SUPREME COURT OF THE UNITED STATES

No. 94–395

UNITED STATES, PETITIONER *v.* LORI RABIN WILLIAMS

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

[April 25, 1995]

CHIEF JUSTICE REHNQUIST, with whom JUSTICE KENNEDY and JUSTICE THOMAS join, dissenting.

The Court, in an unusual departure from the bedrock principle that waivers of sovereign immunity must be "unequivocally expressed," holds that respondent may sue for a refund of a tax which was not assessed against her. In so doing, it outlines in some detail what it conceives to be the equities of respondent's situation—a factor not usually of great significance in construing the Internal Revenue Code. I believe 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.

The legal question at hand is whether the Government has waived its sovereign immunity in §1346(a)(1) to authorize respondent, who conceded that she "is not the taxpayer," App. 16, to file a refund suit. In answering that question, it must be remembered that §1346(a)(1) is "a jurisdictional provision which is a keystone in a carefully articulated and quite complicated structure of tax laws." *Flora* v. *United States*, 362 U. S. 145, 157 (1960). Section "1346(a)(1) must be read in conformity with other statutory provisions [26 U. S. C. §§7422(a) and 6511(a)] which qualify a taxpayer's right to bring a refund suit." *United States* v. *Dalm*, 494 U. S. 596, 601–602 (1990).

Section 1346(a)(1) provides:

> "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." 28 U. S. C. §1346(a)(1) (1988 ed. and Supp V).

The jurisdiction conferred by §1346(a)(1) is limited by 26 U. S. C. §7422(a). Like §1346(a)(1), §7422(a) contains no language limiting a refund suit to the "taxpayer," but its "express language . . . conditions a district court's authority to hear a refund suit." *Dalm*, *supra*, at 609, n. 6. It requires that "a claim for refund or credit [first be] filed with the Secretary, according to the provisions of law in that regard." 26 U. S. C. §7422(a). There are two "provisions of law" dealing with such claims. Title 26 U. S. C. §6511(a) provides in part that 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" (emphasis added).

Title 26 U. S. C. §6532(a), which imposes a period of limitations on suits for refunds in court and is entitled "Suits by *taxpayers* for refund," states that

> "[n]o suit or proceeding under section 7422(a) . . . shall be begun before the expiration of 6 months from the date of filing the claim required under such section . . . , nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary

to the *taxpayer* of a notice of the disallowance" (emphasis added).

Both §§6511(a) and 6532(a) clearly are limited to the "taxpayer," and the term "taxpayer" is in turn defined in 26 U. S. C. §7701(a)(14) to mean "any person subject to any internal revenue tax." Reading these provisions as a whole, the conclusion is inescapable that only a "taxpayer" (26 U. S. C. §7701(a)(14)) who has filed a timely claim for refund (under 26 U. S. C. §6511(a)) and a timely suit for refund (under 26 U. S. C. §6532(a)) is authorized to maintain a suit for refund in any court (26 U. S. C. §7422(a)) for an "erroneously or illegally assessed or collected" tax (28 U. S. C. §1346(a)(1)).

The Court describes §6511(a) as providing "only a deadline for filing for administrative relief, not a limit on who may file." *Ante*, at 7. But the "plain terms" of §6511(a), *ante*, at 7, *do* impose such a limit—a refund claim may be filed only "by the taxpayer." The Court discounts the notion that the term "taxpayer" limits administrative relief to the party assessed by concluding that such a construction "is inconsistent with other provisions of the refund scheme." *Ibid.* The "other provisions" cited by the Court, however, are in no way inconsistent with the above construction of §6511(a): the fact that the Secretary is authorized to refund any overpayment to "the person who made the overpayment," 26 U. S. C. §6402(a), or to "the person who paid the tax," 26 U. S. C. §§6416(a), 6419(a), does not mean that such a person may bring suit if she disagrees with the Secretary's calculation of the amount of the overpayment. And even if such an inconsistency did exist, an "inconsistency" is not enough to carry the day when dealing with a waiver of sovereign immunity; "inconsistency" simply means ambiguity, and because a waiver of sovereign immunity must be "unequivocally expressed," any ambiguity is construed in favor of immunity. *United States* v.

Nordic Village, Inc., 503 U. S. 30, 33 (1992).

The Court proceeds to argue that, even if only "taxpayers" could seek administrative relief under §6511, respondent qualifies as a "taxpayer." *Ante*, at 7. That term is defined in the Code as "any person subject to any internal revenue tax." 26 U. S. C. §7701(a)(14). The Court says this phrase is "broad enough to include [respondent]" because the Government "place[d] a lien on her home and then accept[ed] her tax payment." *Ante*, at 8. This is remarkably imprecise reasoning.

Respondent was subjected to a tax *lien*, but this does not mean she was "subject to any internal revenue tax" in the normal sense of that phrase as used in the Code. The tax was assessed against Rabin, not respondent, and respondent has equivocated as to whether she is simply challenging the lien or also challenging Rabin's underlying tax assessment. The underlying tax, and the lien to enforce liability for that tax, are obviously two different things. 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. The Court says it will decide here only the challenge to the lien, thereby leaving the tax totally unchallenged in this proceeding. *Ante*, at 12—13, and n. 10. This is quite contrary to the language quoted above, which allows only the person "subject to any internal revenue *tax*" to file the claim for refund which is the necessary prerequisite for bringing a refund suit under §1346(a)(1).

The Court believes its position is reinforced by its conclusion that respondent is left without a remedy if she cannot bring a refund suit under §1346(a)(1). Equities ordinarily do not assume such a dominant role when dealing with questions of sovereign immunity, but if they are to play that role, the

equities ought to be those which can be confirmed on the record before us.

