INTERNAL REVENUE—STANDING—SECTION 1346(a)(1) AUTHORIZES REFUND SUIT BY PARTY WHO PAID, UNDER PROTEST, TAXES ASSESSED AGAINST ANOTHER TO REMOVE FEDERAL TAX LIEN FROM HER PROPERTY—*United States v. Williams*, 115 S. Ct. 1611 (1995).

The United States, as sovereign, cannot be sued except where it consents.[1] Thus, a party desiring to institute an action against

[1] United States v. Clarke, 33 U.S. (8 Pet.) 436, 444 (1834). "Sovereign immunity" is defined as "[a] judicial doctrine which precludes bringing suit against the government without its consent." BLACK'S LAW DICTIONARY 1396 (6th ed. 1990). The Supreme Court apparently acknowledged the sovereign immunity of the federal government for the first time in *Cohens v. Virginia*. James S. Sable, Comment, *Sovereign Immunity: A Battleground of Competing Considerations*, 12 SW. U. L. REV. 457, 459 (1981) (citing Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 411-12 (1821)). Chief Justice Marshall asserted in *Cohens* that "[t]he universally received opinion is, that no suit can be commenced or prosecuted against the United States." *Cohens*, 19 U.S. at 411-12. The Supreme Court did not attempt to clarify the reasoning behind the doctrine of sovereign immunity or the justification for it until almost 60 years later in *United States v. Lee*. Sable, *supra*, at 460 (citing United States v. Lee, 106 U.S. 196, 204-07 (1882)). Justice Miller's opinion in *Lee* is described as "a pioneer effort to interpret the scope of the immunity in the light of its purposes." Roger C. Cramton, *Nonstatutory Review of Federal Administrative Action: The Need for Statutory Reform of Sovereign Immunity, Subject Matter Jurisdiction, and Parties Defendant*, 68 MICH. L. REV. 387, 396 (1970). The Court in *Lee* attempted to glean the rationale for the doctrine by comparing England's application of monarchial immunity with the United States system of government, but found that it was "difficult to see on what solid foundation of principle the exemption from liability to suit rests." *Lee*, 106 U.S. at 205, 206.

A more contemporary examination of the source and nature of sovereign immunity was conducted by the Court in *Nevada v. Hall*. 440 U.S. 410, 414-15 (1979). In *Hall*, the Supreme Court stated that the doctrine was founded primarily upon the structure of the English feudal system, in which the King could not be sued because the King's court was the highest court and, to a lesser extent, upon the myth that "the King could do no wrong." *Id.* at 415. Although the ancient maxim that "the King could do no wrong" was rejected early on in this country, the notion of sovereign immunity as an attribute of government remained. *Id.* The Supreme Court explained in *Kawananakoa v. Polyblank* that the persistence of the doctrine of sovereign immunity was due to the practical and logical premise that "there can be no legal right as against the authority that makes the law on which the right depends." Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1907). In *United States v. Shaw*, the Court averred that the philosophical underpinnings behind the doctrine of sovereign immunity are an integral part of our legal philosophy, partaking "somewhat of dignity and decorum, somewhat of practical administration, [and] somewhat of the political desirability of an impregnable legal citadel where government as distinct from its functionaries may operate undisturbed by the demands of litigants." United States v. Shaw, 309 U.S. 495, 501 (1940). For more general discussions of the history of and rationale for the doctrine of sovereign immunity, see Cramton, *supra*, at 396-400; Stephen M. Feldman, *The Supreme Court's New Sovereign Immunity Doctrine and the McCarran Amendment: Toward Ending State Adjudication of Indian Water Rights*, 18 HARV. ENVTL. L. REV. 433, 433-61 (1994); Louis L. Jaffe, *Suits Against Governments and Officers: Sovereign Immunity*, 77 HARV. L. REV. 1, 1-21 (1963); Sharon J. Kronish, Comment, *Sovereign*

the United States must first bring the case within an act of Congressional authority for courts to be able to exercise jurisdiction.[2] Where the government does consent to be sued, however, the waiver of sovereign immunity cannot be implied but must be "unequivocally expressed" in the language of the statute.[3] Furthermore, when interpreting statutes that authorize suit against the United States, courts must use caution so as not to enlarge the waiver of sovereign immunity beyond the meaning of the statutory language.[4] If any ambiguity exists as to Congress's intent to waive the government's sovereign immunity, the ambiguity is construed in favor of immunity.[5]

Historically, one could not maintain an action against the United States for a refund of taxes that were alleged to have been overpaid.[6] Today, by virtue of 28 U.S.C. § 1346(a)(1), the government consents to waive its sovereign immunity for refund actions to recover taxes alleged to have been erroneously or illegally assessed or collected.[7] Certain jurisdictional prerequisites exist, how-

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Immunity: A Modern Rationale in Light of the 1976 Amendments to the Administrative Procedure Act, 1981 DUKE L.J. 116, 116-21 (1981); Sable, *supra*, at 457-63; Douglas Kahle, Note, *United States v. Nordic Village, Inc.: "Unequivocal," Yet Unwarranted, Support For Sovereign Immunity*, 25 U. TOL. L. REV. 325, 325-31 (1994).

2 *Clarke*, 33 U.S. at 444.

3 United States v. Nordic Village, Inc., 503 U.S. 30, 33-34, 37 (1992). This principle made its debut in *The Davis*, 77 U.S. (10 Wall.) 15, 19 (1869). John C. Nagle, *Waiving Sovereign Immunity in an Age of Clear Statement Rules*, 1995 WIS. L. REV. 771, 778 n.30. In *The Davis*, the Court stated that the United States could not be made an original defendant absent an act of Congress "expressly authorizing" a waiver of sovereign immunity. *The Davis*, 77 U.S. at 19.

4 *See* Eastern Transp. Co. v. United States, 272 U.S. 675, 686 (1927) (finding that "[t]he sovereignty of the United States raises a presumption against its suability, unless it is clearly shown; nor should a court enlarge its liability to suit beyond what the language requires"). The origin of this rule may be traced to Schillinger v. United States, 155 U.S. 163, 166 (1894). Nagle, *supra* note 3, at 778 n.31. In that case, the Court announced that courts may not go "[b]eyond the letter of such consent . . . no matter how beneficial they may deem or in fact might be [in] their possession of a larger jurisdiction over the liabilities of the Government." *Schillinger*, 155 U.S. at 166.

5 United States v. Williams, 115 S. Ct. 1611, 1616 (1995) (citing *Nordic*, 503 U.S. at 33).

6 M. Carr Ferguson, *Jurisdictional Problems in Federal Tax Controversies*, 48 IOWA L. REV. 312, 327 (1963). Instead, refund suits were brought directly against the tax collector based on the common-law theory of "assumpsit for money had and received." *Id. See also* Flora v. United States, 362 U.S. 145, 151-54 (1960) (detailing the progression of refund actions from common-law origins to the present form). Assumpsit for money had and received "[i]s of equitable character and lies, in general, whenever [a] defendant has received money which in equity and good conscience he ought to pay to [the] plaintiff." BLACK'S LAW DICTIONARY 123 (6th ed. 1990).

7 15 JACOB MERTENS, JR., THE LAW OF FEDERAL INCOME TAXATION § 58A.03 (1992). The jurisdictional statute, 28 U.S.C. § 1346(a)(1) (1988 & Supp. V 1993), states in pertinent part:

ever, that must be met to bring a tax refund suit against the United States.[8] Pursuant to the statutory scheme, the plaintiff must exhaust administrative remedies prior to bringing the action and must also comply with the applicable statutes of limitation.[9] In addition, the plaintiff must have paid the entire amount of the tax assessed.[10]

In *United States v. Williams*, the Court considered whether there was an additional prerequisite that the plaintiff had to be the party against whom the taxes were assessed to bring a refund action against the United States pursuant to § 1346(a)(1).[11] Prior to the Court's decision in *Williams*, many courts held that the waiver of sovereign immunity embodied in § 1346(a)(1) conferred standing only upon the party against whom the taxes were assessed.[12] Other

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> (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[.]

Id.

8 Ferguson, *supra* note 6, at 331.

9 *Id.* at 331, 336.

10 *Flora*, 362 U.S. at 146. The *Flora* Court, resolving a conflict among the courts of appeal as to whether a refund suit could be brought for the recovery of a partial payment of a tax, held that payment of the entire amount assessed was a prerequisite to a refund suit pursuant to § 1346(a)(1). *Id.* at 146, 147.

11 *Williams*, 115 S. Ct. at 1615. Although this requirement was not expressly stated in the jurisdictional statute, courts nevertheless adhered to the "abstract principle" that a party who voluntarily pays taxes assessed against another may not recover a refund. Ferguson, *supra* note 6, at 331 n.98.

