

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: UNITED STATES, Petitioner v. LORI RABIN WILLIAMS

CASE NO: No. 94-395

PLACE: Washington, D.C.

DATE: Wednesday, February 22, 1995

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES, :
Petitioner :
v. : No. 94-395
LORI RABIN WILLIAMS :
- - - - -X

Washington, D.C.
Wednesday, February 22, 1995

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:10 a.m.

APPEARANCES:

KENT L. JONES, ESQ., Assistant to the Solicitor General,
Department of Justice, Washington, D.C.; on behalf of
the Petitioner.

PHILIP GARRETT PANITZ, ESQ., Camarillo, California; on
behalf of the Respondent.

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1 PROCEEDINGS

2 (11:10 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 94-395, United States v. Lori Williams.

5 Mr. Jones.

6 ORAL ARGUMENT OF KENT L. JONES

7 ON BEHALF OF THE PETITIONER

8 MR. JONES: Mr. Chief Justice, and may it please
9 the Court:

10 A person whose property has become entangled in
11 Government efforts to collect taxes owed by someone else
12 has a broad variety of remedies. The nontaxpayer may
13 challenge the Government collection action in a wrongful
14 levy, a quiet title, or a foreclosure proceeding, and may
15 obtain a release of the Federal lien if they want to make
16 an immediate sale by providing substitute collateral from
17 the proceeds of the sale.

18 Historically, however, nontaxpayers have not
19 been permitted simply to pay the tax and sue for a refund.
20 The collateral litigation of tax obligations by
21 nontaxpayers would present a quagmire of problems that the
22 courts and Congress have not traditionally sanctioned.

23 In this case, however, the Ninth Circuit held
24 that a nontaxpayer whose property became subject to a lien
25 that arose from someone else's obligations may simply pay

1 the tax, even though she admittedly didn't owe it, and sue
2 for a refund.

3 QUESTION: Mr. Jones, do you concede that the
4 lien was improper because at the time notice of it was
5 given the person who allegedly had incurred the tax
6 liability was not the owner of the property?

7 MR. JONES: No, Justice Ginsburg, we don't
8 concede that. Indeed, the facts reflect that the lien
9 would have been valid as against the nontaxpayer because
10 she took the property from her husband without qualifying
11 as a purchaser. She took the property from her husband
12 without paying what the statute requires, full and
13 adequate consideration in money or money's worth.

14 QUESTION: I thought that was conceded, or that
15 was the premise of the decision below, was it not?

16 MR. JONES: Not -- not quite.

17 QUESTION: The -- it did --

18 MR. JONES: Neither court, if I --

19 QUESTION: Just as a matter of chronology, is it
20 not so that the notice of lien was filed some weeks after
21 the property was transferred?

22 MR. JONES: After the transfer, and our point
23 with respect to that is that the notice of lien is not
24 needed to be valid as against a person who took the
25 property without qualifying as a purchaser, under 6323 of

1 the code. The respondent in this case --

2 QUESTION: But you say you don't have to
3 litigate that issue?

4 MR. JONES: That issue hasn't been reached by
5 either of the courts below, because this issue -- the case
6 has been decided solely on jurisdictional grounds. The
7 court of -- the district court found no jurisdiction
8 because she wasn't a taxpayer and couldn't sue under the
9 statute. The court of appeals found jurisdiction and
10 ordered the case remanded for consideration of the merits
11 of our lien.

12 We brought the case to this Court solely on the
13 jurisdictional issue. If the Court thinks there's no
14 jurisdiction, that's the end of the case. If the Court
15 thinks there is jurisdiction, it should be remanded for
16 that type of issue that you've just described to be
17 discussed.

18 QUESTION: Well, Mr. Jones, 1346 confers
19 jurisdiction on the district courts.

20 MR. JONES: Yes.

21 QUESTION: But traditionally, in cases like
22 Testan, we've said that simply conferring jurisdiction is
23 not enough. There must be a grant of some sort of cause
24 of action --

25 MR. JONES: Right.

1 QUESTION: -- to waive sovereign immunity.

2 Where do we find that?

3 MR. JONES: The short answer to that question is
4 that the waiver of immunity for a claim that would fall
5 within 1346(a)(1) is in section 7422(f) of the Internal
6 Revenue Code.

7 QUESTION: But that appears just to be a statute
8 of limitations.

9 MR. JONES: No, sir, 7422(f) --

10 QUESTION: (f).

11 MR. JONES: -- is a statute that says that a
12 claim of the type permitted by 7422(a) -- this is very
13 complicated. I just want to say that at the outset.
14 7422(f) says that a claim of the type permitted by 7422(a)
15 must be brought against the United States rather than the
16 district director, who used to be the collector. If you
17 will recall, at common law these tax refund suits could
18 not be brought against the United States. They were
19 brought against the collector.

