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## Unlikely Pair: Equitable Construction and the IRC—Supreme Court Construes the IRC to Permit Third Party Standing to Challenge the Tax Collection Activities of the IRS, An

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## Notes

# An Unlikely Pair: Equitable Construction and the IRC—Supreme Court Construes the IRC to Permit Third Party Standing to Challenge the Tax Collection Activities of the IRS

*United States v. Williams*<sup>1</sup>

### I. INTRODUCTION

To bring suit against the Internal Revenue Service [hereinafter "Service"] a taxpayer must first cite an act of Congress which waives the Service's protection from lawsuits under the doctrine of sovereign immunity. 28 U.S.C. § 1346(a)(1) permits an individual to bring an action in the district courts for recovery of taxes alleged to have been wrongfully collected by the federal government.<sup>2</sup> The scope of this section, unfortunately, is in dispute as to who has standing to challenge the collection activities of the Internal Revenue Service. As a general rule, citizens cannot challenge the tax liabilities of a third party.<sup>3</sup> There are exceptions to this general rule, however. In *United States v. Williams* the Supreme Court, resolving a split among the circuits, crafted such an exception. It held that 28 U.S.C. § 1346(a)(1) provides standing to one who has paid the taxes of a third party in order to remove a federal tax lien from her property.<sup>4</sup>

### II. FACTS AND HOLDING

Lori Williams [hereinafter "Williams"] brought an action against the United States government for a refund of a tax that she paid under protest.<sup>5</sup> Although the IRS assessed the tax to a third party, Williams paid the tax to remove a federal tax lien on property she had entered into a contract to sell.<sup>6</sup>

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1. 115 S. Ct. 1611 (1995).

2. See *infra* note 23 and accompanying text.

3. See *infra* note 94 and accompanying text.

4. See *infra* note 19 and accompanying text.

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

6. *Id.* at 1615. In October 1988, Rabin Williams, Lori's husband, deeded his interest in their family home to Lori in anticipation of their divorce. In exchange for his interest, Lori assumed responsibility for liabilities in excess of \$650,000. In June

Williams filed suit in the Central District of California, claiming that "she had taken the property free of the Government's lien."<sup>7</sup> Williams relied upon 28 U.S.C. § 1346(a)(1) which waives the government's sovereign immunity "for the recovery of any internal revenue tax alleged to have been erroneously . . . assessed or collected."<sup>8</sup>

Before reaching the merits of the case,<sup>9</sup> the court first decided whether "§ 1346(a)(1) authorizes a refund suit by a party who, though not assessed a tax, paid the tax under protest to remove a federal tax lien from her property."<sup>10</sup> The district court, following the reasoning of the Fifth and Seventh Circuits, held that section 1346(a)(1) does not waive the Government's sovereign immunity unless the refund action is brought by the "assessed party."<sup>11</sup> The United States Court of Appeals for the Ninth Circuit, choosing to follow Fourth Circuit precedent,<sup>12</sup> reversed, finding that section 1346(a)(1) allowed a refund action to one who had paid the taxes of a third party in order to remove a federal lien from her property.<sup>13</sup>

The United States Supreme Court granted certiorari<sup>14</sup> to resolve the circuits' conflict as to the proper interpretation of 28 U.S.C. § 1346.<sup>15</sup> Stressing the statute's broad language and focusing on the inequity of leaving "people in Williams' position without a remedy,"<sup>16</sup> the Court affirmed the

1987, the Service assessed Rabin for tax liabilities resulting from his ownership in a restaurant. The Service placed a lien against the home. Lori was not aware of the lien because the lien was not filed until November 1988. In May 1989, Lori agreed to sell the house and set a closing date of July 3. One week prior to closing, the Service provided Williams with actual notice of over \$41,000 in tax liens. Threatened with a suit by the buyer if she failed to go through with the sale as agreed, Williams paid the taxes from the sale proceeds in order to convey clear title. *Id.*

7. *Id.* Her basis for this claim was 26 U.S.C. § 6323(a) (1994), which stands for the proposition that "absent proper notice, tax liens [are] not valid against [the] purchaser." *Id.*

8. See *infra* note 23 and accompanying text.

9. Williams argued that she had taken the property "free of the Government's lien under 26 U.S.C. §6323(a)." *Williams*, 115 S. Ct. at 1615.

10. *Id.*

11. *Id.* See *infra* notes 37-61 and accompanying text for discussion of *Snodgrass v. United States*, 834 F.2d 537 (5th Cir. 1987); *Busse v. United States*, 542 F.2d 421 (7th Cir. 1976).

12. *Martin v. United States*, 895 F.2d 992 (4th Cir. 1990). See *infra* notes 62-69 and accompanying text.

13. *Williams v. United States*, 24 F.3d 1143, 1144 (9th Cir. 1994), *aff'd*, 115 S. Ct. 1611 (1995).

14. *United States v. Williams*, 115 S. Ct. 417 (1994).

15. *United States v. Williams*, 115 S. Ct. 1611, 1615 (1995).

16. *Id.* at 1618.

