a result, in June of 1987 and March of 1988, the federal government placed a lien of nearly $15,000 on Rabin's property, including his interest in the jointly owned home.[3] After the lien was in place, Rabin and Williams divided their marital property prior to a divorce.[4] On October 25, 1988, Rabin, by quitclaim deed, conveyed his interest in the jointly owned house to Williams.[5] Williams had no notice of the tax lien at this time because the Government did not file the lien against the home until November 10, 1988.[6]

In the following months, the Government made additional assessments exceeding $26,000 on Rabin's property, and filed

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1. United States v. Williams, 115 S. Ct. 1611, 1614 (1995).

2. *Williams*, 115 S. Ct. at 1614.

3. *Id.* at 1614-15. The lien was authorized by the Internal Revenue Code, which provides:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

I.R.C. § 6321 (1988). The Government did not allege that Williams was personally liable for any of the assessments. *Williams*, 115 S. Ct. at 1615.

4. *Williams*, 115 S. Ct. at 1615.

5. *Id.* As consideration for the house, Williams assumed three liabilities for Rabin, none of which were tax liabilities, totaling almost $650,000. *Id.* A quitclaim deed is defined as "a deed of conveyance operating by way of release; that is, intended to pass any title, interest, or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title." BLACK'S LAW DICTIONARY 1251 (6th ed. 1990).

6. *Williams*, 115 S. Ct. at 1615.

the assessments on June 22, 1989.[7] On May 9, 1989, Williams entered into a contract to sell the house and set a closing date of July 3, 1989.[8] The Government gave actual notice of over $41,000 in tax liens to Williams and the purchaser one week before the closing.[9] The purchaser threatened to sue Williams if the sale did not take place.[10] Believing that she had no alternative, Williams authorized payment, under protest, of $41,937 from the proceeds of the sale to the Internal Revenue Service, so that marketable title could be conveyed at closing.[11]

Williams filed a claim for an administrative refund, which was denied by the Government.[12] Williams subsequently filed suit in the United States District Court for the Central District of California, claiming that the property was taken free of the Government's liens.[13] Williams pursued the tax refund action under 28 U.S.C. § 1346(a)(1), which acts as a waiver of governmental sovereign immunity from suit by authorizing federal courts to adjudicate any civil action against the United States to recover any tax erroneously or illegally assessed or collected.[14]

The Government contended that Williams' plea could not be heard because she lacked standing to seek a refund under § 1346(a)(1).[15] The Government argued that this provision authorizes actions only by those assessed a tax, not merely those who pay a tax.[16] The district court, relying on reasoning established in the Fifth and Seventh Circuits, accepted the

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7. *Id.* The additional assessments were also for federal employment taxes which Rabin failed to pay. *Id.*

8. *Id.*

9. *Id.* The Government claimed that the tax liens were valid against the property or proceeds from its sale. *Id.*

10. *Id.*

11. *Williams,* 115 S. Ct. at 1615. No alternatives were suggested by the Government. *Id.*

12. *Id.*

13. *Id. See* I.R.C. § 6323(a) (Supp. V 1993), which provides in pertinent part that: "[T]he lien imposed . . . shall not be valid . . . until notice thereof . . . has been filed." *Id.*

14. *Williams,* 115 S. Ct. at 1615. 28 U.S.C. § 1346(a)(1) provides:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:
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> (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

28 U.S.C. § 1346(a)(1) (1988 & Supp. V 1993).

15. *Williams,* 115 S. Ct. at 1615.

16. *Id.*

Government's jurisdictional argument and dismissed the case.[17] Williams appealed and the United States Court of Appeals for the Ninth Circuit, following the Fourth Circuit opinion in *Martin v. United States*,[18] reversed the district court.[19] To resolve a conflict among the courts of appeals, the Supreme Court granted certiorari.[20]

Justice Ginsburg, writing for the majority, stated that the issue before the Court was whether a non-assessed party that paid a tax under protest in order to remove a federal lien from property has standing to bring a tax refund action.[21] The Court asserted that § 1346(a)(1) does not state that only the party assessed a tax may sue.[22] The Court held that § 1346(a)(1) uses broad language and does not limit the term "taxpayer" to only those parties assessed a tax.[23]

The Government relied on the interaction of three provisions of the Internal Revenue Code (the "I.R.C.") to limit the waiver of sovereign immunity and indicated that because of the provisions, Williams lacked standing to bring an action.[24] The first statute provides that a party may not bring a refund action without first exhausting administrative remedies.[25] The

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17. *Id. See* Snodgrass v. United States, 834 F.2d 537, 540 (5th Cir. 1987); Busse v. United States, 547 F.2d 421, 425 (7th Cir. 1976). *See infra* notes 101-05 and accompanying text for a discussion of *Snodgrass*. *See infra* notes 95-100 and accompanying text for a discussion of *Busse*.

18. 895 F.2d 992 (4th Cir. 1990). *See infra* notes 111-15 and accompanying text for a discussion of *Martin*.