20 QUESTION: That's what made Mr. Helvering
21 famous.

22 MR. JONES: I believe that's correct. "I would
23 like to cite the Helvering case" used to be an easy answer
24 to a tax question.

25 But let me focus, if I may, on exactly the

1 rationale of the court below and why we think it's wrong.

2 The court said that the simple language of
3 1346(a)(1) says that a suit may be brought against the
4 United States for the recovery of any tax illegally or
5 erroneously assessed or collected. The court said the
6 plain language says that if you're alleging that the tax
7 is illegally assessed or erroneously collected, you can
8 proceed.

9 The central premise of that analysis is that it
10 is appropriate to view 1346(a)(1) in complete isolation
11 from any other provision of the code, and this Court has
12 twice rejected that very contention in the Flora case and
13 again most recently in United States v. Dalm.

14 QUESTION: Mr. Jones, would you go back in time
15 with me before there were those later provisions? As I
16 understand it, 1346(a) has been with us since, what, 1911?

17 MR. JONES: 1921.

18 QUESTION: And the other provisions, the
19 subsequent --

20 MR. JONES: The provision that this Court held
21 in Dalm modifies 1346(a)(1) is 1724(a) of the Internal
22 Revenue Code. 1724(a) of the Internal Revenue Code was
23 enacted in 1878. Its language was the model from which
24 1346(a)(1) was drawn when jurisdiction was first provided
25 for suits against the United States.

1 Before jurisdiction was provided for suits
2 against the United States for tax refunds, 7422(a) of the
3 code had already been in existence for almost 50 years.

4 QUESTION: But the language of 1346(a) and 7422
5 are matching, and neither or those use the word
6 "taxpayer."

7 MR. JONES: No, they --

8 QUESTION: So the critical statute you're
9 relying on is not either one of those.

10 MR. JONES: It is, in fact, 7422(a). 7244(a)
11 says that any claim for refund must first be filed with
12 the Secretary of the Treasury before it may be maintained
13 in any court.

14 In Dalm, the Court concluded that's a
15 jurisdictional limit. That's an express limit on the
16 jurisdiction that coexists with 1346 -- you have to read
17 these together -- and the Court further said in Dalm that
18 to decide what that meant you have to file the claim for
19 refund with the Secretary of the Treasury. You have to go
20 to 6511 of the code. 6511 of the Code requires that the
21 administrative refund claim be filed by the taxpayer.

22 QUESTION: What year did that come in?

23 MR. JONES: I can't say.

24 QUESTION: It was after 1346(a)?

25 MR. JONES: I doubt that, but I can't say. The

1 requirement of an administrative refund claim has existed
2 since 1878.

3 QUESTION: Not the requirement of an
4 administrative refund claim, but the time limit that
5 refers to the taxpayer. The language in 7422 of the code
6 and 1346 mesh. They're the same, and they don't refer to
7 any taxpayer.

8 MR. JONES: That's absolutely right, but 74 --
9 our point is that 7422(a) requires that there be a refund
10 claim filed in accordance with law. Not just a refund
11 claim, a refund claim filed with the Secretary in
12 accordance with law, and I'm making the same point that
13 the Court made in deciding the Dalm case, that you have to
14 then go to 6511 to see what that means.

15 QUESTION: But I don't think 6511 provides what
16 you say it provides, because 6511 it seems to me doesn't
17 provide anything more than the fact that a claim for
18 credit or refund of a tax with respect to which the
19 taxpayer is required to file a return shall be filed by
20 the taxpayer within certain periods. It doesn't seem to
21 address the question of a refund which is claimed by
22 someone who was not required to file a return as a
23 taxpayer in the first place.

24 MR. JONES: Actually, I believe that the
25 language of 6511 would apply whether or not a return is

1 required to be filed. The taxpayer is required to file
2 the administrative refund claim within 3 years, I believe,
3 of payment -- no, I've got that backwards.

4 QUESTION: Well, it applies whether or not a
5 return was filed.

6 MR. JONES: Right.

7 QUESTION: But isn't it conditioned upon the
8 requirement of filing by the taxpayer when the taxpayer is
9 the claimant?

10 MR. JONES: Is --

11 QUESTION: I mean, isn't that what the text
12 says? A "claim for credit or refund of an overpayment of
13 any tax imposed by this title in respect of which tax the
14 taxpayer is required to file a return shall be filed by
15 the taxpayer within" certain periods.

16 There seems to be a condition that limits the
17 application of this to refunds by a taxpayer who was
18 required to file a return, and it doesn't seem to speak to
19 the situation we've got here.