12 *See, e.g.*, Snodgrass v. United States, 834 F.2d 537, 538 (5th Cir. 1987) (holding that wife lacked standing to bring refund suit for recovery of taxes assessed against her husband when the government did not coerce payment of taxes that were paid out of proceeds from the sale of community property); Busse v. United States, 542 F.2d 421, 421, 423 (7th Cir. 1976) (finding that wife could not bring refund action when she paid taxes assessed against her husband in order to release her property from tax liens); Eighth St. Baptist Church v. United States, 431 F.2d 1193, 1194 (10th Cir. 1970) (maintaining that employer church was not a taxpayer, but merely a collection agent for taxes owed by its employees and, as such, the church could not maintain a refund suit); Phillips v. United States, 346 F.2d 999, 1000 (2d Cir. 1965) (stating that § 1346(a)(1) is unavailable when the plaintiff does not file suit as a taxpayer); First Nat'l Bank v. United States, 265 F.2d 297, 299, 300 (3d Cir. 1959) (holding that bank could not maintain refund suit for money collected by the United States from sale of equipment belonging to mortgagor/taxpayer to satisfy tax liens, even though bank's mortgage was senior to some of the tax liens). The court in *Hummel v. United States*, faced with the same jurisdictional question, found "an army of precedents" in support of the principle that § 1346(a)(1) authorizes suit only by the taxpayer against whom the taxes were assessed. Hummel v. United States, 494 F. Supp. 1003, 1004 (S.D. Iowa 1980). *See also* 5 JACOB RABKIN & MARK H. JOHNSON, FEDERAL INCOME, GIFT AND ES-

courts permitted refund suits even when the plaintiff was not the one against whom the taxes were assessed.[13]

The scope of jurisdiction granted by § 1346 (a)(1) is not determined by reading the statute in isolation; rather, the provision is construed together with other relevant provisions of the Internal Revenue Code.[14] The seemingly broad language of § 1346(a)(1) must be read in conjunction with other conditional statutes that qualify a party's right to bring a refund action.[15] Some courts have held that reading the section in conjunction with other Code provisions narrows the waiver of sovereign immunity by permitting standing only to those against whom the taxes were assessed.[16]

TATE TAXATION § 71.06[10], at 71-117 (1991) (noting "[a] person who makes an overpayment (of his own taxes) is entitled to the refund even if another's funds were used") (citing Thompson v. United States, 429 F. Supp. 13, 15 (E.D. Pa. 1977)).

13 *See, e.g.*, Martin v. United States, 895 F.2d 992, 992-94 (4th Cir. 1990) (holding that wife was entitled to bring refund suit for payment of taxes assessed against former spouse when her attorney used proceeds from sale of property received in divorce settlement to remove tax liens from that property); Parsons v. Anglim, 143 F.2d 534, 535 (9th Cir. 1944) (finding that wife was permitted to maintain refund action for payment of taxes assessed against deceased husband when the government mistakenly asserted that she was liable as transferee of husband's property); Barris v. United States, 851 F. Supp. 696, 698 (W.D. Pa. 1994) (declaring that party who paid taxes, which were assessed against another, upon belief of personal liability had standing to bring refund action); Brodey v. United States, 788 F. Supp. 44, 44 (D. Mass. 1991) (ruling that officer and shareholder of corporation, who paid taxes assessed against corporation under mistaken belief of personal liability, was a "taxpayer" for purpose of bringing refund action); 15 JACOB MERTENS, JR., THE LAW OF FEDERAL INCOME TAXATION §§ 58.06, 58.13 (1994) (explaining that whether a third party may recover taxes depends on the voluntariness of payment).

14 *Flora*, 362 U.S. at 157-58. *See infra* note 75 (quoting the Court's rationale and specifying the statutes deemed relevant by the Court).

15 United States v. Dalm, 494 U.S. 596, 601 (1990). In dealing with the time period for which refund claims must be filed, the *Dalm* Court reasoned that § 1346(a)(1) had to be read in conjunction with both 26 U.S.C. § 7422(a), which requires that a refund claim first be filed with the Secretary of the Treasury or his delegate, and 26 U.S.C. § 6511(a), which imposes time limitations upon filing a refund claim. *Id.* at 601-02; 26 U.S.C. § 7701(a)(11)(B) (1988). *See also infra* note 110 (quoting statutes and explaining their significance in context). The majority determined that these provisions worked together to narrow the seemingly broad waiver of sovereign immunity expressed in the spacious language of the jurisdictional statute. *Dalm*, 494 U.S. at 601-02. Similarly, the *Williams* Court examined the jurisdictional reach of § 1346(a)(1) in the context of §§ 7422(a) and 6511(a). *Williams*, 115 S. Ct. at 1616-18. In addition, the Court also considered the impact of 26 U.S.C. § 7701(a)(14), which defines the term "taxpayer" as "any person subject to any internal revenue tax." *Id.* (citing 26 U.S.C. § 7701(a)(14) (1988)).

16 *See, e.g.*, Hummel v. United States, 494 F. Supp. 1003, 1004 (S.D. Iowa 1980) (finding that when read in conjunction, § 1346(a)(1) and 26 U.S.C. § 7422 act as a waiver of sovereign immunity, which must be narrowly construed); Jorrie v. Imperial Inv. Co., 355 F. Supp. 1088, 1091 (W.D. Tex. 1973) (explaining that when considering the waiver of sovereign immunity, §§ 1346(a)(1) and 7422 must be construed together and subject to congressional limitations and restrictions).

In addition to construing § 1346(a)(1) with relevant sections of the Internal Revenue Code, the *Williams* Court considered the unavailability of other remedies in determining whether Congress intended to include parties in Williams's situation within the ambit of the jurisdictional grant.[17] Finally, the majority addressed policy considerations in ascertaining whether the jurisdiction conferred by the statute extends or should extend to parties in Williams's situation.[18]

In evaluating these factors, the Court resolved the split in authority among the circuit courts in Williams's favor.[19] The majority held that a party, who was not assessed a tax but who paid that tax under protest to remove a federal tax lien from her property had standing, pursuant to § 1346(a)(1), to bring an action against the United States for a refund of taxes alleged to have been erroneously or illegally assessed or collected.[20] Additionally, the Court found that the term "taxpayer," as used in statutes governing claims for administrative refunds, did not limit the waiver of sovereign immunity in § 1346(a)(1) to only the party assessed.[21] Finally, the *Williams* Court made no determination with regard to whether a party who voluntarily pays the tax liabilities of another could maintain a refund suit.[22]

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17 *Williams*, 115 S. Ct. at 1618. Whether the party seeking the refund is left without a remedy is not always dispositive of the issue in and of itself. As evidenced by the Court's decision in *Dalm*, the claimant was foreclosed from seeking relief because she failed to raise the theory of equitable recoupment within statutory time limits. *Dalm*, 494 U.S. at 610. In *Dalm*, although the Court recognized that the party seeking the refund would not be able to pursue any other remedies, the majority nevertheless refused to "overrid[e] Congress'[s] judgment as to when equity requires that there be an exception to the limitations bar[ ]" imposed on the jurisdictional grant by 26 U.S.C. §§ 7422(a) and 6511(a). *Id.* The Fifth Circuit acknowledged in *Snodgrass* that construing the waiver of sovereign immunity granted by § 1346(a)(1) strictly, so as to include only the person against whom the tax was assessed, could leave the plaintiff without a remedy. Snodgrass v. United States, 834 F.2d 537, 540 (5th Cir. 1987). The court recognized, however, that although inequity might result from a finding that the plaintiff lacked standing, such determination was an unfortunate but unavoidable consequence of the doctrine of sovereign immunity. *Id.* (quoting Phillips v. United States, 346 F.2d 999, 1000 (2d Cir. 1965) ("'[T]he spirit proper to judicial consideration of a waiver of sovereign immunity is not one of generosity and broad interpretation.'").

18 *Williams*, 115 S. Ct. at 1619-20. Specifically, the Court considered: (1) whether finding standing in Williams's situation would run afoul of the principle that parties may not generally challenge the tax liabilities of others; and (2) whether permitting Williams to sue would lead to rampant abuse of the statute. *Id.*

19 *Id.* at 1614, 1615.

20 *Id.* at 1614.

21 *Id.* at 1617.

22 *Id.* at 1620.

The property at issue in *Williams* was initially purchased by Jerrold Rabin and Lori Williams.[23] Approximately twelve years later, Rabin incurred employment tax liabilities through his ownership interest in a restaurant and was assessed by the Internal Revenue Service (IRS).[24] Accordingly, the government placed a lien in the assessed amount on all of Rabin's property, which included his interest in the house that he owned with Williams.[25]

During this time, Rabin and Williams had been contemplating divorce and, as part of the division of their marital property, Rabin had conveyed his interest in the house to Williams.[26] At the time of the conveyance, Williams did not have notice of the federal tax lien on the property.[27] As consideration for Rabin's interest in the house, Williams assumed three non-tax liabilities totaling nearly $650,000.[28]

After Rabin deeded his interest to Williams, the government made further assessments in excess of $26,000 against Rabin; however, it did not file notice until June 22, 1989.[29] On May 9, 1989, Williams entered into a contract to sell the house and a closing

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[23] *Williams*, 115 S. Ct. at 1614.