19. Williams v. United States, 24 F.3d 1143, 1145 (9th Cir. 1994), *aff'd*, 115 S. Ct. 1611 (1995).

20. *Williams*, 115 S. Ct. at 1615.

21. *Id.* Justice Ginsburg was joined by Justices Stevens, O'Connor, Scalia, Souter and Breyer. *Id.* at 1614. Justice Scalia wrote a concurring opinion. *Id.* at 1620 (Scalia, J., concurring). Chief Justice Rehnquist wrote a dissenting opinion in which he was joined by Justices Kennedy and Thomas. *Id.* at 1620 (Rehnquist, C.J., dissenting).

22. *Id.* at 1617.

23. *Id.* at 1616. The Court explained that the language of § 1346(a)(1) is similar to the common law remedy of assumpsit. *Id.* Assumpsit affords a remedy to persons who, like Williams, paid money not owed as a result of fraud, duress or mistake. *Id.*

24. *Id.*

25. *Williams*, 115 S. Ct. at 1615. Section 7422(a) of the Internal Revenue Code provides in pertinent part:

> No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

I.R.C. § 7422(a) (1988).

majority found that Williams exhausted her remedies by filing an administrative claim, which was denied.[26] The second statute cited by the Government imposes a statute of limitations upon a taxpayer filing a claim for credit or refund.[27] The Government contended that because the section uses the term "taxpayer," only a taxpayer may file for administrative relief under § 7422(a) and subsequently file a refund action under 28 U.S.C. § 1346(a)(1).[28] The Court stated that the plain terms of the statute provide only a deadline for filing, not a limit on who may file.[29] The Court also noted that there are other provisions of the I.R.C. which define "taxpayer" broadly, such as I.R.C. § 6402(a), which defines "taxpayer" as "the person who made the overpayment," and I.R.C. §§ 6410(a) and 6419(a), both of which describe the recipient of a refund or credit in the case of an overpayment as "the person who paid the tax."[30]

By using the third provision the Government attempted to show that Williams was not a taxpayer.[31] Section 7701(a)(14) defines a taxpayer as "any person subject to any internal revenue tax."[32] The Court reasoned that the term "subject to" was broad enough to include Williams.[33] Justice Ginsburg further added that Congress did not intend actions under § 1346(a)(1) to be unavailable to individuals in Williams' position.[34]

The Government offered two other options under which Williams could have been granted relief.[35] The first option was a quiet title action under 28 U.S.C. § 2410(a)(1).[36] The Court

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26. *Williams*, 115 S. Ct. at 1616.

27. *Id.* Section 6511(a) provides:

> Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

I.R.C. § 6511(a) (1988).

28. *Williams*, 115 S. Ct. at 1616-17.

29. *Id.* at 1617. The Court explained that the statute of limitations of § 6511(a) narrows the waiver of sovereign immunity by penalizing those who do not file a claim in a timely manner. *Id.*

30. *Id.* at 1617. *See* I.R.C. §§ 6402(a), 6410(a), 6419(a) (1988).

31. *Williams*, 115 S. Ct. at 1617.

32. I.R.C. § 7701(a)(14) (1988). The Government contended that a party who pays a tax is not subject to the tax unless the party is the one assessed. *Williams*, 115 S. Ct. at 1617.

33. *Williams*, 115 S. Ct. at 1617.

34. *Id.* at 1618.

35. *Id.* at 1619.

36. *Id. See* 28 U.S.C. § 2410(a)(1) (1988). A quiet title action is defined as a

concluded that a quiet title action would have offered Williams no relief because it would have taken months to clear the title and would not have concluded until long after the closing date.[37]

The second alternative form of relief posited by the Government was I.R.C. § 6325(b)(3), which allows the Government to discharge a lien on property if the property owner sets aside a fund that becomes subject to a new lien.[38] The Court found that this was not a plausible option for Williams because there was no incentive for the Government to offer such an arrangement to her.[39] The Court stated that the two alternatives are predeprivation relief and therefore were not appropriate to Williams' situation, whereas § 1346(a)(1) is a post-deprivation remedy.[40]

The Court acknowledged that parties generally cannot challenge the tax liabilities of others, but noted that Williams was not challenging the underlying assessment on her husband, but rather the tax lien on her property.[41] The Court found none of the Government's arguments persuasive, and affirmed the judgement of the court of appeals, holding that Williams had standing to bring a refund action.[42]

Justice Scalia wrote a concurring opinion, in which he joined the opinion of the Court, except insofar as the Court held that Williams was a "taxpayer."[43] Justice Scalia found this to be unnecessary because under 28 U.S.C. § 1346(a)(1), Williams had standing to bring a refund action regardless of her status as a

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"proceeding to establish the plaintiff's title to land by bringing into court an adverse claimant and there compelling him either to establish his claim or be forever estopped from asserting it." BLACK'S LAW DICTIONARY 1249 (6th ed. 1990).

37. *Williams*, 115 S. Ct. at 1618.