20 MR. JONES: I'm sorry, I don't believe that's
21 correct, because if you read on, at page 3 of our brief we
22 quote this provision.

23 QUESTION: Yes.

24 MR. JONES: And the last clause of that sentence
25 says, "or if no return was filed by the taxpayer."

1 QUESTION: If no return was filed by the
2 taxpayer --

3 MR. JONES: And that --

4 QUESTION: -- but here, her claim is, I am not a
5 taxpayer within the meaning of the statute, because I was
6 never required to file a return as to the taxes you are
7 ultimately collecting.

8 MR. JONES: Well, she can't qualify as a
9 taxpayer under the code. However, you parse the last
10 clause, and I just respectfully disagree in terms of how
11 that language parses. The way it has always been
12 understood -- and when I say always, except for the Martin
13 case and this case -- is that a taxpayer must make the
14 administrative refund claim, and that only -- and the term
15 "taxpayer" is defined in section 7701 of the code to mean
16 the person subject to the tax. It is a --

17 QUESTION: Mr. Jones, always understood, that's
18 hardly universal.

19 There's one well -- widely used *Verna and Kafka
20 Litigation of Federal Tax Controversies that
21 states -- this is from the 1986 issue -- that a third
22 party who pays the taxes of another under duress may
23 recover the amount paid even if the taxpayer owes the
24 deficiency, and in determining whether payment has been
25 made under duress, the courts have examined the coercive

1 circumstances that prompted the payment and the lack of
2 alternatives available to the payor.

3 That's a widely used manual. It's certainly not
4 authoritative, because it doesn't come from the
5 Government, but how can you say it was generally
6 understood that in light of a statement like this?

7 MR. JONES: I would respectfully disagree with
8 that treatise's description of the law. There are --

9 QUESTION: You may very well disagree with it,
10 but you can't say until this case, it was generally
11 understood that.

12 MR. JONES: I think I --

13 QUESTION: You can say it was debatable.

14 MR. JONES: Well, whether it was debatable or
15 not, the way we understand the cases is as follows. Every
16 case that has actually addressed the question of whether a
17 nontaxpayer may bring a refund suit has said no. There
18 are two lines of authority that follow along that same
19 principle.

20 One line of authority is the Parsons v. Anglim
21 type case, where the person who paid the tax did so under
22 what the Court said was a reasonable assumption, or a
23 reasonable belief that the Government was taking the
24 position she was the taxpayer. Obviously, a person can
25 come in the court and say, well, I paid the tax because

1 you claimed it was due from me, but I don't think I owe
2 it. I'm not really the taxpayer. I don't owe this tax.
3 That's one line of authority.

4 The other line of authority are the kinds of
5 cases like Stewart v. Chinese Chamber of Commerce, which
6 is cited in the Phillips decision in the Second Circuit,
7 and in that case the court says a nontaxpayer cannot bring
8 a refund suit, but what they can do -- and this may relate
9 to the point that you just raised, Justice Ginsburg --
10 what they can do is that before 1966 they could sue the
11 collector, the district director, to recover property that
12 the district director had taken to pay someone else's
13 taxes.

14 Now, in the First National Bank of *Amlinton
15 case, which we cite in our brief simply as the First
16 National Bank case, it's the Third Circuit case, the Court
17 explains the limit on that branch, if you will, of
18 authority to recover property, and that is that once the
19 Government has sold the property and the money has been
20 deposited in the Government's Treasury, that avenue of
21 jurisdiction doesn't exist, because then it would be a
22 suit against the United States for a refund.

23 So I don't have the treatise that was in front
24 of you. It wasn't briefed, and I'm not able at this
25 moment to adequately --

1 QUESTION: I just brought it up because of your
2 statement that until this case it was generally
3 understood, and I think it's not generally understood.

4 MR. JONES: I think that it -- I would go so far
5 as to say I submit that it is perfectly accurate to say
6 that other than the two lines of decisions that I just
7 described, every court that has addressed this subject
8 has said, other than Martin and the current decision, has
9 said that the -- a nontaxpayer may not sue for a refund.

10 QUESTION: What has been the basis of those
11 courts' position?

12 MR. JONES: There have been a variety of bases.
13 The Federal Court of Claims in the Economy Plumbing &
14 Heating case applied the reasoning that I have described,
15 which is -- and the Court's reasoning in Dalm, which is,
16 you have to read these statutes together.

17 As this Court said in Flora, in making the very
18 point that you could not read 1346(a)(1) in isolation, and
19 I'll quote the Court: we are not here concerned with a
20 single sentence in an isolated statute, but with a
21 jurisdictional provision which is a keystone of a
22 carefully articulated and quite complicated structure of
23 tax laws.

24 QUESTION: Okay, but where in that complicated
25 structure do they derive the principle that a nontaxpayer

1 can't sue?