[24] *Id.* at 1614-15. On or about June 1987 and March 1988, the Internal Revenue Service made initial assessments against Rabin in the approximate aggregate amount of $15,000. *Id.*

[25] *Id.* The lien was placed on Rabin's property pursuant to 26 U.S.C. § 6321, which states: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . 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." *Id.* at 1615 (quoting 26 U.S.C. § 6321 (1988)). Thus, although the house was owned jointly by Rabin and Williams, it was still subject to the lien. *Williams*, 115 S. Ct. at 1614-15. The government did not take the position that Williams was personally liable for the taxes that were assessed against Rabin. *Id.* at 1615.

[26] *Id.* The instrument of conveyance, a quitclaim deed, referred to Williams as "an unmarried woman" even though she was still married to Rabin at the time of the transfer. *Id.* at 1622 (Rehnquist, C.J., dissenting). The deed was recorded approximately three months prior to the commencement of divorce proceedings. *Id.* The dissent pointed out that this misrepresentation raises the suspicion of whether Rabin truly transferred the property to Williams "in contemplation of divorce" or whether the conveyance was actually just an artifice used to shield Rabin's assets. *Id.* Prior to the execution of the deed, Rabin entered into a transfer agreement with Williams, whereby he agreed to indemnify her for payment of any liens upon the property. *Id.*

[27] *Id.* at 1615. The government, although it had made the initial assessments as far back as June 1987 and March 1988, failed to file the tax lien until November 10, 1988. *Id.* Therefore, Williams could not have had record notice of the liens as of the date of conveyance. *Id.* In fact, the theory behind Williams's claim was that she took the property free and clear pursuant to 26 U.S.C. § 6323(a). *Id.* Section 6323(a) provides that "[t]he lien imposed by [26 U.S.C. §] 6321 shall not be valid as against any purchaser . . . until notice thereof . . . has been filed by the Secretary." 26 U.S.C. § 6323(a) (Supp. V 1993).

[28] *Williams*, 115 S. Ct. at 1615.

[29] *Id.* The entire amount of assessments against Rabin totaled $41,937. *Id.*

date was set for July 3, 1989.[30] It was not until a week before the closing that the government gave Williams and the purchaser actual notice that there were over $41,000 in tax liens on the property.[31] The government claimed that the liens were valid against the property or the proceeds of the sale.[32] After learning of this information, the purchaser threatened legal action against Williams if the sale did not proceed as scheduled.[33] Williams authorized the disbursement in the assessed amount from the sale proceeds to go directly to the IRS in order to convey clear title and timely close the sale.[34]

In an effort to recover the taxes she paid under protest, Williams initially applied for an administrative refund.[35] When her administrative claim was denied, Williams commenced an action in the United States District Court for the Central District of California.[36] Williams sought jurisdiction pursuant to 28 U.S.C. § 1346(a)(1).[37] The district court granted the government's motion for summary judgment, holding that § 1346(a)(1) authorized refund suits only by the party against whom the tax was assessed.[38] Williams timely appealed to the United States Court of Appeals for the Ninth Circuit.[39] The court of appeals reversed, following Fourth Circuit precedent, and found that Williams had standing to bring a refund suit against the United States.[40]

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30 *Id.*

31 *Id.*

32 *Id.*

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

34 *Id.*

35 *Id.*

36 Williams v. United States, 24 F.3d 1143, 1143-44 (9th Cir. 1994), *aff'd*, 115 S. Ct. 1611 (1995). Williams claimed that as purchaser of the property, she had taken it free of the government's tax lien pursuant to 26 U.S.C. § 6323(a), which provides that absent proper notice, a tax lien is not valid against a purchaser. *Williams*, 115 S. Ct. at 1615. In her complaint, Williams sought refund of the payment, interest, costs, and attorney's fees. *Williams*, 24 F.3d at 1143-44.

37 *Williams*, 115 S. Ct. at 1615. This jurisdictional statute waives the government's sovereign immunity from suit by authorizing federal courts to hear "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected." 28 U.S.C. § 1346(a)(1) (1988 & Supp. V 1993); *see also supra* note 7 (quoting full text of provision).

38 *Williams*, 24 F.3d at 1144. In its decision, the district court relied on precedent set in the Fifth and Seventh Circuits. *Williams*, 115 S. Ct. at 1615 & n.3 (citing Snodgrass v. United States, 834 F.2d 537, 538 (5th Cir. 1987); Busse v. United States, 542 F.2d 421, 425 (7th Cir. 1976)).

39 *Williams*, 24 F.3d at 1144.

40 *Id.* at 1144, 1145. The appellate court relied upon the decision in *Martin v. United States*, which held that a "plain reading" of § 1346(a)(1) simply authorizes refund suits by parties against whom the government erroneously or illegally assessed or

The United States Supreme Court granted certiorari[41] to resolve the conflict among the circuit courts as to whether the jurisdictional grant of § 1346(a)(1) is limited only to the person against whom the tax was assessed.[42]

The Supreme Court affirmed the decision of the court of appeals, holding that § 1346(a)(1) grants jurisdiction to district courts to hear refund suits for taxes alleged to have been erroneously or illegally assessed or collected by a party who was not assessed the taxes but who paid, under protest, to remove a federal tax lien from his or her property.[43] In reaching this decision, the Court found that other remedies were not meaningfully available.[44] The majority posited that reading the statute in conjunction with the provisions regulating administrative claims for

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collected a tax. *Id.* at 1144 (quoting Martin v. United States, 895 F.2d 992, 994 (4th Cir. 1990)). In *Martin*, Mona Martin's ex-husband, Jerry Brodsky, deeded his interest in property he jointly owned with Martin to Martin and her new husband. *Martin*, 895 F.2d at 992. Although Brodsky agreed to transfer his interest in 1979, he did not actually deed the property to the Martins until 1983. *Id.* It was not until 1984 that the deed was recorded. *Id.* Sometime after the deed had been executed but before it was recorded, the IRS filed notice of a federal tax lien against the property for taxes owed by Brodsky. *Id.* Subsequently, the Martins sold the property. *Id.* To convey clear title to the property, the lawyer who conducted the closing paid approximately $18,800 out of the sale proceeds to the IRS. *Id.* at 992-93.

Upon learning that this payment had been made, the Martins filed for an administrative refund. *Id.* at 993. The IRS acknowledged that no lien was ever created against the property because the notice of federal tax lien was filed after the deed to the Martins had been executed. *Id.* The IRS nevertheless denied the refund, claiming that there was no procedure enabling the IRS to return a tax that was voluntarily paid. *Id.*

The *Martin* court recognized a split in authority as to whether a third party had standing to bring a refund suit. *Id.* Upon analyzing the law, the *Martin* court found that those courts that denied standing did so by narrowly construing the waiver of sovereign immunity. *Id.* The court declared that "[a] narrow construction allows only those taxpayers who were actually assessed by the IRS to bring suit in federal court to recover the amounts paid." *Id.* at 993.

In contrast, the court concluded that courts that did find standing were of two categories: (1) those that broadly interpret the statute for equitable reasons so that the plaintiff would not be left without a remedy; and (2) those that allowed claims by third parties only so long as they involuntarily paid the taxes. *Id.* To find standing, the court adopted neither approach, relying instead upon what it termed a "plain reading" of the statute. *Id.* at 994. The court stated that "[a]lthough the statute is silent as to who can bring the action, implicit in its language is that one against whom the tax was erroneously assessed *or* collected has standing to do so." *Id.* Thus, according to the *Martin* court, the taxes were erroneously collected because they were collected from persons who did not owe them, and the plain reading of § 1346(a)(1) allows such persons to bring a refund action against the United States. *Id.*

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

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

43 *Id.* at 1614.

44 *Id.* at 1618

refunds does not, by their use of the term "taxpayer," solely limit the jurisdictional grant of § 1346(a)(1) to only those against whom the taxes were assessed.[45] Finally, the Court limited its holding, explaining that its opinion did not address under what conditions, if any, a party who voluntarily pays the taxes of another may seek a refund.[46]

The circumstances under which one is considered a 'taxpayer' for statutory purposes were previously addressed by the Supreme Court in *United States v. Updike*.[47] In that case, the government brought suit against the former stockholders of a dissolved corporation to collect a tax that it claimed was due from the corporation.[48] It was undisputed that the government failed to file suit within the time period prescribed by the statute governing tax collection proceedings.[49] To keep its suit viable, the government contended that the statute of limitations, which was designed to protect only taxpayers from suit, did not apply.[50] The government argued that the action was not actually being brought against the taxpayer corporation but against the shareholder transferees who were holding government funds in trust.[51] The Court rejected the government's argument and declared that it made no difference whether the government sought to collect the tax assessment against the corporation directly or from the shareholders.[52] The Court held that it did not exert any "undue strain" on the term "taxpayer" so as to include within its meaning a person whose property, impressed with a trust, was subject to the burden of a tax.[53] In support of its conclusion, the Court explained that taxing acts,

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45 *Id.* at 1616-17.