38. *Id.* at 1618. I.R.C. § 6325(b)(3) provides in pertinent part:

> [T]he Secretary may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary, the proceeds of such sale are to be held, as a fund subject to the liens and claim of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

I.R.C. § 6325(b)(3) (1988). A discharge of a lien is defined as: "To release; liberate; annul; unburden . . . . To extinguish an obligation (*e.g.* a person's liability on an instrument) . . . ." BLACK'S LAW DICTIONARY 463 (6th ed. 1990).

39. *Williams*, 115 S. Ct. at 1619.

40. *Id.* Because Williams had already paid the tax and had been deprived of money, the Court determined that predeprivation forms of relief were inadequate. *Id.*

41. *Id.* Williams challenged her husband's assessment in the district court, but at oral argument in the Supreme Court Williams' counsel retreated from this argument. *Id.* at 1619 n.10.

42. *Id.* at 1620.

43. *Id.* (Scalia, J., concurring).

taxpayer.[44]

Chief Justice Rehnquist, joined by Justices Kennedy and Thomas, filed a dissenting opinion which concluded that Williams did not have standing to bring a tax refund action.[45] Chief Justice Rehnquist asserted that the rules clearly state that only a taxpayer may bring a refund action.[46] The dissent reasoned that § 1346(a)(1) must be read in conformity with the other provisions of the Internal Revenue Code which qualify a party's right to bring a refund suit.[47] The majority held, the Chief Justice noted, that limiting administrative relief to only taxpayers is inconsistent with the other provisions of the refund scheme.[48] Chief Justice Rehnquist stated that inconsistency, if it exists, equals ambiguity.[49] Since a waiver of sovereign immunity must be unequivocally expressed by the United States in order to be sued by an individual, Chief Justice Rehnquist noted that any ambiguity is construed in favor of sovereign immunity.[50]

The majority stated that Williams was contesting the lien on the property, not the underlying assessment,[51] but the dissent reasoned that Williams was subject to a tax lien, which did not mean that she was subject to an internal revenue tax.[52] Chief Justice Rehnquist concluded that § 1346(a)(1) requires that a

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44. *Williams*, 115 S. Ct. at 1620. Justice Scalia found that the Government's reliance on the interaction of I.R.C §§ 7422, 6511, and 7701(a)(14) did not deny Williams standing to bring a tax refund action. *Id.* Particularly, Justice Scalia found § 6511(a) to be an administrative provision that could not significantly limit the jurisdiction of § 1346(a)(1), which was the jurisdictional provision at issue. *Id.*

45. *Id.* (Rehnquist, C.J., dissenting).

46. *Id.* at 1621. Chief Justice Rehnquist stated that:

> [R]eading these provisions as a whole, the conclusion is inescapable that only a taxpayer (I.R.C. § 7701(a)(14)) who has filed a timely claim for a refund (under I.R.C. § 6511(a)) and a timely suit for refund (under I.R.C. § 6352(a)) is authorized to maintain a suit for refund in any court (I.R.C. § 7422(a)) for an erroneously or illegally assessed or collected tax (28 U.S.C. § 1346(a)(1)).

Id.

47. *Id. See* United States v. Dalm, 494 U.S. 596 (1990). In *Dalm*, the Court held that the district court lacked jurisdiction over Dalm's refund suit. *Dalm*, 494 U.S. at 601. In order for the district court to have jurisdiction over the suit, the Court held that Dalm was required to file a claim for a tax refund within three years from the time the tax return was filed or within two years from the time the tax was paid. *Id.* at 609. *See* I.R.C. §§ 6511(a), 7422(a) (1988). *See supra* notes 25 and 27 for the pertinent text of §§ 7422(a) and 6511(a). Since Dalm failed to meet the statutory guidelines, the Court refused to extend jurisdiction. *Dalm*, 494 U.S. at 608-09.

48. *Williams*, 115 S. Ct. at 1617.

49. *Id.* at 1621.

50. *Id.*

51. *Id.* at 1619.

52. *Id.* at 1622.

person be subject to an internal revenue tax in order to file a claim for a refund.[53] The dissent also found that other alternative forms of relief presented by the Government were viable options for Williams.[54]

The judicial development of standing for a party to bring a refund action against the United States has its roots in the common law action of assumpsit.[55] Assumpsit is an action to recover money paid under fraud, duress or mistake.[56] Under the common law rule of assumpsit, a party subject to fraud, duress or mistaken payment has standing to bring a refund action against a tax collector.[57] This principle was incorporated into the Internal Revenue Code of 1878.[58] Section 1724(a) of the Internal Revenue Code of 1878 was the model for § 1346(a)(1) of Title 28, which created original jurisdiction for district courts in refund actions against the United States.[59] Section 1346(a)(1) was enacted in 1921.[60] Section 1346(a)(1) grants standing to a party to bring a refund action against the United States for an erroneously or wrongly collected tax.[61]

The issue in many refund cases subsequent to the enactment of § 1346(a)(1) has been who actually qualifies as a taxpayer under the statute.[62] In *United States v. Updike*,[63] the United States Supreme Court reasoned that the term "taxpayer" should

53. *Williams*, 115 S. Ct. at 1622.