2 MR. JONES: I'll track the reasoning.

3 1346(a)(1) permits jurisdiction for suits challenging
4 taxes. Let's abbreviate it that way. 7422 says that in
5 such a suit you can't --

6 QUESTION: 7422(a)?

7 MR. JONES: Of the Internal Revenue Code, yes.

8 QUESTION: Yes.

9 MR. JONES: It says that such a suit may not be
10 maintained until a claim has first been filed with the
11 Secretary of the Treasury in accordance with law.

12 QUESTION: So far we have no limitation to
13 taxpayers, either in 1346 or 7422.

14 MR. JONES: And like in Dalm, we go on to 6511,
15 and 6511 says that this claim that has to be filed before
16 you can proceed with a case under 1346 --

17 QUESTION: But again, the statute doesn't limit
18 that to taxpayers.

19 MR. JONES: Yes, it does.

20 QUESTION: You think 6511 does?

21 MR. JONES: In 6511(a), it says that the claim
22 shall be filed by the taxpayer within a period of years
23 from the time of the payment of the tax to the filing of
24 the return, or if there was no return --

25 QUESTION: Well, that's the statute of

1 limitations section.

2 MR. JONES: Yes.

3 QUESTION: Now, did this taxpayer file an
4 administrative claim for refund first? I thought she did.

5 MR. JONES: She filed an administrative claim
6 for refund, but she is not the person who is the taxpayer.

7 QUESTION: But she was in effect compelled by
8 the Government to do something because the lien had been
9 slapped on the house and she was trying to sell it, and
10 there is a degree of Government compulsion. It's not like
11 the volunteer that you've been concerned about in your
12 brief. This is someone who had a lot of pressure put on
13 her to dispose of this thing.

14 MR. JONES: The statutory structure that I've
15 described wasn't the result of historical happenstance.
16 Congress has long been aware that nontaxpayers cannot sue
17 for a refund under these provisions, and instead of
18 providing jurisdiction for nontaxpayers to sue for a
19 refund, they provided a wholly separate set of remedies
20 directly addressed to the problems that nontaxpayers face.

21 Two of those remedies are particularly relevant
22 to this case. Section 7426 -- well, let me start with the
23 second one, because it more directly addresses your
24 concern.

25 In section 6325 of the code, Congress provided

1 that a person like respondent, whose property is subject
2 to a lien arising from someone else's taxes, doesn't have
3 to pay the tax to remove the lien.

4 QUESTION: All right, except that's a
5 discretionary thing with the IRS, and here she's got an
6 escrow that's going to close in a week, and is there any
7 indication in the world that the IRS would have given her
8 this? They didn't come to her and say, look, you can do
9 this, and we'll offer to let you put it in escrow. They
10 didn't tell her that.

11 MR. JONES: Might I first state there's
12 absolutely nothing in the record one way or the other
13 about the conversations that did or did not occur between
14 the Service and the respondent on this subject, and I
15 would encourage --

16 QUESTION: Well, can you tell us whether in
17 general it is the practice of the Government to notify
18 people in this situation who don't owe the tax but whose
19 property is going to be subject to a foreclosure sale if
20 they can't sell it, is it -- just like the Social Security
21 Office gives people notice of the death benefits that
22 they're entitled to, does the IRS advise people in these
23 situations?

24 MR. JONES: Let me divide your question from the
25 foreclosure to this sale situation. In a foreclosure

1 situation is when a suit is brought and everyone is going
2 to know then that the validity of the liens is going to be
3 adjudicated in that fashion.

4 The problem that Justice O'Connor was addressing
5 was, well, what if someone wants to make a sale of their
6 property? I don't know how to answer that question any
7 better than to say that Congress anticipated that concern
8 and made an express provision for it.

9 QUESTION: But my question to you is, if she's
10 trying to avoid -- she wants to sell the property so
11 she'll avoid a foreclosure. This statute that you tell us
12 fits our situation, I asked if the IRS has a practice of
13 telling taxpayers that's their remedy. It's certainly
14 phrased in highly discretionary terms. There's nothing
15 that requires the Government -- it says the Government may
16 do this if it wants to.

17 MR. JONES: Well, it doesn't quite -- well, I
18 mean, you could understand it to mean that, but what it
19 says is that he may in his discretion enter into -- the
20 Commissioner may in her discretion enter into these --

21 QUESTION: Can you think of a more discretionary
22 way of saying, in the director's discretion, the district
23 director may in his discretion?