46 *Id.* at 1620.

47 281 U.S. 489 (1930).

48 *Id.* at 490-91. The Updike Grain Corporation (Updike) filed its annual return at the end of its fiscal year in June 1917. *Id.* at 490. The corporation lawfully dissolved in August of that year. *Id.* In October 1917, the Commissioner of Internal Revenue issued a regulation that requiring corporations, like Updike, who had dissolved prior to a change in the tax laws, to file tax returns in accordance with the changes. *Id.* One of these changes was an increased rate of taxation. *Id.*

49 *Id.* at 491-92. A revenue agent examined the corporation's books in October of 1918. *Id.* at 491. In January 1920, the government assessed additional taxes against the corporation. *Id.* The government, however, did not bring suit to recover the additional taxes until 1927—seven years after the assessment. *Id.* The applicable statutory provision provided that such suits had to be commenced within six years after the assessment. *Id.* at 491-92.

50 *Id.* at 492-93

51 *Id.*

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

53 *Id.* The Court proclaimed that "[c]ertainly it would be hard to convince such a person that he had not paid a tax." *Id.*

along with their limiting provisions, should be construed liberally in the taxpayer's favor.[54]

With respect to refund suits in particular, the Court in *Stahmann v. Vidal*[55] determined that a person who paid a tax assessed against another had standing to maintain a refund action against the government.[56] In *Stahmann*, a cotton grower attempted to bring a refund suit against the tax collector for taxes that the grower had paid, despite the fact that the taxes had been assessed against the company that had ginned the grower's cotton.[57] The Court began its analysis by asserting the general rule that a third party who voluntarily pays the taxes of another may not maintain a refund action.[58] The majority found, however, that the tax scheme at issue assessed taxes against the ginner only as a matter of convenience, because the ginner could retain the cotton in his possession until the tax was paid by the grower.[59] The Court concluded that standing to bring a refund action largely depended upon the voluntariness of the payment.[60]

The Supreme Court reached a similar decision in *Colorado National Bank v. Bedford*.[61] In that case, the Court found a state tax scheme requiring payment from banks consistent with federal law, which forbade the imposition of taxes on banks, because the incidence of the tax actually fell upon the bank's customers.[62] The Court explained that the party who is liable for the tax is not always the "real" taxpayer; rather, the taxpayer is the party "ultimately liable for the tax itself."[63] Therefore, the Court held that a party not assessed a tax, but upon which the incidence of the tax actually fell,

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54 *Id.* at 496.

55 305 U.S. 61 (1938).

56 *Id.* at 66.

57 *Id.* at 62-63.

58 *Id.* at 64.

59 *Id.* at 65.

60 *Stahmann*, 305 U.S. at 66. According to accepted principles, the Court explained that the growers were proper parties to maintain a refund action, as long as they did not volunteer to pay the taxes. *Id.* The Court further reasoned that the growers were not volunteers because they paid the taxes under duress of goods. *Id.* Duress of goods is an act consisting of "a tortious seizure or detention of property from the person entitled to it, and requires some act as a condition for its surrender." BLACK'S LAW DICTIONARY 504 (6th ed. 1990).

61 310 U.S. 41 (1940). The Court in *Williams* described the decision in *Bedford* as relevant only insofar as it illustrated a preference for "common sense inquiries" over form, a preference which belies the government's "technical argument" in its contention that the district court lacks jurisdiction over Williams. *Williams*, 115 S. Ct. at 1618.

62 *Bedford*, 310 U.S. at 52-53.

63 *Id.* at 52 (citing Stahmann v. Vidal, 305 U.S. 61, 65-66 (1938)).

was a "taxpayer" for purposes of statutory interpretation.[64]

Although the Court in *Flora v. United States*[65] did not specifically define a "taxpayer," the case provides insight as to how the Court interprets § 1346(a)(1).[66] In *Flora*, the petitioner reported for tax purposes certain losses that he incurred as ordinary losses.[67] The Commissioner of Internal Revenue, however, characterized them as capital losses and, accordingly, levied a deficiency assessment.[68] The petitioner paid a portion of the assessment and then filed a refund claim.[69] The Supreme Court granted certiorari[70] to resolve a conflict among the circuit courts as to whether § 1346(a)(1) required full payment of the tax as a prerequisite to bringing a refund action.[71] Although § 1346(a)(1) authorized refund suits for any internal revenue tax, any penalty, or any sum, the Court rejected petitioner's argument that the words "any sum" could refer to partial payments of taxes.[72] Instead, the Court asserted that those words referred to amounts that were neither taxes nor penalties.[73]

To glean the congressional intent in enacting the statute, the *Flora* Court examined and discussed the history of § 1346(a)(1), but found it inconclusive as to whether Congress meant to require full payment of a tax prior to commencement of a refund suit.[74] The Court also recognized that the section must not be read alone, rather; it must be construed with related statutes.[75] Unwilling to

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64 *Id.*

65 362 U.S. 145 (1960).

66 *Id.*

67 *Id.* at 147.

68 *Id.*

69 *Id.*

70 Flora v. United States, 355 U.S. 881 (1957).

71 *Flora*, 362 U.S. at 147, 148.

72 *Id.* at 149.

73 *Id.* The Court explained that interest is an obvious example of a "sum" that is neither a tax nor a penalty. *Id.*

74 *Id.* at 151-57. In discussing the history of the statute, the Court cited language indicative of an inherent assumption that the proper plaintiff to a refund action was the one against whom the tax was assessed. *Id.* For example, the Court quoted what it referred to as "carefully considered dictum" in *Cheatham v. United States*, which stated that payment of the tax claimed was "a condition precedent to a resort to the courts by the party against whom the tax is assessed." *Id.* at 154, 155 (quoting Cheatham v. United States, 92 U.S. 85, 89 (1875)). In addition, the Court quoted language from congressional debates that stated that as a precondition to suit, the plaintiff must "pay *his* tax" and "*his* assessment." *Id.* at 159-60 (quoting 65 CONG. REC. 2621, 8110 (1924)) (emphases added).

75 *Id.* at 157. The Supreme Court articulated that "[w]e are not here concerned with a single sentence in an isolated statute, but rather with a jurisdictional provision which is a keystone in a carefully articulated and quite complicated structure of tax

"sacrifice the harmony of our carefully structured twentieth century system of tax litigation," the Court held that § 1346(a)(1) required full payment of the tax as a prerequisite to bringing a refund suit.[76]

In *United States v. Dalm*,[77] the Supreme Court focused on the importance of reading the broad language of § 1346(a)(1) in conjunction with other provisions of the Internal Revenue Code.[78] In *Dalm*, the respondent characterized certain payments made to her in 1976 and 1977 as gifts, but after auditing her returns, the IRS determined that the payments should have been reported as income and, accordingly, assessed deficiencies against her.[79] In 1984, after settling with the IRS and agreeing to pay income tax deficiencies, the respondent filed an administrative claim for the refund of the gift tax that she paid on the 1976 transaction.[80] When the government failed to take action upon her claim, she commenced a refund suit in the district court.[81] The government moved to dismiss the action because the suit was filed after the statute of limitations set forth in 26 U.S.C. § 6511(a) had run.[82] The respondent countered that she was entitled to maintain the action pursuant to the doctrine of equitable recoupment.[83]

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laws." *Id.* In support of its conclusion, the Court examined the statute that established the Board of Tax Appeals, the Declaratory Judgment Act and 26 U.S.C. § 7422(e). *Id.* at 158-67.

76 *Flora*, 362 U.S. at 176-77.

77 494 U.S. 596 (1990).

78 *Id.* at 601. The Court proffered that "[d]espite its spacious terms, § 1346(a)(1) must be read in conformity with other statutory provisions which qualify a taxpayer's right to bring a refund suit upon compliance with certain conditions." *Id.* First, the majority explained that § 1346(a)(1) had to be read in conjunction with § 7422(a), which requires the filing of an administrative claim as a prerequisite to suit. *Id.* at 601-02. Second, the Court stated that the statute must also be read in conjunction with 26 U.S.C. § 6511(a), which provides the limitations period for the filing of an administrative claim. *Id.* at 602.

79 *Id.* at 599.

80 *Id.* at 599-600. The respondent did not file a gift tax return for the 1977 payment. *Id.* at 599.

81 *Id.* at 600.

82 *Dalm*, 494 U.S. at 600. Section 6511(a) requires that an administrative claim for a refund must be filed "within 3 years from the time the return was filed or 2 years from the time the tax was paid," whichever period expires later. 26 U.S.C. § 6511(a) (1988).