54. *Id.* at 1622. Williams never sought to invoke the alternative remedies, and the district court opined that many cases have held that a person may not claim that an administrative remedy is inadequate if they have never sought to invoke the remedy. *Id.*

55. *Id.* at 1616.

56. *Id.* Assumpsit refund actions were not available to volunteers. *Id. See* City of Philadelphia v. Diehl, 72 U.S. (5 Wall.) 614 (1867).

57. *Williams*, 115 S. Ct. at 1616.

58. I.R.C. § 1724(a) (repealed).

59. *See* 28 U.S.C. § 1346(a)(1) (1988 & Supp. V 1993).

60. *Id.*

61. *Id.*

62. As was defined in United States v. Dalm, 494 U.S. 596 (1990), and followed by the dissent in *Williams*, other applicable statutes must be read in conformity with § 1346(a)(1) to determine who qualifies as a "taxpayer." *Dalm*, 494 U.S. at 601. The other applicable statutes are: I.R.C. §§ 7701(a)(14) (taxpayer definition statute), 6511(a) (claim for refund statute of limitations statute), 6352(a) (refund suit statute of limitations statute) and 7422(a) (cause of action statute). *Williams*, 115 S. Ct. at 1622.

63. 281 U.S. 489 (1930).

include individuals who were subject to a tax.[64] In *Updike*, the Updike Grain Company dissolved and its assets were distributed to its shareholders after satisfaction of its debt.[65] The Revenue Act of October 3, 1917 increased the rate of taxation for that year.[66] The Commissioner of the Internal Revenue Service issued a regulation providing that all corporations dissolved in 1917 should file amended tax returns reflecting the increased rate.[67] The Court found that the shareholders of Updike were taxpayers because they were subject to the tax.[68] The Court noted that as transferees of the corporation, the shareholders were entitled to the same rights as the corporation.[69] Since the statute of limitations had run against the corporation, it had in turn run against the shareholders, and thus the Court dismissed the suit.[70]

Although there is extensive authority that denies a non-taxpayer the right to sue under § 1346(a), there are numerous cases which have allowed such actions. In *White v. Hopkins*,[71] the appellant paid taxes under protest because of a threat of enforcement of a writ of distraint against the appellant's property.[72] The Fifth Circuit reasoned that the right of recovery of the taxes was a fundamental common law right that could not be abridged by a statute.[73] The court suggested that it cannot be assumed that the United States would deny redress to someone in the appellant's position.[74] The court also stated that

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64. *Updike*, 281 U.S. at 490. In *Updike* the Supreme Court stated:

> [I]ndeed, when used to connote payment of tax, it puts no undue strain upon the word "taxpayer" to bring within its meaning that person whose property, being impressed with a trust to that end, is subjected to the burden. Certainly it would be hard to convince such a person that he had not paid a tax.

Id.

65. *Id.*

66. *Id.*

67. *Id.* A revenue agent completed an amended return for the Updike Grain Company in October of 1918, upon which additional taxes were due. *Id.* at 491.

68. *Id.* at 494. Suit to recover the amount was brought against the shareholders in 1927, more than seven years after the assessment. *Id.*

69. *Updike*, 281 U.S. at 494.

70. *Id.*

71. 51 F.2d 159 (5th Cir. 1931).

72. *White*, 51 F.2d at 160. Distraint is defined as:

> Seizure; the act of distraining or making a distress. The inchoate right and interest which a landlord has in the property of a tenant located on the demised premises. Upon tenant's default, a landlord may in some jurisdictions distrain upon the tenant's property, generally by changing the locks and giving notice, and the landlord will then have a lien upon the goods.

BLACK'S LAW DICTIONARY 474 (6th ed. 1990).

73. *White*, 51 F.2d at 161.

74. *Id.* at 163.

the term "taxpayer" as used in the I.R.C. cannot exclude the general and commonly understood meaning of that term.[75] The appellant in *White* was treated as the taxpayer, was subject to the tax in question and therefore, the court held, came within the meaning and intent of the definition of the term "taxpayer."[76]

In *Parsons v. Anglim*,[77] Parsons, a widow, paid her taxes as a joint tenant with right of survivorship.[78] The Government took the position that Parsons was the taxpayer.[79] After paying the taxes, Parsons filed a claim for a tax refund of the taxes paid in a district court, which was denied.[80] Parsons appealed and the Ninth Circuit Court of Appeals reversed the district court.[81] The court noted that the distinction in *Parsons* was that at the time the taxes were paid, both Parsons and the Government considered her to be the taxpayer.[82] Parsons paid the taxes voluntarily and was thereafter denied relief.[83] The court held that suits for wrongfully collected taxes may be maintained without duress and the demand of the Commissioner.[84]

There is significant authority that holds that a non-taxpayer does not have the right to bring a refund action under § 1346(a)(1) of 28 U.S.C. In *Stuart v. Chinese Chamber of Commerce*,[85] the Chinese Chamber of Commerce (the "Chamber") brought suit against the Internal Revenue Service to recover money allegedly belonging to it which had been seized by the Collector of Internal Revenue.[86] The Ninth Circuit Court

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75. *Id.*

76. *Id.* The court concluded that "[a]ny other conclusion would work injustice and deprive appellant of his common-law right of recovery." *Id.*

77. 143 F.2d 534 (9th Cir. 1944).