Ninth Circuit's decision.<sup>17</sup> The Court found that, because the IRS placed a lien on Williams' property, she was "subject to" the tax and, therefore, qualified as a "taxpayer" under section 1346.<sup>18</sup> The Court held that a person who pays the taxes of a third party, when under the burden of federal tax liens, has standing to sue for a refund under 28 U.S.C. 1346(a)(1).<sup>19</sup>

### III. LEGAL BACKGROUND

#### *A. Statutory Background*

The Supreme Court has long recognized that, under the doctrine of sovereign immunity, the federal government is immune from suits brought against it by its citizens.<sup>20</sup> Congress however, has the authority to waive this immunity.<sup>21</sup> 28 U.S.C. § 1346(a)(1) provides an example of Congress doing just that.<sup>22</sup> This section waives the federal government's sovereign immunity by granting the district courts original jurisdiction "for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected . . . ." <sup>23</sup> Nonetheless, exactly who may sue the government, under section 1346, is an issue that has been repeatedly brought before the courts.

To understand the history of section 1346, it is necessary first to consider the common law remedy of assumpsit. Assumpsit allows recovery to those who, "as a result of fraud, duress, or mistake," paid money that they did not owe.<sup>24</sup> Thus, courts have long recognized that circumstances might warrant

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17. *Id.* at 1616. Justice Ginsburg wrote the majority opinion. *Id.* at 1614.

18. *See infra* notes 81-84 and accompanying text.

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

20. *United States v. Nordic Village, Inc.*, 503 U.S. 30 (1992).

21. *Id.* *See also* John Copeland Nagle, *Waiving Sovereign Immunity in An Age of Clear Statement Rules*, 1995 WIS. L. REV. 771, 777. In the interest of brevity this Note defers to Nagle and bypasses the legal history and many of the issues surrounding waivers of sovereign immunity.

22. 28 U.S.C. § 1346(a)(1) (1994).

23. 28 U.S.C. § 1346(a)(1) (1994). This section reads in full:

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(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;

24. *United States v. Williams*, 115 S. Ct. 1611, 1616 (1995). The Court noted that these refund actions were unavailable to those who voluntarily paid the taxes of others and were "once brought against the tax collector personally rather than against

judicial intervention to recover money, even though the individual who paid it was under no legal obligation to do so.<sup>25</sup> The policies behind assumpsit were implemented into the Internal Revenue Code of 1878,<sup>26</sup> which served as the basis for section 1346.<sup>27</sup>

For a taxpayer to use 28 U.S.C. 1346(a)(1) as a means of bringing a refund suit, additional statutory provisions must be examined. First, 26 U.S.C. § 7422(a) requires that an individual, before filing suit against the United States, must file a refund claim with the Secretary.<sup>28</sup> Second, 26 U.S.C. § 6511 requires that a claim "be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid . . . ."<sup>29</sup> Finally, 26 U.S.C. § 7701(a)(14) defines "taxpayer" as "any person subject to any internal revenue tax."<sup>30</sup> The issue arising from the interplay of these provisions is whether the definition of a "taxpayer" under section 7701 of the Internal Revenue Code applies to section 1346 and, if so, what limitations are thereby placed on 28 U.S.C. § 1346. In other words, who is entitled to use this statutory waiver of sovereign immunity? As the Fourth Circuit in *Martin v. United States*<sup>31</sup> observed, in 1990, there was a "split of authority among the courts over the jurisdictional reach of this statute."<sup>32</sup>

the United States." *Id.*

25. See *id.* (citing M. Carr Ferguson, *Jurisdictional Problems in Federal Tax Controversies*, 48 IOWA L. REV. 312, 327 (1963); HENRY W. BALLANTINE, *SHIPMAN ON COMMON-LAW PLEADING* 163-164 (3d ed. 1923); *City of Philadelphia v. Collector*, 72 U.S. (5 Wall.) 720, 731-732 (1867)).

26. I.R.C. § 1724(a) (repealed).

27. Paul H. Minton, *Recent Decision*, 34 DUQ. L. REV. 455, 461 (1996).

28. I.R.C. § 7422(a) (1994). This provision provides:

(a) *No suit prior to filing claim for refund.* 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.

Furthermore, this section stands for the proposition that one must, prior to bringing a refund action, exhaust all administrative remedies. *United States v. Williams*, 115 S. Ct. 1611, 1616 (1995).

29. I.R.C. § 6511(a) (1994).

30. I.R.C. § 7701(a)(14) (1994).

31. 895 F.2d 992 (4th Cir. 1990).

32. *Id.* at 993.

## B. Case Law

When ascertaining the jurisdictional reach of 28 U.S.C. § 1346, courts typically face a variety of competing interests. Those courts allowing a "non-assessed" plaintiff to bring a refund action under section 1346 focus on the unfairness of leaving a plaintiff without a remedy.<sup>33</sup> Courts that deny a plaintiff a right to recovery place greater emphasis on the sovereign immunity doctrine and the precedent calling for "narrow construction of waivers of immunity."<sup>34</sup> These courts deny standing despite their recognition of possible inequities<sup>35</sup> and the susceptibility of the statute's language to a broader and more equitable construction.<sup>36</sup>

In *Busse v. United States*,<sup>37</sup> the Seventh Circuit set out a narrow construction of section 1346 when deciding "whether one who is not liable for a tax but pays it to remove a lien against his property may sue for a refund under 28 U.S.C. § 1346(a)(1)."<sup>38</sup> The court pointed to the availability of other remedies, the importance of narrowly construing waivers of sovereign immunity, and prior case law as reasons for holding that the plaintiff lacked the standing to bring a refund claim under section 1346.<sup>39</sup>