83 *Dalm*, 494 U.S. at 600. The doctrine of equitable recoupment is defined as a:

> [r]ule of the law which diminishes the right of a party invoking legal process to recover a debt, to the extent that he holds money or property of his debtor, to which he has no moral right. . . . [The doctrine] provides that, at least in some cases, a claim for a refund of taxes barred by a statute of limitations may nevertheless be recouped against a tax claim of the government.

The Court opined that the statute under which the respondent sought jurisdiction, § 1346(a)(1), had to be construed in the context of 26 U.S.C. §§ 7422(a) and 6511(a).[84] When read together, the Court explained, it was clear that unless a claim for a tax refund is filed within the time limitation imposed by 26 U.S.C. § 6511(a), a refund suit may not be maintained, regardless of any illegal, erroneous, or wrongful collection.[85]

The majority invoked the doctrine of sovereign immunity to reinforce the argument for strict construction of the jurisdictional statute and to reject the respondent's claim for equitable recoupment.[86] The Court reasoned that allowing the respondent to maintain her refund suit when she failed to adhere to statutory requirements would venture "beyond the authority Congress has given [the Court] in permitting suits against the Government" and impermissibly undermine the principle of sovereign immunity.[87]

In *United States Department of Energy v. Ohio*,[88] the Supreme Court construed waivers of sovereign immunity in the context of statutes other than § 1346(a)(1).[89] The Court reiterated the common rule that waivers of sovereign immunity must be unequivocally expressed and should be narrowly construed.[90] Although the Court remarked that even if the statutory language appeared broad enough to authorize the imposition of civil penalties upon the

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BLACK'S LAW DICTIONARY 539 (6th ed. 1990) (citation omitted).

The Court rejected the respondent's claim for equitable recoupment because she did not assert the rule in the prior action. *Dalm*, 494 U.S. at 606. Accordingly, the Court held that she was foreclosed from relitigating her liability with respect to the gift tax. *Id.*

84 *Dalm*, 494 U.S. at 601.

85 *Id.* at 602.

86 *Id.* at 608.

87 *Id.* at 609-10 (footnote omitted). The Court maintained that this was especially true because Congress had already provided for several exceptions to the statute of limitations prescribed by 26 U.S.C. §§ 6511 and 7422. *Id.* at 610. These exceptions, codified as §§ 1311-1314, allow a taxpayer who was obligated to pay inconsistent taxes to pursue a refund even though a refund action would otherwise be barred by §§ 6511(a) and 7422(a). *Id.* The majority reasoned that permitting the respondent's suit to proceed "would be doing little more than overriding Congress'[s] judgment as to when equity requires there be an exception to the limitations bar." *Id.*

88 503 U.S. 607 (1992).

89 *See id.* at 615. Specifically, the Court examined whether Congress waived sovereign immunity with respect to state-imposed civil fines for past violations of the Clean Water Act or the Resource Conservation and Recovery Act of 1976. *Id.* at 611.

90 *Id.* at 615. The Court recognized the tension that existed between a provision suggesting a broad yet uncertain waiver of sovereign immunity for civil penalties and the provision's antecedent text that demonstrated a narrower and clearer waiver for coercive fines. *Id.* at 627. The Court concluded that such tension was properly resolved in favor of the sovereign. *Id.*

United States, the Court held that absent a clear congressional intent, the statutes did not waive the government's sovereign immunity.[91] Thus, the Court ruled that the statutes did not function to waive the sovereign immunity of the United States.[92]

The Supreme Court examined the concept of sovereign immunity in depth in *United States v. Nordic Village, Inc.*[93] In that case, a trustee in bankruptcy brought suit against the United States to recover money that an officer of the bankrupt corporation had withdrawn from the corporation's bank account to pay personal tax liabilities.[94] In reversing judgment for the trustee, the Court held that the applicable section of the Bankruptcy Code, 11 U.S.C. § 106, did not give rise to a waiver of sovereign immunity.[95] In so holding, the Court relied upon the rule that waivers of sovereign immunity must be "unequivocally expressed" and generally should not be liberally construed.[96] The majority admitted that it had occasionally narrowly construed exceptions to waivers of the government's sovereign immunity when it was consistent with the clear intent of Congress.[97] The Court proffered, however, that those instances did not serve to abolish the traditional rule that sovereign immunity should be strictly construed in favor of the sovereign.[98]

The Supreme Court reiterated that waivers of sovereign immunity cannot be enlarged beyond the requirements of the statutory

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91 *Id.* at 626 & n.16. In fact, the Court commented that even if there was an equal probability that Congress did or did not intend to waive the government's sovereign immunity, the rule that requires waivers of sovereign immunity to be narrowly construed would favor the narrow reading. *Id.* n.16.

92 *Id.* at 615.

93 503 U.S. 30 (1992).

94 *Id.* at 31.

95 *Id.* at 39. Section 106 of the Bankruptcy Code provided:

> (a) A governmental unit is deemed to have waived sovereign immunity with respect to any claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which such governmental unit's claim arose. (b) There shall be offset against an allowed claim or interest of a governmental unit any claim against such governmental unit that is property of the estate. (c) Except as provided in subsections (a) and (b) of this section and notwithstanding any assertion of sovereign immunity—(1) a provision of this title that contains "creditor", "entity", or "governmental unit" applies to governmental units; and (2) a determination by the court of an issue arising under such a provision binds governmental units.

11 U.S.C. § 106 (1988).

96 *Nordic*, 503 U.S. at 33-34.

97 *Id.* at 34.

98 *Id.*

language.[99] Because the Court found that the statute under scrutiny lent itself to at least two readings that would not authorize the relief sought by the trustee, the majority concluded that there was not an unequivocal and unambiguous intent of Congress to waive sovereign immunity.[100] Furthermore, the *Nordic* Court pronounced that it would not consider the legislative history of the statute to ascertain congressional intent with respect to resolving the ambiguity, insisting that the government's consent to be sued must be clearly expressed in the language of the statute itself.[101] Writing for the dissent, Justice Stevens stated that the majority's decision demonstrated the Court's preference for a strict interpretation of the doctrine of sovereign immunity over the equitable interests at issue.[102]

Justice Ginsburg, writing for the majority in *Williams*, acknowledged the rule that the Court may not enlarge waivers of sovereign immunity beyond the scope of the language of the statute.[103] In addition, Justice Ginsburg commented that the task of the Court rested on discerning Congress's "unequivocally expressed" intent, resolving any ambiguities in favor of sovereign immunity.[104] In determining whether § 1346(a)(1) waived the government's sovereign immunity from suit with respect to Williams, the Court began

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99 *Id.*

100 *Id.* at 37. The first interpretation of § 106 would permit the bankruptcy court to issue only declaratory and injunctive relief, but not monetary damages against the government. *Id.* at 35. The second plausible reading of the statute would preclude the trustee from seeking monetary relief because "the rules established in subsections (a) and (b) for waiver of Government 'claim[s]' that are 'property of the estate' are exclusive, and preclude any resort to subsection (c)." *Id.* at 37.

The Court explained that although these two statutory interpretations were certainly not the only possible readings, their existence was enough to defeat any notion that the statute unambiguously expressed a waiver of sovereign immunity. *Id.*

101 *Nordic*, 503 U.S. at 35. Congress responded to the Supreme Court's interpretation of § 106 by amending the statute in 1994. Joseph A. Guzinski, *The New § 106: Jurisdictional and Constitutional Issues Persist for Sovereign Immunity*, 10 AM. BANKR. INST. J. 10, 10 (Sept. 14, 1995). The new enactment "completely abrogates sovereign immunity" by explicitly waiving it with respect to specifically enumerated causes of action. Guzinski, *supra*, at 27.

102 *Nordic*, 503 U.S. at 40 (Stevens, J., dissenting). Justice Stevens explained that a literal reading of the statute's text permitted a waiver of sovereign immunity and that this literal reading was supported by the statute's legislative history. *Id.* at 40, 41 (Stevens, J., dissenting). The dissent denounced "the Court's love affair with the doctrine of sovereign immunity," and commented that "[d]espite its ancient lineage, the doctrine of sovereign immunity is nothing but a judge-made rule that is sometimes favored and sometimes disfavored." *Id.* at 42 (Stevens, J., dissenting) (footnotes omitted).

103 *United States v. Williams*, 115 S. Ct. 1611, 1615-16 (1995) (citing United States Dep't of Energy v. Ohio, 503 U.S. 607, 614-16 (1992)).