78. *Parsons*, 143 F.2d at 535. The right of survivorship is defined as "[t]he right of a survivor of a deceased person to the property of said deceased. A distinguishing characteristic of a joint tenancy relationship, upon the death of any joint tenant, the deceased tenants interests pass, not to the tenants lawfully designated beneficiaries, but to surviving joint tenants." BLACK'S LAW DICTIONARY 1326 (6th ed. 1990).

79. *Parsons*, 143 F.2d at 536.

80. *Id.*

81. *Id.* at 537.

82. *Id.* at 536.

83. *Id.*

84. *Parsons*, 143 F.2d at 536.

85. 168 F.2d 709 (9th Cir. 1948).

86. *Stuart*, 168 F.2d at 710. Ung Too Thet ("Thet") was arrested in October of 1945 by agents of the Narcotics Bureau. *Id.* During a search of Thet's premises the agents found a safe containing $32,000. *Id.* The Collector of Internal Revenue applied the money seized by the agents against Thet's unpaid income taxes which totaled $25,893. *Id.* The Chamber claimed that Thet had no interest in the money other than safe-keeping thereof. *Id.*

of Appeals held that the Chamber could not seek a refund as could a taxpayer, but rather, needed to bring suit to recover possession of property which it claimed it owned.[87]

In *First National Bank of Emlenton v. United States*,[88] the First National Bank of Emlenton (the "Bank") brought suit to have a money judgment enforced against the Government.[89] The Bank's action was rejected because the court found that § 1346(a)(1) only authorized "taxpayers" to sue to recover back taxes which were wrongfully paid.[90]

In *Phillips v. United States*[91] the court examined the statutory construction of § 1346(a)(1) as it related to the waiver of sovereign immunity, and although the court stated that the language of § 1346(a)(1) could be interpreted broadly, the court found that judicial interpretation of a waiver of sovereign immunity does not include generosity or broad interpretation.[92] The *Phillips* court concluded that the waiver of sovereign immunity from § 1346(a)(1) should not be extended to suits by non-taxpayers.[93] This narrow interpretation of the waiver of sovereign immunity from *Phillips* has been followed in numerous cases to deny tax refund actions by non-taxpayers.[94]

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87. *Id.* at 712.

88. 265 F.2d 297 (3d Cir. 1959).

89. *First Nat'l Bank*, 265 F.2d at 298. The Bank argued that the District Director of the Internal Revenue Service seized and sold equipment of the Barrett Machine Tool Corporation for back taxes, upon which the Bank held a valid chattel mortgage. *Id.* at 299. Therefore, the Bank argued, the District Director, knowing of the Bank's mortgage, should have given the Bank the net proceeds of the sale of the equipment, after the tax liens were satisfied. *Id.* The Director did not and the Bank claimed that the United States owed it $7,000. *Id.*

90. *Id.* at 299-300.

91. 346 F.2d 999 (2d Cir. 1965). The Second Circuit, in following *Stuart* and *First Nat'l Bank*, found that § 1346(a)(1) is not available to a plaintiff who did not bring suit as a taxpayer. *Phillips*, 346 F.2d at 1000. In *Phillips* the Internal Revenue Service collected, pursuant to a notice of levy, $680.94 from the New Rochelle Thermatool Corporation. *Id.* at 999. The levy was made on the assumption that Thermatool owed this sum to Ray Johnson. *Id.* Phillips alleged that the money was owed to him and not Johnson, and that he was entitled to its return. *Id.*

92. *Id. See also* Hammond-Knowlton v. United States, 121 F.2d 192 (2d Cir. 1938), *cert. denied*, 314 U.S. 694 (1941). *Hammond* was an appeal from a judgment of the district court holding that Isabelle Hammond-Knowlton, as administratrix of the estate of Charles C. Knowlton, was entitled to recover the overpayment of federal estate taxes. *Hammond*, 121 F.2d at 192. The appellate court reversed the district court's judgment. *Id.* at 206.

93. *Phillips*, 346 F.2d at 1000.