The *Busse* court emphasized that Congress provided other statutory remedies for a non-taxpayer to contest the collection activities of the Internal Revenue Service.<sup>40</sup> The statutory remedies cited by the court included an

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33. *Martin v. United States*, 895 F.2d 992, 993 (4th Cir. 1990). Steven R. Johnson recognized that: "[t]ax cases are principally occasions of statutory construction, and considerations of fairness should not override the intent of Congress. Nonetheless, equity often matters, whether as stated in the construction process or as a tacit element in the judge's thinking." Steven R. Johnson, *Fog, Fairness, and the Federal Fisc: Tenancy-by-the-Entireties Interests and the Federal Tax Lien*, 60 MO. L. REV. 839, 850 (1995).

34. *Snodgrass v. United States*, 834 F.2d 537, 539 (7th Cir. 1987). In addition, the government "in a time of acute budgetary stress," has an interest in the "effective collection of taxes. . . ." Johnson, *supra* note 33, at 839.

35. *Snodgrass*, 834 F.2d at 540. The Seventh Circuit, although conceding that "inequity may result," adhered to the following view: "Democratic sovereigns, like kings, may do wrongs, but in the absence of their consent, the courts of their nations lack jurisdiction to remedy the harms they have wrought." *Id.*

36. *Id.* at 539. See also *Phillips v. United States*, 346 F.2d 999, 1000 (2d Cir. 1965).

37. 542 F.2d 421 (7th Cir. 1976).

38. *Id.* at 423. The plaintiff received a family home, encumbered by tax liens, pursuant to a divorce decree. To raise money, the plaintiff sold the house and, to deliver clear title, paid the taxes to remove the government's lien. *Id.*

39. *Id.* at 425.

40. *Id.*

action to quiet title under 28 U.S.C. § 2410<sup>41</sup> and 26 U.S.C. § 6325(b)(3)<sup>42</sup> which allowed the Service to negotiate with the owner of the property and to transfer the lien from the property to the proceeds of the sale, thereby clearing title.<sup>43</sup> The court also relied upon 26 U.S.C. § 7426,<sup>44</sup> which allows a third party to bring an action challenging a wrongful levy.<sup>45</sup> The court viewed section 7426 as the exclusive remedy for a third party challenging a levy.<sup>46</sup> The court reasoned that if Congress did not intend to allow section 1346 to be used to challenge a levy—when an individual's property is seized, then Congress did not intend to permit a section 1346 refund action to one whose property was under a tax lien—under the threat of seizure.<sup>47</sup>

The court also distinguished case law upon which the plaintiff relied.<sup>48</sup> The court believed that prior decisions granting standing to an individual who paid a third party's taxes were of limited precedential value because they preceded the enactment of section 7426.<sup>49</sup> Furthermore, the court rejected two other cases helpful to the plaintiff, because in those cases "the plaintiff seeking a refund paid the tax believ[ed] himself to be at least potentially liable for the tax assessed."<sup>50</sup> The *Busse* court instead cited case law stating that the "definition of a taxpayer is strictly limited to 'the taxpayer who has overpaid his own taxes.'"<sup>51</sup> Thus, after distinguishing "plaintiff friendly" case law and focusing on the alternative remedies that the Code provided, the court adhered to the principle of strict construction of waivers of sovereign

41. I.R.C. § 2410 (1994).

42. I.R.C. § 6325(b)(3) (1994).

43. *Busse v. United States*, 542 F.2d 421, 425 (7th Cir. 1976).

44. I.R.C. § 7426 (1994).

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

46. *Id.*

47. *Id.* See *infra* note 135, noting that as a result of the *Williams* decision courts are inclined to allow section 1346 refund actions when dealing with a wrongful levy.

48. The plaintiff cited to both *United States v. Halton Tractor*, 258 F.2d 612 (9th Cir. 1958) and *McMahon v. United States*, 172 F. Supp. 490 (D.R.I. 1959).

49. *Busse*, 542 F.2d at 425. Section 7426 was enacted in 1966. See Pub. L. 89-719, 80 Stat. 1142 (1966).

50. *Busse*, 542 F.2d at 424 (distinguishing *Parsons v. Anglim*, 143 F.2d 534 (9th Cir. 1944) and *Adams v. United States*, 380 F.Supp 1033 (D. Mont. 1974)). The *Busse* court left undecided whether "potential personal liability is a sufficient qualification of taxpayer status . . ." *Busse*, 542 F.2d at 424.

