

CASE NO. 21-1457

Supreme Court, U.S.

FILED

OCT 26 2021

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

QUILLER BARNES,

Petitioner,

v.

INTERNAL REVENUE SERVICES, DOES 1-20,

INCLUSIVE

Respondents.

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth circuit court of  
California  
Honorable Kimberly Mueller

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PETITION FOR WRIT OF CERTIORARI

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QUILLER BARNES  
Petitioner in Pro Per  
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## **QUESTION PRESENTED**

Were the Petitioner's 1996 Pension funds from Pacific Bell Telephone Company, which was properly rolled over within 60 days of his retirement, per his employer's regulations and the Internal Revenue regulations 402 (c) and 408(d)(3) taxable income? Because of the *unusual circumstances* regarding this tax situation, the Petitioner's pension fund was mistakenly taxed; therefore, should the statute of limitation regarding this tax situation be waived? And the Respondent obligated to return to the Petitioner any taxes, interest and penalties Petitioner paid for the pretax and taxation of the Petitioner's untaxable Pension Funds.

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**6511(b)**

Petitioner Quiller Barnes respectfully request the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit

**JURISDICTION**

The Ninth Circuit entered judgment on July 26, 2021. This court's jurisdiction is involved under 26 U.S.C. § 6511(b). Violation of Petitioner's 4<sup>th</sup> Amendment rights of the Constitution.

## **FEDERAL RULE INVOLVED**

Employee Retirement Income Security Act of 1974 (ERISA) laws, I.R.C. § 6511(a)(6) ERISA laws are included, Internal Revenue regulations 402(c) and 408(d)(3) for protection from taxation properly rolled over pension funds.

## **PARTIES TO PROCEEDINGS AND RELATED CASES:**

Barnes vs. IRS Commissioner No.: 2:19-CV-00558-KJM-CKD  
United States District Court Eastern District of California  
Judgment 08/24/2020

Barnes vs. IRS Commissioner No.: 20-15733, United States  
Court of Appeals for the Ninth Circuit, Judgment July 26, 2021

## **STATEMENT OF THE CASE**

In December 1996 Petitioner took an early retirement and based on his employer's regulations regarding his retirement, and I.R.C. 408 (a), Petitioner had sixty (60) days to roll over his Pension funds to another retirement plan to avoid his pension funds from being taxed. The Petitioner successfully rolled over his \$154,000 pension funds to a qualifying money market plan. Subsequently, in 2001, the Petitioner found that a mistake had been made and the \$154,000 pension funds had been reported as income on his 1996 tax return. The Petitioner was required by the Respondent to pay taxes on the \$154,000 rolled over pension funds, even though it was obvious that the Petitioner's 1996 tax return had this unusual high amount of reported income. The Petitioner informed Respondent that his 1996 tax return has incorrectly included his pension funds and that they had incorrectly taxed his properly rolled over pension funds. The Respondent told Petitioner that even if they investigated the matter and found it was a mistake it was too late for him to request a refund because the statute of limitation had expired, and he had no way to have his claim enforced. The Petitioner stated to the Respondent that it was not a matter of a tax refund, but the return of \$154,000 retirement funds, including the taxes, interest, and penalties which they forced him to pay on his untaxable pension funds.

I. The Internal Revenue Service refuse to look at this matter as an “unusual circumstance” as based on their rules and regulations they cannot tax a properly rolled over retirement fund.

(a) I.R.C. § 408(a) Individual Retirement Account, means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements. I.R.C. § 408(a)(1) except in the case of a rollover contribution described in subsection (d)(3) or in section 402(c), 403(a)(4), 403(b)(8). The Petitioner met the qualification when he properly rolled over his pension funds into another qualified pension plan.

(b) This was the Petitioner’s personal property which the Defendants taxed, robbing his estate of the pension he paid into during his years of employment that was specifically for his retirement years.

(c) In 1996 Petitioner’s combined income for him and his spouse was \$83,636.00, which was the same for the previous tax years, however Respondent did not question the change of income in a year (Petitioner working for same employers with no substantial increase in income) to \$249,891.00. That income was a combined income of Petitioner and his Spouse’s W2 wages and the Petitioner’s properly rolled over Pension funds. The Respondent did not “red flag” this return due to the unusual

increase but proceeded to tax the Plaintiff for the combined W2 wages and the rolled over Pension funds.

(d) The Plaintiff's employer had submitted for that tax year a 1099R showing the W2 income earned by the Plaintiff.