24 MR. JONES: I don't think that anyone doubts
25 that the Commissioner will exercise her discretion to

1 enter into these agreements. The discretionary aspect of
2 it is what exactly the agreement needs to contain. It
3 is --

4 QUESTION: Is that based on your knowledge of
5 what's done in the field? The district directors --

6 MR. JONES: Yes.

7 QUESTION: -- regularly exercise their
8 discretion to make these agreements?

9 MR. JONES: Well, there's nothing on that in
10 this record. I want to be frank about that.

11 QUESTION: And the point is, isn't it, that you
12 don't really care, under your reading of the statute?
13 They can act with total arbitrariness and there's still no
14 remedy.

15 MR. JONES: No, sir, I wouldn't say that.

16 QUESTION: Well --

17 MR. JONES: There's no refund remedy, that's
18 right.

19 QUESTION: There's no -- section 3225(b)(3)
20 doesn't help if the Government acts with total
21 arbitrariness.

22 MR. JONES: I would say that it does, because if
23 someone -- if the Commissioner arbitrarily abused her
24 discretion in refusing to provide a substitute collateral
25 agreement, I suppose that that would help that there would

1 be some basis --

2 QUESTION: And there would have been
3 jurisdiction in this case?

4 MR. JONES: Well --

5 QUESTION: You're not saying that.

6 MR. JONES: There wouldn't be in this case,
7 Justice Stevens --

8 QUESTION: Well, that's what I'm talking about.

9 MR. JONES: -- because in this case she sued for
10 a refund. She didn't follow that path, so what would or
11 wouldn't have happened if she followed that path is
12 something we don't know.

13 QUESTION: Yes, but the statute does not read
14 that the Commissioner shall, unless there is in her
15 judgment reason not to do so, enter into such an
16 agreement. It doesn't say that. It just says, she may if
17 she wishes. I --

18 MR. JONES: Well, it says it -- she may in her
19 discretion.

20 QUESTION: Yes.

21 MR. JONES: And how a court would decide whether
22 discretion had been abused in a particular situation is
23 frankly a little bit far removed from the question we --

24 QUESTION: Hasn't that language --

25 QUESTION: That's the point.

1 MR. JONES: Which is, whether there's
2 jurisdiction for a refund suit for a person who didn't do
3 that.

4 QUESTION: It's not that it's far removed,
5 it's -- at least in my mind.

6 It seems -- a woman pays the tax her husband
7 owes, and she has to do it, because she can't sell the
8 property otherwise, in my imaginary case. Now, that tax
9 was unlawfully assessed. There should be some way she
10 could be able to get the money back, and one way to get
11 the money back is, she brings a refund suit. That would
12 work.

13 And you tell us, no, there's this other way, but
14 the trouble with the other way is, it gives the
15 discretionary power to the district, and they write that
16 right in the regs -- this is discretionary. So that's a
17 problem with the other way.

18 Now, what happens bad to the law if we try the
19 first way? That is, suppose we read the word, refund
20 suit, to apply to this situation, and you say yes, they
21 have to file a claim, but nothing in 65 -- nothing in
22 6511(a) says that the husband or the wife of the taxpayer
23 couldn't do it. That's a statute of limitations
24 provision.

25 So what would, bad, happen to the law if you

1 read the refund thing the way your opponents want it?

2 MR. JONES: That's -- to us that's a very
3 important question, because we think that this result,
4 deviating from the language of the statutes and the cases,
5 would produce incredibly bad results. It's difficult to
6 describe that with precision precisely because there is
7 not a track record of cases allowing tax refund suits,
8 collateral challenges to taxes by persons who aren't
9 taxpayers. We --

10 QUESTION: What if you just said the person who
11 paid the money can file to get her money back?

12 MR. JONES: You would be permitting a collateral
13 litigation of someone else's tax liability by the person
14 who wasn't, by definition, obligated for it.

15 QUESTION: Oh, no, no, no, she's not seeking to
16 contest whether the husband owes the tax. She's seeking
17 to contest only the propriety of the lien on that
18 property.

19 MR. JONES: If you look at page 6, footnote 3,
20 of respondent's brief, you'll see that they do contest the
21 underlying assessments. They have done so in the district
22 court at page 8 --

23 QUESTION: Well, let's assume -- let's assume
24 that the only issue that she's bringing up is her issue,
25 not his issue. Could she -- let's just say, she wants to

1 ask for more. Maybe she's not entitled to it. But if all
2 she wants to contest is the propriety of putting the lien
3 on her property, nothing more, why can't she use 1346, the
4 refund, 1722 --

5 MR. JONES: I understand your point. There
6 isn't any easy way to differentiate to reach that result.
7 You can't very well say that the nontaxpayer can challenge
8 an erroneous collection but can't challenge an unlawful
9 assessment if you read the statute on its -- without
10 reading anything else, and I don't know what else you'd be
11 reading to import that requirement in the 1346(a)(1).
12 Taking --

13 QUESTION: Why not the simple -- the simple
14 point that the wrong that was done to her was that a lien
15 was put on her property?