51. *Id.* (quoting *Collins v. United States*, 532 F.2d 1344, 1347 n.2 (Ct. Cl. 1976)). The court noted that *Collins* would not grant standing even if the third party were threatened with personal liability. *Id.* at 424 n.2. The plaintiff in *Busse* did not raise this argument, however, and the court found her argument—that standing was appropriate because she paid the taxes in order to release a lien against her property—"unpersuasive." *Id.* at 425.

immunity.<sup>52</sup> Accordingly, the Seventh Circuit found that section 1346 failed to provide the plaintiff with standing to bring her refund suit.<sup>53</sup>

The *Busse* decision proved persuasive precedent for the Fifth Circuit in *Snodgrass v. United States*.<sup>54</sup> The court in *Snodgrass* also denied standing under 28 U.S.C. § 1346 relying in part on the fact that the Seventh Circuit in *Busse* denied standing on nearly identical facts.<sup>55</sup> As in *Busse*, the plaintiff asserted that section 1346 provided her with standing to bring a refund suit because she paid her husband's taxes in order to release a lien that encumbered her one-half interest in the family home.<sup>56</sup> In reaching its holding, the court in *Snodgrass* relied on the policy calling for narrow construction of waivers of immunity and section 7426's wrongful levy remedy, which the court maintained is the "only means by which third parties may challenge the tax collection activities of the IRS."<sup>57</sup>

The court, although rejecting the plaintiff's claim, recognized that some courts allowed third party refund suits when the government's collection efforts had, in some way, coerced the payment of a third party's taxes.<sup>58</sup> The court offered two reasons for its decision not to follow this line of precedent. First, the court insisted that Mrs. Snodgrass's payment could not be considered involuntary because the IRS did not demand that she sell her house.<sup>59</sup> Second, the court distinguished the government "coercion cases" by stating that they were decided before the enactment of section 7426's wrongful levy remedy provision.<sup>60</sup> As such, the Fifth Circuit did not provide the plaintiff with a statutory waiver of the federal government's sovereign immunity.<sup>61</sup>

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52. *Id.* at 425.

53. *Id.*

54. 834 F.2d 537 (5th Cir. 1987).

55. *Id.* at 539.

56. *Id.* The IRS placed a lien on the Snodgrass family home because of taxes assessed against the husband. The couple, in order to remove the lien and convey clear title, sent \$51,000 of the sale proceeds to the IRS. Thereafter, the wife sued the United States to recover \$25,529.06—the amount representing her one-half interest in the property. *Id.* at 538-39.

57. *Id.* at 539. See *supra* notes 45-47 and accompanying text.

58. *Snodgrass*, 834 F.2d at 539.

59. *Id.* The court also found significance in the fact that, in the cases relied upon by the plaintiff the Service either threatened the plaintiff with personal liability (*see United States v. Halton Tractor Co.*, 258 F.2d 612 (9th Cir. 1958)) or intended that the burden fall on the plaintiff (*see Stahmann v. Vidal*, 305 U.S. 61, 65-66 (1938)).

60. *Snodgrass*, 834 F.2d at 539. As in *Snodgrass*, the *Busse* court reasoned that Congress intended section 7426, once enacted, to be the only remedy available to one who paid the taxes of a third party. See *supra* note 47 and accompanying text.

61. *Snodgrass*, 834 F.2d at 539.



Despite the holdings of the Fifth and Seventh Circuits, the Fourth Circuit in *Martin v. United States*<sup>62</sup> held that an individual who paid a third party's taxes in order to remove a lien from his property had standing to sue under section 1346(a)(1).<sup>63</sup> In *Martin*, the plaintiff's property, acquired through a divorce settlement, was encumbered by a tax lien.<sup>64</sup> Martin paid the taxes to remove the lien. While admitting the invalidity of the lien, the IRS refused to refund the taxes, stating "there is no provision or procedure by which the Service can return the tax voluntarily paid by the Martins."<sup>65</sup>

The *Martin* court believed that neither a broad view or a narrow view of section 1346 was necessary to reach its holding.<sup>66</sup> Instead, the court insisted that "a plain reading of the statute" provided Martin with standing to bring a refund action.<sup>67</sup> The court reasoned that because the lien upon Mrs. Martin's property was improper, the taxes were erroneously collected from Mrs. Martin.<sup>68</sup> This collection provided Mrs. Martin with standing to sue under 28 U.S.C. § 1346(a)(1).<sup>69</sup>

Against the background of these precedents, the Supreme Court granted certiorari in the *Williams* case.<sup>70</sup>

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62. 895 F.2d 992 (4th Cir. 1990).

63. *Id.* at 994.

64. *Id.* at 992. Mona Martin received the property as part of a divorce settlement in 1979 from her ex-husband Jerry Brodsky. It was not until 1983, however, that Brodsky executed the deed. In July 1984, the IRS filed notice of a federal tax lien against the property for taxes assessed to Brodsky and his business partner. In November 1984, the deed was recorded. On November 30, plaintiff closed on the property. The attorney conducting the closing discovered the tax lien and, after failing to get the tax lien released, paid the taxes in order to convey clear title. *Id.* at 992-93.

65. *Id.* at 993.

66. *Id.*

67. *Id.* at 994. The court read the statute, granting "district courts jurisdiction over civil actions brought against the government to recover any tax alleged to have been erroneously or illegally assessed or collected," as clearly encompassing Martin's claim. *Id.* The court found implicit in this language that standing was available to the "one against whom the tax was erroneously assessed or collected." *Id.*

68. *Id.*

69. *Id.*

70. *United States v. Williams*, 115 S. Ct. 417 (1994). The Ninth Circuit followed the plain language reading of section 1346 espoused in *Martin*. *Williams v. United States*, 24 F.3d 1143, 1144 (9th Cir. 1994). See *supra* note 13 and accompanying text.