94. *See* Mill Factors Corp. v. United States, 391 F. Supp. 387 (S.D.N.Y. 1975). On June 2, 1970 Mill Factors Corporation ("Mill Factors") foreclosed on a lien and took possession of Vamco Incorporated's ("Vamco") property. *Mill Factors*, 391 F. Supp. at 388. The Internal Revenue Service had made assessments on Vamco for failure to withhold and deposit income, unemployment and social security taxes. *Id.* Mill Factors was notified by the I.R.S. that it was responsible for Vamco's unpaid

In *Busse v. United States*,[95] the Seventh Circuit Court of Appeals denied a refund action by a spouse who had paid taxes owed by her husband to clear title to her property.[96] The Seventh Circuit followed the reasoning in *Phillips* and construed the § 1346(a)(1) waiver of sovereign immunity narrowly.[97] The Seventh Circuit also attempted to further define the meaning of the term "taxpayer" as it related to refund actions under § 1346(a)(1).[98] Citing the Court of Claims, the court of appeals stated that a "taxpayer" under § 1346(a)(1) is strictly limited to "the taxpayer who has overpaid his own taxes."[99] Other courts have given § 1346(a)(1) a similar interpretation, holding that the section should be read merely as authorizing a taxpayer to sue for a refund of back taxes which they have wrongfully been required to pay.[100]

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taxes. *Id.* Mill Factors filed a claim for wrongful levy on October 5, 1971, which was rejected. *Id.* The court found that under § 1346(a)(1) even when a party owns or has an interest in property, which is levied upon to satisfy the tax assessments of another, the party is not the taxpayer. *Id.* at 389. *See also* Economy Plumbing & Heating Co. v. United States, 470 F.2d 585 (Ct. Cl. 1972). Economy Heating ("Economy") entered a joint venture with Lieb Brothers to construct facilities at Scott Air Force Base in Belleville, Illinois. *Economy Plumbing*, 470 F.2d at 586. The joint venture was awarded a contract of $545,000 by the Corps of Engineers to perform the work. *Id.* at 587. The Internal Revenue Service asserted tax liens against Lieb Brothers of $478,000. *Id.* Without notice to Economy, the General Accounting Office transferred that sum to the Internal Revenue Service to satisfy the tax liens against Lieb Brothers. *Id.* Economy filed a tax refund claim which was rejected. *Id. See also* Eighth St. Baptist Church Inc. v. United States, 431 F.2d 1193 (10th Cir. 1970). The Eighth Street Baptist Church (the "Church") sued to recover federal income taxes withheld by it from its employees. *Baptist Church*, 431 F.2d at 1194. The court found the Church was not the taxpayer, but instead was merely the collection agent for its taxpayer-employees. *Id.* Thus the Church did not have standing to sue. *Id.*

95. 542 F.2d 421 (7th Cir. 1976).

96. *Busse*, 542 F.2d at 425.

97. *Id.*

98. *Id.*

99. *Id.* at 424 (citing Collins v. United States, 532 F.2d 1344, 1347 n.2 (Ct. Cl. 1976)).

100. *See* Hofheinz v. United States, 511 F.2d 661, 662 (5th Cir. 1975) (citing First Nat'l Bank of Emlenton v. United States, 265 F.2d 297, 299-300 (3d Cir. 1959)). In *Hofheinz*, Roy Hofheinz was appointed the executor of Irene Hofheinz's (the "decedent") estate. *Hofheinz*, 511 F.2d at 662. The decedent's will gave two million dollars in real estate and securities to a family trust (the "Trust"). *Id.* On August 31, 1967, a portion of the decedent's stock in Houston Sports Authority was transferred to the Trust in accordance with the will. *Id.* The executor placed a $96.59 value per share on the stock. *Id.* The Internal Revenue Service audited the decedent's federal estate tax return and determined that the fair market value of the stock was $400 per share. *Id.* This discrepancy resulted in an I.R.S. assessment of a two million dollar deficiency which the executor paid out of the assets of the Trust. *Id.* The Trust brought suit for a refund. *Id.* The executor argued that the Trust, which was not the taxpayer, lacked standing to sue. *Id.* The court found in favor of the executor. *Id.*

In *Busse*, the Seventh Circuit also discussed the fact that other courts had

In *Snodgrass v. United States,*[101] the Fifth Circuit addressed the issue of whether a refund of federal taxes, penalties and interest paid by a husband with funds that belonged to his wife and their community property should have been granted.[102] Mrs. Snodgrass brought her refund action under § 1346(a)(1), seeking to recover her undivided one-half interest in the home, which was approximately $25,000.[103] The court found that § 1346(a)(1) is capable of broad interpretation, but chose to follow other courts when it decided the issue.[104] The Fifth Circuit, therefore found that the statute permits only a taxpayer who has paid a tax to seek a refund, thus adopting the "policy of narrow construction of waivers of immunity."[105]

In 1990, the Supreme Court, in *United States v. Dalm,*[106] concluded that § 1346(a)(1) could not be interpreted alone to establish if a party has standing to sue the Internal Revenue Service.[107] The Court reasoned that § 1346(a)(1) must be read

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allowed tax refund actions by non-taxpayers. These holdings contradicted *Busse*, but the Seventh Circuit reasoned that *United States v. Halton Tractor*, 258 F.2d 612, 617 (9th Cir. 1958) (holding that a party who pays a tax under compulsion rather than protest cannot be considered a volunteer and has standing to bring a refund action) and *McMahon v. United States,* 172 F. Supp. 490 (D.R.I. 1959) (holding that a non-taxpayer could bring a refund action) were attempts by courts to correct the failure of the Internal Revenue Code prior to 1966 to provide a remedy for a party whose property was harmed by a wrongful governmental levy. *Busse*, 542 F.2d at 424. The Seventh Circuit viewed these cases permitting actions by non-taxpayers against the Government as an effort by the courts to solve an inequitable situation. *Id.* This situation, the Seventh Circuit noted, was remedied by legislation in 1966, and therefore courts following *Busse* would no longer find it necessary to allow refund suits by non-taxpayers. *Id.* at 425.