(e) *There are no tax laws with a reference to a statue of limitation to correct a mistake for taxing a properly rolled over pension fund.*

The Respondent continued to look at the matter as a W2 Wage tax issue and that the Petitioner was requesting a tax refund. The Respondent had all the information to prove to the Respondent that the \$154,000 was the Petitioner's rolled over retirement funds and that this was not a W2 tax refund issue. However, Respondent have objected all the Petitioner's acknowledgements that this was not a tax refund issue but an illegal taxation of a properly rolled-over Pension funds and that the 2- or 3-year statute of limitation laws did not apply to this taxation situation.

Respondent states, "The district court properly dismissed Barnes' action because Barnes failed to file timely administrative refund claims with the Internal Revenue Service," pursuant to 26 U.S. C § 6511(a), and state the court cannot hear a refund suit without filing an administrative refund claim with IRS).

The Respondent made every effort to, when he learned of the mistake, to correct the mistake in 2000 and 2001, but over the years have consistently informed the Petitioner that IRS, FIB the statute of limitations had passed for them to address the issue of his illegal taxed pension. The Petitioner was told repeatedly that there

was nothing they could do, even when the statute of limitation had not lapsed. They would not concede that this was a “unusual circumstance” and “fix” the problem. Respondent stated that Petitioner had two years from the time the tax was paid to file an administrative claim, which the Petitioner had contacted the Respondent on a number of occasions between 2001 when he learned of the mistake and 2012 when he was final able to amend his 1996 tax return. (1) The Petitioner did not learn about the mistake until 2001; (2) When the Petitioner learned of the mistake, he immediately contacted the Respondent regarding the mistake (3) And, informed Respondent this was not a W2 income tax refund mistake; (4) Pursuant to 26 U.S.C. § 6511(2) there is no statute of limitation regarding the taxation of properly rolled over retirement funds. According to 26 CFR 1.4037(b) “rolled over pension funds rolled over to a specific pension Plan within 60 days of retirement are not taxable income”. The Respondent’s regulations I.R.C. § 408(d)(a) protect the taxation of the Plaintiff’s properly rolled over pension funds. And, within these regulations, there is no regulation that state a statute of limitation apply regarding the illegal taxation of a properly rolled over pension fund. The Petitioner was forced to pay thousands of dollars in taxes on his own pension.

**Taxpayer’s Bill of Rights state:**

- (a) The right to pay no more than the “CORRECT” amount of tax owed.
- (b) The right to pay only the amount of tax “LEGALLY DUE,” including interest and penalties to have IRS apply all tax payments properly.

The Petitioner's employer had submitted their 1099R showing the amount of income earned by the Petitioner in 1996, again a "red flag" should have gone up when this information did not agree with the Petitioner's tax return.

The Respondent has stolen the Petitioner's pension and all interest earned on the pension since 1997. Respondent was at fault for incorrectly taxing the Petitioner's pension; and refusing to return the Petitioner's pension and all interest and penalties he paid. Since this is a *Pension Protection issue and not a tax refund issue (on a W2 income) the statute of limitation regarding a tax refund claim does not apply. Respondent is responsible for the return of the Petitioner's pension and all other funds Petitioner paid to Respondent regarding this specific issue.*

Using the statute of limitation laws to prevent returning Petitioner's pension and other illegally collected fees and penalties is a violation of the Petitioner's 4<sup>th</sup> Amendment rights it deprives him of his personal property.

**ERISA – The Employee Retirement Income Security Act of 1974 is a federal law to protect the assets of American funds placed in retirement plans during their working lives to assure these funds will be there when they retire**

- (a) You may owe current income taxes-and tax penalties—on your distribution if you take money out before age 59½, UNLESS YOU TRANSFER IT TO AN IRA OR ANOTHER TAX-QUALIFIED RETIREMENT PLAN.

The Petitioner's rolled over pension was protected under the ERISA law as stated.

The Petitioner's rolled over pension was protected under the I.R.C. § 408(a). Both

these laws protect the Plaintiff's properly rolled over pension funds. And, because of the Federal protection the federal court has jurisdiction over the Petitioner's claim. The lower court was responsible to allow the Petitioner the right to amend his complaint to correct the any misleading issues that the Respondent has held against the Petitioner in this matter. The Third Circuit addressed the issue of amending a complaint, "The Third Circuit disagreed with West Run Student Housing Associates, LLC v. Huntington National Bank, 7 F. 3d 165 (3d Cir. 2013). "The court found that an amended pleading supersedes an original pleading, and parties are free to correct inaccuracies in pleadings by amendment." The lower court dismissed the Petitioner's original complaint without allowing the Petitioner to amend his complaint and correct the inaccuracies. 28.U.S.C. Section 1346 (a)(b)(1) based on this section of the federal laws, the United States has jurisdiction to hear this matter. Had the Petitioner been given the opportunity to correct his original complaint it would have been clear that the Petitioner was not asking for a refund but putting the Respondent on notice for illegally taxing his 1996 pension fund. And, that the Respondent could not invoke the "3 year or 2 years" statute of limitation rule against the Petitioner's claim because the Petitioner corrected complaint would have shown the "3 year or 2 years" statutes did not apply to his taxation situation.