#### IV. INSTANT DECISION

##### *A. Majority Opinion*

Justice Ginsburg framed the issue facing the Court as follows: "whether respondent Lori Williams, who paid a tax under protest to remove a lien on her property, has standing to bring a refund action under 28 U.S.C. § 1346(a)(1), even though the tax she paid was assessed against a third party."<sup>71</sup> The majority opinion began by recognizing the principle against extending waivers of sovereign immunity beyond the statutory language<sup>72</sup> and that, in ascertaining the intent of Congress, ambiguities are to be construed "in favor of immunity."<sup>73</sup> With this principle in mind, the Court examined the language of section 1346(a)(1).<sup>74</sup>

The Court emphasized what it considered to be the broad language of section 1346 and found that Williams's claim for the refund of a tax "erroneously collected" fell within the statute's language.<sup>75</sup> Justice Ginsburg wrote that "only a strained reading of the relevant provisions would bar [Williams] suit."<sup>76</sup> The Court also found that because Williams paid the taxes under protest, she did not fall into the category of a "voluntary taxpayer."<sup>77</sup>

On the other hand, the Government maintained that, when looking at the Code as an "elaborate, interlocking scheme,"<sup>78</sup> Congress did not intend for an individual in Williams' position to be considered a "taxpayer" under section 1346(a)(1).<sup>79</sup> The Government argued that this scheme required one seeking to bring an action under section 1346 to look at section 7701 to determine if he qualified as a "taxpayer." The Government concluded that section 7701's

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

72. *Id.* at 1615.

73. *Id.* at 1616.

74. *Id.*

75. *Id.*

76. *Id.* at 1614.

77. *Id.* at 1616. The majority noted section 1346's ties to the common law action of assumpsit and assumpsit's availability only to those who had not paid their taxes "voluntarily." See *supra* note 25.

78. Brief for the United States, *United States v. Williams*, No. 94-395, 1994 WL 687541, at \*21 (U.S. Dec. 8, 1994).

79. *Williams*, 115 S. Ct. at 1616. The Government argued that "taxpayer" as defined in section 7701(a)(14) applies to section 1346 because of section 6511's statute of limitations provision which requires a "taxpayer" to file a claim for credit or refund. See *supra* notes 28-30 and accompanying text for the steps necessary to reach this conclusion.

definition of taxpayer ("any person subject to any internal revenue tax") excluded Williams because "a party who pays a tax is not 'subject to' it unless she is the one assessed."<sup>80</sup>

Nonetheless, the majority rejected the government's argument. First, the Court pointed out that the Government's position would be inconsistent with other Code provisions that expressly allow refunds for individuals other than those assessed.<sup>81</sup> Second, the majority found that Williams fell within the scope of section 7701's definition of "taxpayer."<sup>82</sup> The Court believed that the language "subject to" is broader than "assessed." The Court reasoned that, although not assessed, the tax lien placed upon Williams' property amounted to her being "subjected to" a tax.<sup>83</sup> Therefore, Williams' predicament qualified her as a "taxpayer" under section 7701.<sup>84</sup>

The majority then developed its argument for an equitable construction of § 1346 when determining Congressional intent. The Court contended that Congress did not intend to leave people in Williams' position without a remedy.<sup>85</sup> The Court attacked the Government's contention that Congress already had enacted all of the remedies that it intended to provide, finding that none of the remedies relied on the by the Government were realistically available to Williams.<sup>86</sup> For example, section 7426's oft-cited wrongful levy remedy was not available to Williams because there had yet to be a levy upon her property.<sup>87</sup> Furthermore, the Court insisted that the Code's provision that permitted an action to quiet title<sup>88</sup> failed to provide Williams with "meaningful relief" because she did not have time to bring such an action before her closing date.<sup>89</sup>

The Court also discounted the Code's remedy allowing the Service to transfer its lien from the property to the proceeds from the sale of the

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

81. *Id.* at 1617. The Court called attention to 26 U.S.C. § 6402(a) which describes the recipient . . . "as the person who made the overpayment" and 26 U.S.C. § 6416(a) and § 419(a) which allow a refund by "the person who paid the tax." *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 1614. This line of reasoning prompted the dissent to comment: "it would surely come as news to the millions of taxpayers in this country that the I.R.C. has a 'beneficent purpose' as far as they were concerned." *Id.* at 1624 (Rehnquist, C.J., dissenting).

86. *Id.* at 1618.

87. *Id.* at 1618. *See supra* note 45-47 and accompanying text.

88. I.R.C. § 2410(a)(1) (1994). *See supra* note 41 and accompanying text.

89. *Williams*, 115 S. Ct. at 1618. On the other hand, the Court found that "a refund suit would allow her to sell the property and simultaneously pay off the lien, leaving her free to litigate with the government . . . ." *Id.*

property.<sup>90</sup> The Court noted that this procedure is available only at the discretion of the Government.<sup>91</sup> As such, the Court found there to be little incentive for the government to exercise its discretion. The Court observed that by negotiating with the aggrieved party the Government only receives another lien.<sup>92</sup> On the other hand, by refusing to negotiate with those in a position similar to Williams, the Government is likely to receive immediate payment.<sup>93</sup>