16 MR. JONES: Well, it wasn't -- that's a question
17 that hasn't been resolved. I mean --

18 QUESTION: But that's her controversy with the
19 Government. Her husband has a -- her ex-husband has a
20 different controversy. She wants to litigate her
21 controversy.

22 MR. JONES: The problem -- I take it we accept
23 as taken that there's an enormous problem from allowing
24 the collateral litigation of the liability itself.

25 QUESTION: I don't accept that. I don't see why

1 it's so much more horrible if she's got two reasons for
2 getting the money back, 1) that she was put upon, and
3 2) that the tax wasn't owed in the first place. Why is
4 that so horrible?

5 MR. JONES: Okay. We don't know how collateral
6 estoppel and res judicata would apply then. Would we have
7 to bring suits against -- would we have to win our tax
8 cases two or three times? Clever practitioners, of whom
9 there's many, would be able to identify a host of issues
10 here. Let me explain one simple one. It's just an
11 example.

12 The statute of limitations. What statute of
13 limitations would apply to a refund suit by a nontaxpayer?
14 Section 6532 --

15 QUESTION: How about the precedent of this Court
16 set in Lampf? You look in the same statute for the
17 closest analogy. Here we've got a wonderful statute we
18 can look at, 6511.

19 MR. JONES: 6532 is the statute of limitations
20 for a refund suit. It -- 6511 is for the refund claim.
21 6532 is for a -- is divided into two parts. The first
22 part is suits for refund by taxpayers and it provides for,
23 a suit may be brought within 2 years from the time notice
24 of disallowance of the claim is given to the taxpayer.

25 Section -- the other half of 6532 is entitled,

1 suits for refund by persons other than taxpayers, and it
2 gives a 9-month statute of limitation for suits for
3 wrongful levy by persons other than taxpayers. There is
4 no clear answer to which of these --

5 QUESTION: There's no wrongful levy here when
6 they never got to the point of making the levy. They just
7 put a notice --

8 MR. JONES: Yes.

9 QUESTION: They notified her of the lien.
10 Wasn't --

11 MR. JONES: There's no clear --

12 QUESTION: -- another statute that you haven't
13 mentioned, and I wonder if you can tell us how that plays
14 into it? You said that there's -- is there a basis for a
15 claim -- 6402 provides -- gives authority to make a
16 refund.

17 MR. JONES: Yes.

18 QUESTION: And it doesn't use the word,
19 taxpayer.

20 MR. JONES: That's correct. What it says --

21 QUESTION: So she has a claim for a refund, and
22 then here's a substantive provision that says, the
23 Government can give somebody a refund --

24 MR. JONES: For an overpayment --

25 QUESTION: A refund to the person who made the

1 overpayment.

2 MR. JONES: Right, and there was no overpayment
3 in this case.

4 QUESTION: Could you --

5 MR. JONES: There would only be -- but beyond
6 that, even if there was a claim of an overpayment, it
7 would only be maintained in court under 1346 if it had
8 been first filed as an administrative claim by the
9 taxpayer. The taxpayer is defined to mean the person
10 subject to the tax.

11 You cannot allow non --

12 QUESTION: But you get all that from 6511, and
13 then the definition of taxpayer.

14 MR. JONES: And from 80 years of cases
15 addressing this subject that have reached the same
16 conclusion, and from the fact that congress relied on that
17 conclusion in an action --

18 QUESTION: Do you have a case like this one,
19 where the person who is making the claim says, this was my
20 property. The Government came in and slapped a lien on
21 it. I had nothing to do with this tax, but I need to sell
22 the property. Do you have any case --

23 MR. JONES: Yes, Busse.

24 QUESTION: You keep saying -- what is the
25 closest case to this one?

1 MR. JONES: The Seventh Circuit decision in
2 Busse is just like this case.

3 QUESTION: All right. There are other circuit
4 cases going the other way, are there not?

5 MR. JONES: Only consistent with the two lines
6 of authority I described earlier. If I may -- yes, sir.

7 QUESTION: Well, let me ask -- I want to ask you
8 a question before your time expires. What about where the
9 IRS simply mistakes the property that it has a right to
10 lien? It says, the lien is on lot 2 and it's really on
11 lot 3. What remedy does the owner of lot 2 have?

12 MR. JONES: I didn't understand your
13 hypothetical, and I think I may need to. Lot 2 is --

14 QUESTION: Lot 2 has no connection --

15 MR. JONES: No connection --

16 QUESTION: -- with the tax liability. The IRS
17 simply makes a mistake in the legal description.

18 MR. JONES: They can bring it to the IRS'
19 attention, and the IRS would remove the lien.

20 QUESTION: Well, but supposing you're going to
21 have a particularly -- a curmudgeon, who's the IRS --

22 (Laughter.)