### **The Protection of the Petitioner's Pension**

The United States protects the Petitioner's pension for his retirement years. Sovereign immunity can be implied if the laws that are put in place to protect the

rights of a United States citizen are denied that citizen (over no fault of his own). ERISA supply a sovereign immunity to the Petitioner's claim because he is a United States citizen and entitled to all the protections of federal laws. He worked in the United States, saved for his retirement for his future when he could no longer work, did what the laws instructed him to do in terms of his pension, and believed that these laws protected his rights to have access to his pension funds when he retired. It is the "duty" of the government to accommodate a United States citizen when that citizen has complied with laws of the government.

The Petitioner has an "unusual tax circumstance" which could have been resolved years ago had the Respondent complied with their own laws. There was a mistake involving the Petitioner's personal pension funds, the Respondent was provided all the information in which to resolve this problem yet refused to practice their own laws to protect the rights of a United States citizen. And based on the Taxpayer's bill of rights, "a taxpayer has the right to pay no more than the correct amount of tax and to pay only the amount legally due," since the Respondent knew the correct amount of the Petitioner's tax obligation —they themselves made a mistake of taxing the Petitioner on an amount that was not the Petitioner's taxable income. And, in fact, the Respondent used every excuse to deny the Petitioner the right to claim the return of his pension. This was not a W2 refund mistake, but a gross mistake that has deprived the Petitioner to the benefits of his hard work that provide him with a Pension for his financial future.

### **Supportive Case Law**

There is no case law that the Petitioner can refer or quote that set a standard or precedent for what has happened to him in terms of the taxation of his pension. As there are many cases that exist regarding an issue of a W2 refund claim and other sort of tax issues, but this tax situation is limited in scope and the Respondents continuously characterize this as an issue of a tax refund without incorporating in their reasoning that because the Petitioner's properly rolled over pension is an issue that this matter must be looked at differently. The Respondent claims that the Petitioner, in fact, "tried" to change the characterization of this issue from a W2 tax refund issue to the issue of an improperly, illegally taxation of a pension.

#### **REASON FOR GRANTING THE WRIT**

**The court should Grant Certiorari to Clarify the Proper taxation of a proper rolled over pension fund by waiving the usual statute of limitations laws that have been imposed on the Petitioner in this matter.**

This court should grant review of this case to provide guidance on how to apply extraordinary circumstances on the mistakenly taxation of a worker's properly rolled over pension fund which has confounded the Respondent and the lower courts. The ERISA laws and the I.R.C. laws both protect the taxation of a properly rolled over pension fund. When this mistake occurred, the Respondent should have "red flagged" the Petitioner's 1996 tax return and asked some questions. To assure that they should have only been properly taxing the Petitioner's W2 income and not his pension funds. When they received the information that there was a mistake, they immediately stated that the Petitioner had no recourse because of the statute of limitation to request a refund. They did not consider the special circumstance

that they had illegally taxed the Petitioner's pension and that the incident was not a W2 taxation issue.

Had the lower court allowed the Petitioner to amend his complaint to be for specific and clear about what he was asking in his complaint, the lower court could have looked at the complaint in a different manner.

The Respondent has more than ten (10) years, which under special circumstance, the 10 years to collect a tax debt can be extended. However, a U. S. Citizen have three (3) years or less to claim the overpayment of taxes. But Petitioner has a special circumstance where he is requesting that the Respondent return any monies, they collected on his properly rolled over 1996 pension, which they characterized as a W2 tax refund and have invoked the 2- or 3-year statute of limitation to claim a refund.

There is no case that standardize the Petitioner's taxation situation, but the court should not limit this matter to a simple request for a tax refund and look at all aspects of the laws to justly protect this claim of the Petitioner. The Petitioner is only requesting to have his pension returned which he has loss, with all the pre-tax, taxes, interest, and penalties he has paid on his own personal pension required for his financial future.

## CONCLUSION

Therefore, the Petitioner respectfully request that this Court issue a Writ of Certiorari.

Respectfully submitted,

January 10, 2022

*Quiller Barnes*  
QUILLER BARNES,  
Petitioner in Pro Per