The Government maintained that allowing those in Williams's position to pursue a refund action violates the principle that a party may not challenge another's tax liabilities.<sup>94</sup> The government insisted that a departure from this principle would result in widespread abuse.<sup>95</sup> Specifically, the Government believed that people would manipulate section 1346 and use it to delay or evade the payment of their taxes.<sup>96</sup> The Government hypothesized that a party would be tempted to pay the taxes of another and then, after the Government ended its collection efforts against the real taxpayer, sue for a refund.<sup>97</sup> The majority did not, however, find these arguments persuasive. The Court acknowledged that, although the principle against standing to contest another's taxes constitutes the general rule, exceptions nonetheless exist.<sup>98</sup> In addition, the Court believed that its holding does not undercut this principle because its decision is limited to the challenge against the tax lien, not the underlying assessment.<sup>99</sup> Finally, the Court maintained the Government's concern of "rampant abuse" was undermined by the absence of evidence of such abuse among the "millions of taxpayers" in the Fourth and Ninth Circuits.<sup>100</sup>

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90. I.R.C. § 6325(b)(3) (1994).

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

92. *Id.* at 1619.

93. *Id.* The Court also discredited the Government's argument that the availability of section 1346 would render the other remedies "superfluous." *Id.* The Court characterized the refund action under section 1346 as a "post deprivation remedy, available only if the taxpayer has paid the government in full." *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 1619-20. *See also* Brief for the United States, *United States v. Williams*, No. 94-395, 1994 WL 687541, at \*20 (U.S. Dec. 8, 1994).

97. *Id.*

98. *Williams*, 115 S. Ct. at 1620. For example, the Court pointed to a taxpayer's fiduciary litigating on behalf of the taxpayer. Under such circumstances, if there is a fraudulent conveyance the transferee is treated as the taxpayer and refund actions by parties not assessed such as that found in *Stahmann*. The Court conceded, however, that a different statute was involved. *Id.* at 1619.

99. *Id.*

100. *Id.*

### B. Concurring Opinion

Justice Scalia concurred with the majority opinion, finding that section 1346's "unequivocal language" permitted Williams to bring suit.<sup>101</sup> Scalia did not agree with the majority's finding, however, that Williams fell within the scope of section 7701's definition of "taxpayer." Scalia, attaching significance to the fact that section 6511 was an administrative exhaustion provision, believed that it had no significant bearing on the jurisdictional reach of section 1346.<sup>102</sup> Likewise, Scalia found the government's argument that section 7701 prevented Williams from using section 1346 "implausible."<sup>103</sup>

### C. Dissenting Opinion

In a vigorous dissent, Chief Justice Rehnquist attacked the majority's decision by asserting that waivers of sovereign immunity must be "unequivocally expressed."<sup>104</sup> The dissent rejected the majority's contention that the language of section 1346 ("subject to") provided Williams with a refund action against the Government. The dissent maintained that being "subject to" taxes and "subject to" tax liens were wholly distinguishable and found the majority's approach to be based on "remarkably imprecise reasoning."<sup>105</sup> Believing the decision unduly influenced by the equities of the case, the dissent chastised the Court, stating that equities are not normally a factor "of great significance in construing the Internal Revenue Code."<sup>106</sup>

The dissent also felt the majority was "too quick" to dismiss the availability of other remedies to Williams. Unpersuaded that section 6325(b)(3) was an inadequate remedy simply because the government had

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101. *Id.* at 1620 (Scalia, J., concurring).

102. *Id.* See *supra* notes 28-30, outlining the connection between section 6511 and section 7701.

103. *Id.* Scalia recognized that the general rule demanding clear expressions of waivers of immunity. Scalia did not feel, however, that this rule required the Court to engage in acts of "implausible" statutory interpretation. Scalia quoted Cardozo: "The exemption of the sovereign from suit involves hardship enough where consent has been withheld. We are not to add to its rigor by refinement of construction where consent has been announced." *Id.* at 1619 (citing *United States v. Aetna Casualty & Surety Co.*, 338 U.S. 366, 383 (1949) (quoting *Anderson v. Hayes Constr. Co.*, 153 N.E. 28, 29-30 (N.Y. 1926))).

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

105. *Id.* at 1621-22.

106. *Id.* at 1621. Chief Justice Rehnquist further remarked that he "believ[ed]" that the Court's picture of the equities is misleadingly inaccurate, and that its effort to stretch the law to avoid these perceived inequities is quite contrary to established doctrine." *Id.*

discretion as to when to apply it, the dissent pointed out that Williams never even attempted to use it.<sup>107</sup> Moreover, the dissent believed that the Code's action to quiet title<sup>108</sup> was also available to Williams.<sup>109</sup> Dismissing the majority's reliance on this actions impracticability because of Williams's closing date,<sup>110</sup> the dissent commented that the absence of "same day service" did not render the remedy unavailable.<sup>111</sup> Subsequently, the dissent felt that Williams's failure to exhaust these administrative remedies prevented her from bringing suit, even if section 1346 would otherwise allow it.<sup>112</sup>

## V. COMMENT

Though facing an issue of statutory construction and a waiver of sovereign immunity, the Supreme Court clearly allowed equities to influence its holding in *Williams*. The result, however, may in fact comport with the Court's "preference for common sense inquiries over formalism."<sup>113</sup> In keeping with this preference, the Court analyzed both the statutory language and the equities involved. It is important to understand, however, the majority's use of equities in its reasoning. The sympathetic position of one in Ms. Williams's position purportedly did not prompt the Court to bend or artificially expand the reach of section 1346. Instead, the Court believed that the inequities that can result from limiting the jurisdictional reach of section 1346<sup>114</sup> demonstrate the intended and legitimate scope of section 1346.