104 *Id.* at 1616 (citing *Nordic*, 503 U.S. at 33).

its analysis by examining the language of the statute itself.[105] The Court found that Williams's refund suit for erroneously collected taxes fell precisely within the statute's broad phraseology.[106] The Court strengthened its position by pointing out that the spacious language of the jurisdictional provision reflected the similarly broad common-law remedy that was displaced by the statute.[107]

Next, the majority asserted that the other statutes cited by the government did not narrow the waiver of sovereign immunity only to those against whom the tax was assessed.[108] Justice Ginsburg rejected the theory that Congress's use of the term "taxpayer," instead of a broader characterization, such as the "person who paid the tax," would permit only the party who was assessed the tax to seek administrative relief and, thereafter, bring a refund action in the district courts.[109] The Court repudiated the government's argument that Williams could not bring a refund suit because she was not a "taxpayer" entitled to exhaust administrative remedies pursuant to 26 U.S.C. §§ 7422(a), 6511(a) and 7701(a)(14).[110]

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105 *Id.*; *see supra* note 7 (quoting text of statute).

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

107 *Id.* (citing Ferguson, *supra* note 6, at 327). The common-law action of assumpsit for money had and received was brought directly against the tax collector instead of the United States. *Id.* (citing Ferguson, *supra* note 6, at 327). Assumpsit was a remedy afforded to people in Williams's situation, who paid money that they did not owe, usually as a result of duress, fraud, or mistake. *Id.* (citing BENJAMIN J. SHIPMAN, HANDBOOK OF COMMON-LAW PLEADING 163-64 (3d ed. 1923)). The Court asserted that at common law, Williams would not have been barred by the exclusion of voluntary taxpayers from pursuing an action in assumpsit because she paid the tax under protest and was, therefore, not a volunteer. *Id.*

108 *Id.* at 1616-17.

109 *Id.*

110 *Id.* at 1616. First, the government reasoned that § 7422(a) required administrative relief as a prerequisite to bringing a refund action. *Id.* 26 U.S.C. § 7422(a) provides:

> 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 . . . .

26 U.S.C. § 7422(a) (1988).

The logic that supports reading this statute in conjunction with the jurisdictional grant is that because an administrative claim must be filed as a prerequisite to suit, it is relevant to first ascertain who is a proper party to file an administrative claim before establishing who may bring a refund suit. *See* 15 JACOB MERTENS, JR., THE LAW OF FEDERAL INCOME TAXATION § 58.01 (1994). Although Williams complied with § 7422(a) by filing an administrative claim, the government contended that Williams was not even qualified to file for an administrative remedy pursuant to § 6511(a). *Williams*, 115 S. Ct. at 1616.

Section 6511(a) states in relevant part:

The majority further stated that even if construing the statutes together did lead to the conclusion that only a "taxpayer" had standing to bring a refund suit, Williams would still not be excluded from the statutory definition of a taxpayer.[111] The Court then distinguished precedent supporting the government's reading of the term "taxpayer."[112]

Next, the Supreme Court found that there was no other remedy available to Williams.[113] The majority asserted that the lack of an alternative remedy strengthened the conclusion that Congress did not intend to limit the jurisdictional grant of § 1346(a)(1) solely to those against whom a tax was assessed.[114] The Court maintained that none of the three remedies suggested by the govern-

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> [A] [c]laim 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.

26 U.S.C. § 6511(a) (1988).

The Court explained that the government's reliance on the use of the word "taxpayer" in § 6511(a) was misplaced because the statute merely provides a limitation on when one may file for administrative relief, and not on who may file a claim. *Williams*, 115 S. Ct. at 1617. In addition, the Court reasoned that reading the term "taxpayer" in § 6511(a) as inherently limiting administrative relief only to the party assessed would be inconsistent with other sections of the refund scheme, which explicitly provide for refunds to parties other than the one assessed. *Id.* (citing 26 U.S.C. § 6402(a) (1988) (authorizing the award of credits or refunds to "the person who made the overpayment"); §§ 6416(a) and 6419(a) (1988) (describing the recipient of refunds of other taxes as "the person who paid the tax")).

Finally, 26 U.S.C. § 7701(a)(14) defines the term "taxpayer" as "any person subject to any internal revenue tax." 26 U.S.C. § 7701(a)(14) (1988). The government argued that Williams did not fit within this statutory definition; therefore, she was ineligible to apply for an administrative refund. *Williams*, 115 S. Ct. at 1616-17.

111 *Williams*, 115 S. Ct. at 1617. The Court explained that the statutory definition is broader than the interpretation offered by the government. *Id.* Although Williams was not the party assessed, she became "subject to" an internal revenue tax and fell within the statutory definition of a taxpayer when the government placed the tax lien upon her home and accepted her payment under protest. *Id.*

112 *Id.* at 1617-18 (referring to Colorado Nat'l Bank v. Bedford, 310 U.S. 41, 52 (1940)). The majority explained that the government, in attempting to demonstrate that Rabin, not Williams, was the proper party to bring a refund suit, improperly relied upon the Court's statement in *Bedford* that "'[t]he taxpayer is the person ultimately liable for the tax itself.'" *Id.* at 1617 (quoting *Bedford*, 310 U.S. at 52). Justice Ginsburg asserted that the only relevance that should attach to the holding in *Bedford* was the Court's "preference for common sense inquiries over formalism," which disfavored the "technical" argument promulgated by the government in *Williams*. *Id.* at 1618.

113 *Id.*

114 *Id.*

ment was realistically available to Williams.[115] Justice Ginsburg wrote that the first remedy, 26 U.S.C. § 7426, was unavailable to Williams because the government did not levy on her property.[116] Second, the majority concluded that a quiet title action under 28 U.S.C. § 2410 would not have afforded Williams "meaningful" relief.[117] The Court found the third remedy, a release of the lien or discharge of property in exchange for a new lien upon the proceeds of the sale, pursuant to 26 U.S.C. § 6325(b)(3), equally unsatisfactory.[118] Finally, the Court dismissed the government's

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115 *Id.*

116 *Williams*, 115 S. Ct. at 1618. Section 7426, entitled "[c]ivil actions by persons other than taxpayers," provides in pertinent part:

> If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States.

26 U.S.C. § 7426 (1988).

Based upon the legislative history of § 7426, the court in *Snodgrass* concluded that when Congress enacted this statute in 1966, Congress intended § 7426, instead of a generous interpretation of § 1346(a)(1), to become the sole remedy for a party whose property had been wrongfully levied upon by the government. Snodgrass v. United States, 834 F.2d 537, 539 (5th Cir. 1987). The passage of § 7426 thus "removed the equitable need to find jurisdiction" under § 1346(a)(1). Hummel v. United States, 494 F. Supp. 1003, 1005 (S.D. Iowa 1980). Along the lines of this reasoning, the court in *Busse* concluded that cases prior to the enactment of § 7426 that had been decided in the taxpayer's favor could be distinguished in light of the fact that prior to the enactment of § 7426, except for a broad interpretation of § 1346(a)(1), no other remedy existed for parties whose property had been wrongfully levied upon. Busse v. United States, 542 F.2d 421, 425 (7th Cir. 1976) (citing S. REP. No. 1708, 89th Cong., 2d Sess. 29 (1966), *reprinted in* 1966 U.S.C.C.A.N 3722, 3750). The Court in *Williams* nevertheless found that this remedy was inapplicable because Williams's property had not been levied upon. *Williams*, 115 S. Ct. at 1618.

117 *Williams*, 115 S. Ct. at 1618. This section provides in pertinent part that "the United States may be named a party in any civil action or suit in any district court . . . to quiet title to . . . real or personal property on which the United States has or claims a mortgage or other lien." 28 U.S.C. § 2410(a)(1) (1988). The *Williams* Court explained that Williams would not be afforded "meaningful" relief under this statute because she did not receive actual notice of the liens until she was on the verge of selling the house. *Williams*, 115 S. Ct. at 1618. Furthermore, the Court stated that a protracted quiet title proceeding would have made it impossible for Williams to close on time. *Id.* Thus, according to the majority, a refund action was preferable to a quiet title action because the refund suit allowed Williams to dispose of the property, while still being able to litigate the refund. *Id.*

118 *Williams*, 115 S. Ct. at 1618. This section states in relevant part:

> Subject to such regulations as the Secretary may prescribe, the 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 claims of the United States, in the same

argument that allowing third parties to sue for a refund under § 1346(a)(1) would render the three remedies superfluous.[119]

The last issue the Court addressed was the government's contention that permitting Williams to bring this action would violate the rule that parties generally "may not challenge the tax liabilities of others," thereby leading to abuse of the system.[120] Justice Ginsburg determined that by permitting Williams to sue, no significant damage would be wrought against this principle.[121] Furthermore, the Court found unwarranted the government's fear that finding standing in this instance would lead to abuse.[122] Finally, the Supreme Court limited its holding to situations where the third-

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manner and with the same priority as such liens and claims had with respect to the discharged property.