101. 834 F.2d 537 (5th Cir. 1987). The *Snodgrass* court followed the decisions in Phillips v. United States, 346 F.2d 999 (2d Cir. 1965) and Busse v. United States, 542 F.2d 421 (7th Cir. 1976).

102. *Snodgrass*, 834 F.2d at 538. Mr. Snodgrass had not paid federal income and social security taxes for the Latham Exploration Company, of which he was an official. *Id.* The Internal Revenue Service filed notices of liens on Snodgrass' property, including a home which was community property of Mr. and Mrs. Snodgrass. *Id.* The Snodgrass' sold their home and in order to clear the liens from the title, gave the net proceeds of the sale, approximately $51,000 to the Internal Revenue Service. *Id.*

103. *Id.* at 539.

104. *Id.*

105. *Id.*

106. 494 U.S. 596 (1990).

107. *Dalm*, 494 U.S. at 601. In *Dalm*, the taxpayer, Francis Dalm ("Dalm"), was given payments in 1976 and 1977 as gifts. *Id.* at 599. Dalm paid the gift tax in 1976, but failed to pay gift tax on the 1977 payment. *Id.* Dalm was sued by the Internal Revenue Service for the deficiency. *Id.* The case was settled and Dalm agreed to pay the deficiency stipulated by the Internal Revenue Service. *Id.* In October of 1984, immediately after the settlement, Dalm filed a claim for a refund of the gift tax paid on the payment in 1976. *Id.* at 599-600. Dalm claimed the district court had jurisdiction under § 1346(a)(1), and the Government argued that under

in conformity with other statutory provisions which qualify a taxpayer's standing to bring a refund suit.[108] Although *Dalm* mainly concerned a claim for a tax refund that failed to meet the statute of limitations, the implications went beyond that. Following *Dalm*, in order to determine whether a party has standing to bring a refund action, all appropriate statutes must be considered rather than relying on § 1346(a)(1) alone.[110]

In *Martin v. United States*,[111] the Fourth Circuit digressed from the broad view taken by other courts that allow non-taxpayer refund actions.[112] According to the court in *Martin*, the answer to the question of who has standing to bring a refund action lies in the plain meaning of the statute.[113] The Fourth Circuit pointed out that although the statute does not enumerate who can sue, its language may be interpreted to say that a person erroneously assessed a tax or a person from whom a tax was erroneously collected has standing to sue.[114] The Fourth Circuit held that § 1346(a)(1) allows a party who erroneously or wrongfully paid taxes to sue for a refund of those taxes.[115]

To analyze the Supreme Court's holding in *Williams*, it is necessary to understand the relief requested and the limited scope of the Court's holding. Williams claimed that the tax she paid was erroneously collected.[116] Williams paid the tax under protest and then brought an action for a refund.[117] The Court

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§ 6511(a), Dalm had to file a claim for refund of the gift tax paid by December 1979. *Id.* Since Dalm failed to meet the statutory deadline of § 6511(a), which the Court said must be coupled with § 1346(a)(1), the Court held that the district court lacked jurisdiction. *Id.*

108. *Id.* at 601. According to the Court, the statutes that must also be considered in conjunction with § 1346(a)(1) are 26 U.S.C. §§ 6511(a) and 7422(a). *Id.* at 601-02. *See supra* notes 27 and 25 respectively for the pertinent text of §§ 6511(a) and 7422(a).

110. *See Dalm*, 494 U.S. at 601.

111. 895 F.2d 992 (4th Cir. 1990).

112. *Martin*, 895 F.2d at 994. Mona Martin ("Martin") divorced her husband, Jerry Brodsky ("Brodsky"), in 1979. *Id.* at 992. As part of the divorce settlement, Brodsky deeded his interest in their home to Martin. *Id.* Prior to the divorce, the Internal Revenue Service filed notice of a federal tax lien against the home of $20,225 for taxes owed by Brodsky related to his business. *Id.* Martin sold the house to the Jennings on October 30, 1984. *Id.* At closing, Martin's attorney, Seganish, withheld from the sale proceeds $21,600. *Id.* Without notice to Martin, and after unsuccessful attempts to have the lien cleared, Seganish paid $18,822 to the Internal Revenue Service in order to deliver clear title to the Jennings. *Id.* at 993. When Martin heard of the payment, she brought a refund action for the amount paid. *Id.*

113. *Id.* at 994.

114. *Id.*

115. *Id.*

116. *Williams*, 115 S. Ct. at 1615.