As the majority acknowledged, the object of statutory interpretation is to discover the congressional intent underlying its legislation.<sup>115</sup> For a court to find a waiver of sovereign immunity, the court must discover an intent for a congressional waiver that is "unequivocally expressed."<sup>116</sup> The Court's decision rested on its assumption that Congress did not intend to leave one in

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107. *Id.* at 1623. See *supra* note 90-92 and accompanying text.

108. 28 U.S.C. § 2410 (1994).

109. *Williams*, 115 S. Ct. at 1624.

110. See *supra* note 89 and accompanying text.

111. *Id.* at 1624.

112. *Id.*

113. *Williams*, 115 S. Ct. at 1617-18. Professor Gerald Kafka and tax specialist Rita Cavanaugh believe the Court's decision to be a "narrowly crafted but common-sense reading of 28 U.S.C. § 1346(a)(1)." Gerald A. Kafka & Rita A. Cavanaugh, *Supreme Court Expands Refund Jurisdiction to Include Some Third Party Payors*, 83 J. TAX 139, 139 (1995). The article observed that the "the decision ensures that such third party payers will not be deprived of a judicial remedy to seek recovery." *Id.*

114. See *supra* note 85.

115. See *supra* note 73 and accompanying text.

116. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992).

Ms. Williams's position without a remedy, while allowing the Internal Revenue Service to benefit from erroneously placing a lien on a citizen's property. In other words, finding that a contrary holding would not make sense, the Court presumed that Congress intended only to promulgate sensible legislation.

The majority's interpretation of section 1346 provides standing to one who has been injured by a mistake made by the Internal Revenue Service. One article points out that "to the extent that the IRS errs, third party targets of its collection efforts should not bear the burden."<sup>117</sup> A contrary result on the basis of the government's "statute hopping" argument<sup>118</sup> is, to quote Justice Scalia, "implausible."<sup>119</sup> Therefore, the Court's emphasis on the broad language of section 1346 and the lack of adequate remedies for one found in Williams's position provide foundation for the Court's assertion that it was the intent of Congress to allow for an expanded application of section 1346(a)(1). What follows from this interpretation is not only a favorable and fair result to future taxpayers, but a legitimate, common sense reading of Congressional legislation.<sup>120</sup>

While the Court's narrow holding addresses many of the concerns voiced by the Government,<sup>121</sup> the limitations on the *Williams* decision leaves important issues unresolved. For example, will section 1346 allow an individual to contest the underlying tax assessment of a third party? Will the *Williams* holding permit someone to bring a refund action after "voluntarily" paying the taxes of a third party? To understand the implications of *Williams* it is necessary to understand the scope of the terms "subject to" and "voluntary" in section 1346. How the courts interpret this language will determine the future scope of section 1346.

Although finding the phrase "subject to" broader than "assessed,"<sup>122</sup> the Court limited who may be considered a "taxpayer" for purposes of the statute.

117. Kafka & Cavanaugh, *supra* note 113, at 143. Kafka & Cavanaugh comment that perhaps this decision will result in better training of IRS personnel.

118. *See supra* notes 78-80 and accompanying text.

119. *United States v. Williams*, 115 S. Ct. 1611, 1620 (1995) (Scalia, J., concurring).

120. John Copeland Nagle, writing extensively about the Court's treatment of waivers of sovereign immunity, noted that the dissent was correct in that *Williams* was difficult to reconcile with the Court's precedent in regard to waivers of sovereign immunity. Nagle, *supra* note 21 at 795. Nagle comments that "[o]nly in *Williams* was the Court persuaded that Congress had waived sovereign immunity in the face of a statutory scheme whose provisions did not all point in the same direction." *Id.* at 796. Nonetheless, Nagle dubbed the *Williams* decision as a "return to common sense." *Id.* at 794.

121. *See supra* notes 94-99 and accompanying text.

122. *See supra* note 83 and accompanying text.

The majority focused on the fact that the government subjected Williams to a tax by first subjecting her home to a tax lien and then accepting her payment, under protest, of the taxes.<sup>123</sup> Thus, although not expressly deciding what remedies are available to one who pays another's taxes voluntarily, the Court's decision will make it difficult for a voluntary taxpayer to argue that § 1346 affords him a remedy. Buttressing this reading of the opinion is the Court's emphasis on assumpsit's requirement that payments not be made voluntarily.<sup>124</sup> Furthermore, there are no strong policy interests compelling an expanded construction of § 1346. Thus, to bring a section 1346(a)(1) action, one must demonstrate that he has been "subjected to a tax." Generally speaking, one must have paid the tax under some type of compulsion.