26 U.S.C. § 6325(b)(3) (1988).

Under this type of arrangement, Williams could have sold her property and conveyed clear title if she agreed to set aside part of the proceeds. *Williams*, 115 S. Ct. at 1618. Although the value of Williams's property would have made her a candidate for this remedy as it "far exceeded the value of the Government's liens," the Court nevertheless dismissed a remedy premised upon § 6325(b)(3) as "doubtful" because it was only available at the discretion of the government. *Id.* The majority took the position that the government could not fault Williams for failure to exhaust her administrative remedies by not taking advantage of this seemingly appropriate solution because the remedy "lies entirely within the government's discretion." *Id.* at 1618, 1619 & n.9. Furthermore, the Court reasoned that the Secretary probably would not have offered this remedy to Williams because the government has a greater incentive to immediately receive cash from someone desperate to remove a lien on their property than to receive merely another lien over which the government would still have to litigate. *Id.* at 1618-19.

119 *Williams*, 115 S. Ct. at 1619. The Court explained that while § 1346(a)(1) was only available after full payment has been rendered to the government, the other remedies offered relief before full payment has been made. *Id.* (citing Flora v. United States, 362 U.S. 145, 177 (1960)).

120 *Id.* The government forecasted that violation of this principle would lead to a situation where people would voluntarily pay third-party tax liabilities and then bring a refund action after the government had ceased its collection efforts against the assessed party. *Id.*

121 *See id.* The majority noted several exceptions to the general rule to demonstrate that this principle was not inflexible. *Id.* For example, the Court pointed out that a fiduciary may litigate the liability of the taxpayer pursuant to 26 C.F.R. § 301.6903-1(a). *Id.* The Court also noted that certain transferees are similarly permitted to litigate the tax liabilities of transferors under 26 U.S.C. § 6901(a)(1)(A) (1988). *Id.* In addition, the Court articulated that in *Stahmann v. Vidal*, a third party was permitted to bring a refund action under a different statute. *Id.* (citing Stahmann v. Vidal, 305 U.S. 61, 65-66 (1938)). Justice Ginsburg then asserted that any burden placed upon the rule by allowing Williams to sue was diminished because she was not challenging the underlying validity of the tax, but rather, she was disputing the wrongful attachment of the lien on her property. *Id.* at 1619-20.

122 *Id.* at 1620. The Court was unpersuaded by the government's prediction that people would start paying taxes of third parties in order to assist others in tax evasion, especially in the absence of any proof of that type of abuse occurring in circuits that permitted standing. *Id.*

party payment was involuntary, leaving undecided the circumstances under which a party who voluntarily paid another's taxes would be able to bring a refund action under § 1346(a)(1).[123]

In a brief concurrence, Justice Scalia opined that the majority's assertion that Williams was a "taxpayer" within the meaning of 26 U.S.C. §§ 6511 and 7701(a)(14) was unnecessary and inapplicable to the Court's decision.[124] Instead, Justice Scalia explained that the clear waiver of sovereign immunity found in § 1346(a)(1) would be given an implausible meaning if the explicit language of the jurisdictional statute was narrowed by an implicit reference to the statutes governing administrative remedies.[125]

Chief Justice Rehnquist, with whom Justices Kennedy and Thomas joined, began the dissenting opinion by characterizing the majority's holding as "an unusual departure from the bedrock principle that waivers of sovereign immunity must be 'unequivocally expressed.'"[126] The dissent expounded that in bypassing established principle, the Court gave improper weight to the equities of Williams's situation.[127] The Chief Justice concluded that reading § 1346(a)(1) in conformity with the statutes pertaining to administrative remedies limited the waiver of sovereign immunity only to "taxpayers."[128] The dissent averred that because Williams

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123 *Id.* The majority characterized Williams as an involuntary taxpayer because she paid the taxes under protest for the sole reason of obtaining the release of a lien erroneously maintained against her property. *Id.* The Court reasoned that because the holding was limited to involuntary payments, its decision would not authorize the multitude of third-party challenges feared by the government. *Id.*

124 *Williams*, 115 S. Ct. at 1620 (Scalia, J., concurring). Justice Scalia commented that those statutes dealing with administrative exhaustion were too remote to have any impact on § 1346(a)(1). *Id.*

125 *Id.* The principle upon which Justice Scalia relied was that sovereign immunity presents hardship in and of itself, and the courts should not "'add to its rigor by refinement of construction where consent has been announced.'" *Id.* (citing United States v. Aetna Casualty & Sur. Co., 338 U.S. 366, 383 (1949) (quoting Anderson v. Hayes Constr. Co., 153 N.E. 28, 29-30 (N.Y. 1926) (Cardozo, J.))).

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

127 *Id.* The Chief Justice opined that when dealing with the Internal Revenue Code, the equities of the situation was generally not a significant factor. *Id.* Furthermore, the dissent argued that the Court's perception of the equities was distorted in light of the fact that Rabin's deed to Williams incorrectly named her as an "unmarried woman" even though the conveyance took place some three months prior to the commencement of any divorce proceedings. *Id.* at 1622 (Rehnquist, C.J. dissenting). This misrepresentation, Chief Justice Rehnquist explained, might indicate that Williams was not the innocent victim the Court depicted, but she may have been helping to shield Rabin's assets from the government. *Id.*

128 *Id.* at 1620-21 (Rehnquist, C.J., dissenting). Chief Justice Rehnquist argued that the jurisdictional provision had to be read in conjunction with 26 U.S.C. §§ 6511(a) and 7422(a) because both "qualify a taxpayer's right to bring a refund suit." *Id.* at 1621 (Rehnquist, C.J., dissenting) (quoting United States v. Dalm, 494 U.S. 596, 601-

was not subject to a tax, rather to a tax lien, she was not a taxpayer under the definition set forth in 26 U.S.C. § 7701(a)(14) and, therefore, not authorized to bring a refund action.[129]

Next, the Chief Justice argued that there were at least two other remedies available to Williams that the Court improperly rejected.[130] The dissent explained that the first remedy, a quiet title action under 28 U.S.C. § 2410(a)(1), obviously would not have been convenient for Williams, but was nonetheless a viable remedy.[131] The second remedy, the Chief Justice asserted, a certificate of discharge pursuant to 26 U.S.C. § 6325(b)(3), should not have been dismissed by the Court merely because issuance of the certificate lied within the discretion of the Secretary.[132]

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02 (1990)). Therefore, the dissent explained, § 6511 does not serve merely as a deadline for the filing of administrative claims, but serves to expressly limit the filing of such claims only to "taxpayers." *Id.*

Contrary to the majority's assertion, the Chief Justice did not agree that the existence of other provisions in the Code authorizing payment of refunds to third parties rendered inconsistent a reading of § 1346(a)(1) that limited refund actions only to the assessed party. *Id.* At best, the Chief Justice continued, the use of different language in the statutes cited by the majority could be considered an inconsistency or an ambiguity, and because waivers of sovereign immunity must be "unequivocally expressed," any ambiguities must be construed in favor of immunity. *Id.* (citing United States v. Nordic Village, Inc., 503 U.S. 30, 33 (1992)).

129 *Williams*, 115 S. Ct. at 1622 (Rehnquist, C.J., dissenting). The Chief Justice accused the majority of "remarkably imprecise reasoning" in concluding that the government's placement of a lien on Williams's home and acceptance of her payment under protest somehow transformed Williams into a "person subject to any internal revenue tax," pursuant to 26 U.S.C. § 7701(a)(14). *Id.* In illuminating this difference, the dissent stated: "One may have a tax assessed against him, and if he pays it in a timely manner he will never be subject to a lien. Conversely, one against whom the tax was not assessed may nonetheless be subject to a lien to enforce collection of that tax." *Id.*

130 *Id.*

131 *Id.* at 1622-23 (Rehnquist, C.J., dissenting). The dissent articulated its dissatisfaction with the majority's dismissal of the quiet title remedy, stating that it is a "fact of life" that sometimes people who want to sell their property discover that the property is subject to a federal tax lien. *Id.* at 1623 (Rehnquist, C.J., dissenting). Furthermore, the Chief Justice expounded, holders of property liens, especially the United States government, have not been required to "afford the legal equivalent of 'same day service' to finally adjudicate title before the closing date." *Id.*

132 *Id.* Under this remedy, Williams could have sought a "certificate of discharge" from the Secretary, which would have discharged the property from the lien, allowing her to convey clear title, and place a new lien on the proceeds of the sale "'as a fund subject to the liens and claims of the United States.'" *Id.* (quotation omitted). Williams could have subsequently litigated the proprity of the lien pursuant to 26 U.S.C. § 7426(a)(3). *Id.* The dissent challenged the majority's dismissal of this remedy as "doubtful" for the sole reason that its issuance was within the discretion of a government official. *Id.* Rather, the dissent explained, placing this remedy in the discretion of the Secretary was appropriate. *Id.* For example, Chief Justice Rehnquist pointed out that some properties subjected to tax liens, such as property worth less than the