23 MR. JONES: Then they can bring -- then they
24 bring a quiet title action, or if that's -- if they're in
25 a big hurry, they make a substitute collateral agreement.

1 QUESTION: That's 65 -- that's again the
2 discretionary thing.

3 MR. JONES: Well, it's discretionary in our view
4 in the sense that Congress wants us to do it when we can
5 work out provisions that make sense in the facts of the
6 case.

7 QUESTION: Is your answer --

8 MR. JONES: I don't think that anyone has
9 suggested that we've abused our discretion.

10 QUESTION: Mr. Jones, is your answer to the
11 chief in the case of somebody who is no relation to the
12 taxpayer at all, just a wrong lien on the wrong piece of
13 property, that the only remedies are a quiet title suit --
14 by the time that gets over the foreclosure has long since
15 occurred -- or this, within his discretion? Are those the
16 only two remedies?

17 MR. JONES: No.

18 QUESTION: What else?

19 MR. JONES: Well, a foreclosure suit and a quiet
20 title suit are wholly separate issues. Foreclosure is
21 when we --

22 QUESTION: I'm not talking about a foreclosure
23 suit. I'm talking about somebody who wants to sell her
24 property. The Government --

25 MR. JONES: They bring a quiet title suit, or

1 they make a substitute collateral agreement if they're in
2 a hurry.

3 QUESTION: And if the district director says, in
4 my discretion, no, then what is there?

5 MR. JONES: Well, then there --

6 QUESTION: She's in a hurry.

7 MR. JONES: There's the same kind of a problem
8 they would have with any private creditor who has a lien.
9 I mean, there's nothing unique about the Government's
10 position in this case.

11 QUESTION: All right, if I have to read --

12 MR. JONES: Pardon me?

13 QUESTION: -- in your mind, the sanctity of the
14 following proposition. Person A should not be able to
15 litigate the liability of taxpayer B.

16 MR. JONES: That's correct.

17 QUESTION: That's sacred.

18 MR. JONES: That's sacrosanct.

19 QUESTION: All right, but that is, in my mind,
20 not a tax expert, what do I read? What one thing can I
21 read that will help me understand the sacredness of that
22 principle?

23 MR. JONES: Flora and Dalm.

24 QUESTION: *Flora?

25 MR. JONES: This Court's opinions in Flora and

1 Dalm.

2 QUESTION: All right, fine. Thank you.

3 QUESTION: Dalm was not your proudest moment, I
4 don't think.

5 QUESTION: Thank you, Mr. Jones.

6 Mr. Panitz.

7 ORAL ARGUMENT OF PHILIP GARRETT PANITZ

8 ON BEHALF OF THE RESPONDENT

9 MR. PANITZ: Mr. Chief Justice, and may it
10 please the Court:

11 The Government's argument in this case
12 absolutely infuriates me. First of all, they mistake the
13 record. Justice Ginsburg was correct in her statement
14 with regard to the record, and I'll cite you to the
15 specific parts of the record where the Government conceded
16 factual issues in this case.

17 On page 24 on the Joint Appendix is a transcript
18 from the district court where the judge of the district
19 court asked both counsel, are there in this case any
20 triable issues of fact? Both counsel stipulated that
21 there were not. The judge ultimately decided the case as
22 there were no triable issues of fact and that the sole
23 question in this case was jurisdiction, and that is in the
24 petitioner's petition for cert, page 9A of their appendix.

25 QUESTION: Well, that by itself doesn't --

1 MR. PANITZ: That's absolutely correct.

2 QUESTION: -- tell us much of anything as to
3 what might have been triable issues of fact.

4 MR. PANITZ: Well, in our complaint, we alleged
5 certain facts, and then in their answer they denied these
6 facts, and then the Government in their conclusions of law
7 submitted to the Court, which is in the Joint Appendix,
8 page 11, their number 12, which specifically states there
9 are no longer any genuine issues of triable fact, which to
10 me means that whatever the issues were in the case from
11 the complaint to the answer no longer exist.

12 QUESTION: Did this go up on a motion for
13 summary judgment?

14 MR. PANITZ: The judge recharacterized it from a
15 motion for summary judgment to a trial on stipulated
16 facts, and -- originally it was submitted as a motion for
17 summary judgment, but he recharacterized it. He said,
18 there are no more facts to try here, so we're going to
19 recharacterize as a trial on stipulated facts, and sole
20 issue being jurisdiction.

21 QUESTION: And so it was a trial on stipulated
22 facts because the parties stipulated that there were no
23 triable issues of fact?