The Court declined to address the issue whether Ms. Williams can challenge the underlying tax assessment against her ex-husband. Challenging the underlying tax, however, also seems to be an expansion of section 1346 that the Court would be unlikely to uphold. It was the federal tax lien on Ms. Williams's property that rendered her "'subject to' the tax in a meaningful and immediate way."<sup>125</sup> In addition, the Court acknowledged the general rule against "challeng[ing] the tax liabilities of others."<sup>126</sup> Though the *Williams* decision carved an exception to this rule, the Court limited its holding to one whose challenge was against the tax lien and not the underlying assessment.<sup>127</sup>

Policy considerations underlying the principle against allowing challenges to a third person's tax liability indicate that the *Williams* holding will not provide effective authority to one hoping to challenge the underlying assessment. One recent article notes that one of the policy considerations behind this principle states that only the taxpayer is privy to the facts and evidence needed to challenge the assessment.<sup>128</sup> In addition, there are strict requirements under section 6103 which limit information that the Service can provide about a taxpayer to a third party.<sup>129</sup> The concerns, however, regarding the availability of information pertinent to the suit are not viable in a case similar to *Williams*, where the plaintiff is challenging a lien placed on her own property. Lack of information is a problem, however, in the case of one who voluntarily pays a third party's taxes and the underlying assessment

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123. See *supra* note 77 and accompanying text, where the Court states that Ms. Williams did not "voluntarily" pay her ex-husband's taxes.

124. See *supra* note 77 and accompanying text.

125. *United States v. Williams*, 115 S. Ct. 1611, 1620 (1995).

126. *Id.* at 1619.

127. *Id.*

128. *Kafka & Cavanaugh*, *supra* note 113, at 143.

129. *Kafka & Cavanaugh*, *supra* note 113, at 143.



is then challenged. Therefore, with respect to these policies, no reason exists to extend the reach of section 1346 to one who hopes to challenge the underlying assessment.

Noting the lack of either "logical or policy grounds" for such an interpretation of section 1346, one scholar commented that extending jurisdiction under such circumstances would be "outrageous."<sup>130</sup> He pointed out that if the underlying assessment is erroneous, the assessed party has every incentive to challenge the assessment.<sup>131</sup> Finally, the Court still adheres to the principle that waivers of immunity should not be construed "beyond the purview of the statutory language."<sup>132</sup> With this in mind, the *Williams* decision should not be extended either by allowing a "volunteer" to bring a refund action or permitting one in Ms. Williams's position to challenge the underlying assessment. Maintaining the narrow holding of the Court addresses the concerns raised by the government while affording a remedy to those who otherwise would be without one.

Due to its narrow holding, the *Williams* decision should not result in a substantial expansion of the jurisdictional reach of section 1346. Nonetheless, the *Williams* decision will provide a greater number of people with a remedy after they have been "subjected to" the collection activities of the Internal Revenue Service. People likely to be mistaken for the proper taxpayer have the most reason to take comfort in the Court's decision.<sup>133</sup> The *Williams* case demonstrates how section 1346 now provides an important remedy for one who is caught between the Internal Revenue Service and an ex-spouse/taxpayer who has little incentive to challenge a tax lien placed on property in which he no longer has an interest.<sup>134</sup>

130. Kafka & Cavanaugh, *supra* note 113, at 143.

131. Kafka & Cavanaugh summarize this point as follows:

There are no logical or policy grounds why this right of the taxpayer should be infringed by any action of the third party against whom the Service has taken erroneous collection action, and it would not serve judicial economy for the merits of the tax assessment to be the subject of two different causes of action.

Kafka & Cavanaugh, *supra* note 113, at 144.

132. *United States v. Williams*, 115 S. Ct. 1611, 1616 (1995).

133. Kafka & Cavanaugh, *supra* note 113, at 143. For example, those who are married or going through a divorce and those involved in some type of partnership. Kafka & Cavanaugh, *supra* note 113, at 143.

134. Another group likely to benefit by a more generous interpretation of section 1346 are nominees. Professor Kafka and Ms. Cavanaugh summarize:

[A] person determined to be a nominee receives no statutory notice of deficiency allowing pre-deprivation access to the Tax Court. Moreover, like the spousal situation, a nominee's property is subject to tax liens with respect to the true taxpayer, thereby leaving the nominee, until now, with

As a result of *Williams*, 28 U.S.C. § 1346(a)(1) will likely provide an alternative remedy to those burdened by a wrongful levy. Such an application is a logical extension of the Court's reasoning of when one qualifies as being "subject to" taxes in order to bring a refund action under section 1346. This will be helpful to taxpayers because of the short time frame available to bring an action challenging a wrongful levy.<sup>135</sup> Therefore, in accordance with the canons of statutory interpretation and the policies underlying the Court's decision, the *Williams* holding should permit important, although limited, extensions of section 1346(a)(1).

## VI. CONCLUSION

The *Williams* decision provides taxpayers an opportunity to obtain a refund of their money when they believe it has been collected from the wrong person. From a broad perspective, the result appears fair and logical. The satisfying aspect of this decision, however, is the Court's equitable construction of the relevant statutes. The strength of the *Williams* decision is found in the fact that its reasoning can be applied in those circumstances in which fairness demands that a remedy be made available to a taxpayer, while preventing additional, unnecessary waivers of sovereign immunity.

ROBERT F. EPPERSON, JR.

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little judicial recourse. As the Service relies more frequently upon nominee determinations, *Williams* will provide such third parties with access to direct judicial review.

Kafka & Cavanaugh, *supra* note 113, at 143.

135. The Ninth Circuit has already so held in *WWSM Investors v. United States*, 64 F.3d 456 (9th Cir. 1995).