Chief Justice Rehnquist concluded by declaring that the majority's charitable interpretation of the provision would have been more understandable if the statute under scrutiny had been one conferring new benefits or rights on a class of people.[133] The Court's generous interpretation, the Chief Justice proffered, was wholly inappropriate in construing a provision of the Internal Revenue Code.[134]

The decision in *Williams*, although providing an equitable result, breaks with the established principles that waivers of sovereign immunity should be strictly construed by the Court and must be "unequivocally expressed" in the statutory provision.[135] Thus, even though Williams did not owe taxes, and it would seem unfair to deny her any recovery, the fact remains that she opted to pursue a course of action and a remedy that, by strict statutory construction, might not have been open to her.[136] The Court's broad holding, that one does not have to be the party assessed to pursue a refund action under § 1346(a)(1), sharply conflicts not only with strict statutory construction but also with established lower court

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value of the lien, might not be appropriate for this remedy. *Id.* Thus, it was entirely appropriate for Congress to allow the Secretary to determine case by case whether the proceeds from a particular sale would be adequate enough to permit this remedy. *Id.* In Williams's case, the dissent proffered, Williams probably would have been a likely candidate for this remedy had she pursued it, since the value of her property was far greater than the amount of the tax liens. *Id.* Williams did not pursue this remedy, however, and the dissent averred that it is an established rule that one cannot claim an administrative remedy to be inadequate when one does not even invoke the remedy. *Id.*

The dissent disagreed with the majority's assertion that the government was at fault for not proactively offering this remedy to Williams. *Id.* The Chief Justice mused whether this reasoning would confer a duty upon IRS agents to issue warnings to the people they investigate in a manner analogous to the requirement of Miranda warnings, which must be administered to persons taken into custodial interrogation. *See id.* In fact, Chief Justice Rehnquist noted that because Williams even conceded that the government had no obligation to inform her about the availability of discretionary relief, the majority's reasoning on this point was flawed. *Id.*

133 *Id.* at 1623-24 (Rehnquist, C.J., dissenting). Such statutes, explained the dissent, are subject to more liberal constructions in order to accomplish their beneficent purposes. *Id.* at 1623 (Rehnquist, C.J., dissenting).

134 *Williams*, 115 S. Ct. at 1624 (Rehnquist, C.J., dissenting). When dealing with the Internal Revenue Code, "it would surely come as news to the millions of taxpayers in this country that the [Code] has a 'beneficent purpose' as far as [the millions of taxpayers in this country] are concerned. It does not [have a beneficent purpose], and the Court is mistaken to decide this case in a way that can only be justified if it does." *Id.*

135 *Williams*, 115 S. Ct. at 1620 (Rehnquist, C.J., dissenting). In fact, with respect to waivers of sovereign immunity, the majority's decision in *Williams* "calls into question the clear statement rule the Court had developed in its preceding five terms." Nagle, *supra* note 3, at 796.

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

precedent.[137]

The Supreme Court's generous interpretation of § 1346(a)(1) may already have opened the floodgates to sue under that statute. For example, in *WWSM Investors v. United States*,[138] the Ninth Circuit permitted WWSM, the creditor of a delinquent taxpayer, to bring a refund suit under § 1346(a)(1) after WWSM failed to file its wrongful levy action pursuant to 26 U.S.C. § 7426 within the relevant statute of limitations.[139] Relying upon the Court's sentiment in *Williams* that substance is preferable over form, the court in WWSM disregarded 26 U.S.C. § 7426 as the sole remedy for a wrongful levy and permitted an otherwise time-barred claim against the sovereign to proceed pursuant to the Supreme Court's new reading of § 1346(a)(1).[140]

To achieve an equitable result without opening up the remedy of a refund action to a whole new class of plaintiffs, the standing issue in *Williams* could have been resolved by ascertaining the voluntariness of the payment.[141] In fact, the Court appeared to be on

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137 *Id.*; *see supra* note 12 (citing cases that held claimant had to be the assessed party to bring an action under § 1346(a)(1)).

138 64 F.3d 456 (9th Cir. 1995).

139 *Id.* at 457, 458. In *WWSM*, the IRS levied on bank accounts that belonged to WWSM, seizing approximately $79,000. *Id.* at 457. This action gave rise to WWSM's wrongful levy claim because the money was not owed by WWSM, but by another company, Advanced Plastics Engineering Corporation (Advanced). *Id.* WWSM had simply seized Advanced's assets pursuant to a security agreement that took priority over the government's tax claim. *Id.*

140 *Id.* at 459 (citing *Williams*, 115 S. Ct. at 1618). Interestingly, Judge Brunetti filed a dissenting opinion and proffered that the majority had misread and misapplied the Supreme Court's decision in *Williams*. *Id.* (Brunetti, J., dissenting). The dissent explained that the Supreme Court characterized *Williams* as a refund action, not a wrongful levy case. *Id.* Furthermore, the dissent elucidated that the Court in *Williams* did not "overrule or even hint that § 7426 was not the exclusive remedy for a claimed *wrongful levy*." *Id.*

141 Many courts have used voluntariness of payment as a standard in determining whether a third party could sue for a refund. *See, e.g.*, Schoenherr v. United States, 566 F. Supp. 1365, 1367 (E.D. Wis. 1983) (setting forth a tripartite test to determine whether a party had attained "taxpayer status" by virtue of involuntary payment of another's taxes); Collins v. United States, 532 F.2d 1344, 1348 (Ct. Cl. 1976) (utilizing a volunteer standard and stating that "[i]n cases involving the payment of tax liabilities by a third party, it is fundamental that the plaintiff cannot recover if the payment in issue was voluntary and the plaintiff bears the burden of proving some element which would remove him from the category of volunteer"). *See also* Parsons v. Anglim, 143 F.2d 534, 537 (9th Cir. 1944) (explaining that the word "volunteer" in the context of tax law is a term of art meaning "one who cannot recover moneys paid as a donation to discharge another's tax," the determining factor being the volition to donate, not the absence of coercion); McMahon v. United States, 172 F. Supp. 490, 494 (D.R.I. 1959) (holding that the term "taxpayer" should include any person who paid a tax, provided that the payment was not voluntarily made); 15 JACOB MERTENS, JR., THE LAW OF FEDERAL INCOME TAXATION § 58A.02 (1992) (stating that "[a] person who

the verge of acknowledging this principle, whereby a party becomes a "taxpayer" for the purpose of bringing a refund action if the payment was made involuntarily or under compulsion.[142]

A standard based upon the voluntariness of payment would seem to be fair, workable, and grounded in common sense. For example, if someone paid the IRS to avoid imprisonment or foreclosure due to a falsely assessed tax, that person should be allowed to pay the tax to preserve their person and possessions and then be allowed to sue the government for a refund. More difficult situations would arise in cases such as *Williams*, where the person paying the tax is in a difficult situation because although they may not actually owe the money to the government, they pay anyway to avoid other unpleasantries, such as being sued for not conveying clear title or closing on time.[143] Under these circumstances, it may be difficult to ascertain whether the person actually paid the tax under some force of compulsion, or whether they were just looking for an easy solution. In fact, this appeared to be a point of contention between the majority and the dissent in *Williams*: whether Williams could be considered a taxpayer for practical purposes because she was forced to pay the taxes involuntarily, or whether Williams opted to pay the taxes of another, foregoing other possible though costly remedies.[144]

An inquiry that considered all the facts and circumstances involved could have been utilized to determine whether Williams was truly a "victim" of unfortunate circumstances who paid the tax under compulsion, or whether she paid the tax voluntarily, either because she was involved in some sort of scheme to shield Rabin's assets or because she simply elected the wrong remedy.[145] A standard that takes into account the voluntariness of the third-party

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voluntarily pays the taxes for another person is not entitled to prosecute a refund action. . . . However, it has been held that where a third party pays another entity's tax on the mistaken assumption that he was personally liable, rather than payment to remove a tax lien, and the [IRS] does not dispel his assumption, the third party may bring a suit for refund") (footnote omitted); *id.* at § 58A.09 (explaining that "the word 'taxpayer' is deemed to include the person against whom the tax was assessed as well as any person who in fact pays the tax, if such payment was not voluntarily made") (footnote omitted).

142 *See Williams*, 115 S. Ct. at 1616, 1620. The Court took the voluntariness of the payment into consideration when it determined that Williams was not a volunteer because she paid the tax under protest. *Id.* at 1616. In addition, the majority expressly stated that it left undecided any circumstances under which someone who volunteered to pay the taxes of another might be able to seek a refund. *Id.* at 1620.

143 *See Williams*, 115 S. Ct. at 1615.

144 *See generally id.*

145 *See id.*

claimant's payment would comport with strict statutory construction, permitting only a "taxpayer," a party that is subject to any internal revenue tax, to take advantage of the waiver of sovereign immunity. A voluntariness standard would also be fair by virtue of permitting refund actions by third parties who truly have no other recourse, as well as excluding those who either slept on their rights by failing to pursue other remedies or tried to take advantage of the system.

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