The undisputed facts of record which evoke the Court's sympathy are these. Rabin and respondent owned the property in question as joint tenants. In June 1987, and in March 1988, the Government made federal employment tax assessments totaling nearly $15,000 against Rabin. A federal tax lien securing the taxes and interest owed by Rabin arose "at the time the assessment [was] made," 26 U. S. C. §6322, and reached "all property and rights to property, whether real or personal, belonging to" Rabin at that time. 26 U. S. C. §6321. In October 1988, Rabin and respondent entered into a "transfer agreement," whereby Rabin agreed to convey his interest in the property to respondent and to indemnify her for the payment of any liens on the property. Rabin transferred his interest in the property to respondent by executing a quitclaim deed. The deed, recorded nearly three months before any divorce proceedings had commenced, described respondent as "an unmarried woman." App. 14. This misrepresentation —stating that respondent was "an unmarried woman" at the time of the transfer—raises the question whether the property was conveyed to respondent "in contemplation of divorce," as the Court says, *ante*, at 2, or whether it was done in an attempt to shield Rabin's assets from the tax lien. In November 1988, the Government recorded notice of the federal tax lien. Respondent commenced divorce proceedings against Rabin in January 1989, and in May 1989, while the divorce petition was pending, respondent entered into an agreement to sell the property. In June 1989, the Government filed notice of additional tax liens, including a lien in respondent's name as nominee, agent, alter ego, and holder of a beneficial interest in the property for Rabin. The closing date for the sale of the property was July 3, 1989.

Respondent thus faced a situation not uncommon to

those who seek to transfer a clear title to real property: her property was subject to federal tax liens. But despite the Court's suggestion to the contrary, respondent clearly had available to her at least two remedies. She could have brought an action to "quiet title" under 28 U. S. C. §2410(a)(1), or she could have sought from the Secretary a "certificate of discharge" of the property under 26 U. S. C. §6325(b)(3).

The Court, relying on respondent's bald assertion that she had no notice of the liens until the week before the closing, concludes that a quiet title action under §2410(a) would not have afforded respondent meaningful relief because only "a refund suit would allow her to sell the property and simultaneously pay off the lien, leaving her free to litigate with the Government without tying up her real property." *Ante*, at 9. This simply begs the question. Obviously, a quiet title action brought at the time respondent agreed to sell the property could not have proceeded to judgment before the closing date, but that is true of lawsuits to quiet title against all sorts of other liens that may prevent the conveyance of clear title. The existence of outstanding liens on property is a fact of life, and heretofore lienors—least of all the United States—have not been required to afford the legal equivalent of "same day service" to finally adjudicate title before the closing date.

Respondent was not left only with the remedy of a "quiet title" action; she could have sought from the Secretary a "certificate of discharge" of the property under 26 U. S. C. §6325(b)(3) by agreeing to hold the proceeds of the sale of the property "as a fund subject to the liens and claims of the United States," with the propriety of the liens to be litigated in a subsequent action under 26 U. S. C. §7426(a)(3). The Court finds this remedy inadequate because it was a "doubtful" remedy upon which respondent could not "rely," since the certificate of discharge could issue

only in the exercise of the Secretary's discretion. *Ante*, at 9—10. That the Secretary must exercise discretion does not make §6325(b)(3) a "doubtful" remedy. Congress appropriately granted the Secretary discretion to determine, on a case-by-case basis, whether the proceeds from the sale of property will be sufficient to protect the Government's tax lien. And because the worth of respondent's property "far exceeded the value of the Government's liens," *ante*, at 9, the Secretary most likely would have issued a certificate of discharge in this case. But respondent never sought to invoke this remedy, and the cases are legion holding that a person may not claim an administrative remedy was inadequate if she never sought to invoke it. *See, e.g., McGee* v. *United States*, 402 U. S. 479, 483 (1971) (a Selective Service registrant may not complain in court if the registrant "has failed to pursue normal administrative remedies and thus has sidestepped a corrective process which might have cured or rendered moot the very defect later complained of"); *Geo. F. Alger Co.* v. *Peck*, 74 S. Ct. 605, 606–607, 98 L. Ed. 1148, 1150 (1954) (a company may not complain in court when it failed to take advantage of an available administrative remedy, even though that remedy may "cause inconvenience and expense"); cf. *McCarthy* v. *Madigan*, 503 U. S. 140, 145 (1992) (exhaustion of administrative remedies "appl[ies] with particular force when the action under review involves exercise of the agency's discretionary power or when the agency proceedings in question allow the agency to apply its special expertise") (citing *McKart* v. *United States*, 395 U. S. 185, 194 (1969)).

To make a bad matter worse, the Court faults the Government for not "afford[ing respondent] an opportunity" to pursue this remedy. *Ante*, at 10. This makes one wonder whether we are entering an era where internal revenue agents must give warnings to delinquent taxpayers and lienees analogous to the

warnings required in criminal cases by our decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Certainly the Court has never so held before, and one may hope that it would not so hold in the future. Indeed, since respondent concedes in her brief that the Government was not required to tell her about the discretionary relief available, Brief for Respondent 20, it is surprising to see the Court suggest to the contrary.

If this case involved the interpretation of a statute designed to confer new benefits or rights upon a class of individuals, today's decision would be more understandable, since such a statute would be "entitled to a liberal construction to accomplish its beneficent purposes." *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783 (1949) (construing the Jones Act); see also *Atchison, T. & S. F. R. Co.* v. *Buell*, 480 U. S. 557, 562 (1987) (stating that the Federal Employers' Liability Act is a "broad remedial statute" which must be given a "liberal construction"). But it would surely come as news to the millions of taxpayers in this country that the Internal Revenue Code has a "beneficent purpose" as far as they are concerned. It does not, and the Court is mistaken to decide this case in a way that can only be justified if it does.