117. *Id.*

held that Williams had standing to bring a refund action and thus affirmed the decision of the Ninth Circuit Court of Appeals.[118]

The Supreme Court did not decide the circumstances under which a party who volunteers to pay a tax assessed against another may seek a refund under § 1346(a)(1).[119] The Government feared that volunteering to pay another's tax, as a result of the Court's holding, would become abusive.[120] The Court rejected this scenario, finding little incentive for a volunteer to pay another's taxes, as a way to evade them.[121] Also, the Government did not provide evidence that such schemes were commonplace in the Fourth and Ninth Circuits, both of which permit individuals in Williams' position to bring refund suits.[122] Thus, the Court's holding is limited to individuals who, though not assessed a tax, pay the tax because no other alternative forms of relief are at their disposal.

In allowing Williams' refund action, the Court reasoned that she was a taxpayer.[123] Williams paid the tax and was therefore subject to it.[124] As the Court stated previously in *Updike,* it would be hard to convince a person, such as Williams, that they had not paid a tax.[125] Many of the provisions of the Internal Revenue Code identify the taxpayer as the one who paid the tax or who was subject to it.[126] By finding that Williams was subject to a tax, the Court reasoned that she fell squarely within the definition and meaning of the term "taxpayer" as used in the Internal Revenue Code.[127] The Court looked to the plain meaning of § 1346(a)(1) and found implicit in the statute's language that one from whom a tax has been erroneously assessed or collected has standing to sue.[128] There can be little doubt that Williams was erroneously required to pay a tax, was subject to that tax and therefore had standing to bring her refund action.

The holding in *Williams* has already been extended to an

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118. *Id.*
119. *Id.* at 1620.
120. *Id.*
121. *Williams,* 115 S. Ct. at 1620.
122. *Id.*
123. *Id.*
124. *Id.* at 1617. Section 7701(a)(14) of the Internal Revenue Code defines a taxpayer as "any person subject to any internal revenue tax." I.R.C. § 7701(a)(14) (1988).
125. *Updike,* 281 U.S. at 494.
126. *Williams,* 115 S. Ct. at 1617.
127. *Id.*
128. *Id.*

action against the Internal Revenue Service for a wrongful levy.[129] The application of the holding in *Williams* to a wrongful levy action does not mean that widespread application to a variety of actions will be common. Instead, the rule developed in *Williams* develops a common sense approach to tax law. Williams' only meaningful option for redress was a tax refund action. Common sense indicates that she should be allowed to pursue that action.

The significant language to be interpreted from the holding in *Williams* is the meaning of "subject to" in the Internal Revenue Code. The Court found that if an individual has paid a tax, they are "subject to" that tax and are thus a "taxpayer" under the Internal Revenue Code.[130] This view is a departure from previous decisions in this area, where in the past only a party assessed could bring a refund action. As a result, the Internal Revenue Service will need to change its regulations when dealing with tax refund actions by non-assessed taxpayers.

Now and in the future, a spouse who pays the taxes of the other spouse, a corporation that pays the taxes of its debtor to avoid further loss or a beneficiary of a will where the decedent had tax liabilities, will all have standing to sue the federal government for tax refunds under § 1346(a)(1). It should be pointed out that none of these tax payments can be made voluntarily as a donation for the party who owed the tax. The party seeking standing under § 1346(a)(1) must be compelled to bring a refund action. While the holding of *Williams* represents a change for future tax litigation, other remedies which were inadequate in *Williams* may still be appropriate in other situations.

In *Williams,* the Supreme Court was faced with a situation where a party, through no fault of her own, was required to pay a tax the party did not owe and for which there was no remedy.

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129. *See* WWSM Investors v. United States, 64 F.3d 456 (9th Cir. 1995). In *WWSM*, the Internal Revenue Service levied on the bank account of Advanced Plastic Engineering Corporation, a WWSM investor, seizing the funds to satisfy the tax liabilities of the corporation. *WWSM*, 64 F.3d at 457. WWSM had lent money to Advanced Plastics for payroll taxes owed and when Advanced Plastics defaulted, WWSM foreclosed on a security agreement and seized Advanced Plastic's assets. *Id.* The Internal Revenue Service denied WWSM's request for a return of the levied funds, and thus WWSM filed suit. *Id.* The district court found that WWSM's only remedy was for a wrongful levy under I.R.C. § 7426, under which the statute of limitations had run. *Id.* at 458. The Ninth Circuit reversed, relying on the Supreme Court's decision in *Williams*. *Id.* The court of appeals explained that, under *Williams*, a third party such as WWSM had standing to sue the Government under § 1346(a)(1) to recover the taxes paid for another. *Id.* at 459.

130. *Williams*, 115 S. Ct. at 1618.

The Government's fear that allowing Williams to recover would open the flood gates to this type of litigation is unfounded. There is no incentive for a volunteer to pay another's taxes. In the end, although Williams was not the assessed party, she was the taxpayer. Williams paid a tax that she did not owe, and the Court correctly allowed her to obtain a refund in accordance with the applicable statutes. Congress could not have intended for one who wrongly paid a tax or had a tax erroneously collected from them to be left with no redress.

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