24 MR. PANITZ: That's correct.

25 QUESTION: That's quite remarkable.

1 MR. PANITZ: The Government in essence is
2 arguing that it doesn't matter, because the Government's
3 argument is that she's not the taxpayer, that she has no
4 jurisdiction to sue, so whether or not their collection
5 was erroneous or not is really irrelevant, according to
6 their argument.

7 The Government makes this convoluted argument
8 about the statutory scheme. We are not arguing with the
9 statutory scheme in this case. We agree that the Internal
10 Revenue Code provisions are pertinent and do apply, as
11 this Court ruled in Dalm and also in Flora.

12 However, the Government blurs the statutory
13 scheme in this case. Rather than looking at each
14 independent statute and seeing what the purpose was, both
15 as a matter of law and as a matter of tax policy, they
16 instead blur them all together and say, this prevents the
17 petitioner in this case to sue, simply because 6511, which
18 is a procedural statute of limitations, has the word
19 "taxpayer" in it, yet section 7422, which is the cause of
20 action section, does not have the word "taxpayer" in it.

21 It requires that, as a matter of tax policy, the
22 petitioner file an administrative claim with the Internal
23 Revenue Service, which she did, and as a matter of tax
24 policy there's justification for that.

25 Why file an action in district court, and incur

1 additional litigation, if you could just ask the IRS for
2 your money back, and if they agree with you and they
3 review that and they realize they made an error --

4 QUESTION: Are there any authorities indicating
5 that the IRS has processed and paid administrative claims
6 that are filed by persons other than the taxpayer?

7 MR. PANITZ: No. There's nothing in the record
8 to reflect that, and they probably -- and this is just my
9 speculation -- dismiss them as a matter of course, but we
10 went through, and went through the process of filing this
11 administrative --

12 QUESTION: Dismiss the claims?

13 MR. PANITZ: They dismiss the administrative
14 claim for refund, and the reason they gave in this case --

15 QUESTION: So the position of the IRS has been
16 consistent that it will only honor refund claims when
17 filed by the taxpayer?

18 MR. PANITZ: That's their position, but we
19 complied with the statutory scheme by filing the
20 administrative claim, which was then denied, and we then
21 proceeded to district court.

22 QUESTION: Well, Mr. Panitz, as I understand the
23 Government's reasoning, it's that 7422 says that no suit
24 shall be maintained until you've filed for a refund, and
25 6511 says that the claim for credit on the -- under the

1 refund section must -- shall be made by the taxpayer.

2 Now, what is your answer to that?

3 MR. PANITZ: Well, the Government's position
4 with regard to 6511 makes that provision the Charles Atlas
5 of all tax provisions, because it literally reaches across
6 from title to title and injects "taxpayer" into title 28.

7 QUESTION: Well, but if it really is a
8 keystone -- I mean, if you have to do this in order to
9 bring a suit for refund, and if to do it you have to be a
10 taxpayer, perhaps that is its effect.

11 MR. PANITZ: But the actual language in 6511 is
12 not limiting jurisdiction. It is solely a statute of
13 limitations.

14 QUESTION: Yes, but 7422 says that must be
15 complied with before you bring a suit for refund.

16 MR. PANITZ: No, actually, counsel misstated the
17 purpose of 7422. Section 7422 requires the administrative
18 claim for refund to be filed with the Internal Revenue
19 Service. That is governed not under 6511, but under
20 6532(a), which says that the administrative claim for
21 refund must be filed with the Internal Revenue Service,
22 and that the Internal Revenue Service has 6 months to
23 review your claim. It's a --

24 QUESTION: It doesn't say, by the taxpayer?

25 MR. PANITZ: It doesn't say, by the taxpayer, so

1 there's no limitation there.

2 You know, over the years that I've been involved
3 in this case, I've wondered why is the Government taking
4 such a harsh position in this case, such an inequitable
5 position, and after reading their brief for 4 years, I'm
6 still not all that sure why they're taking this position,
7 but I think --

8 QUESTION: Well, nobody ever claimed the tax
9 laws were equitable.

10 (Laughter.)

11 QUESTION: I mean, they're fairly strict.

12 MR. PANITZ: They are fairly strict, but they
13 should be fair. They should be fair as a matter of tax
14 policy. I don't think when Congress enacts tax
15 legislation that they're trying to be inequitable to
16 people.

17 QUESTION: Yes, but they argue that it is fair.
18 Their argument is, you didn't follow the right route.
19 They said, there's the sacred principle person A should
20 not be able to litigate the tax liability of B, so if your
21 client is concerned with B's tax liability, that should
22 not be up to her.

23 If your client feels that they didn't assess the
24 lien and do the procedural stuff properly, there is a
25 perfectly good route. You go to the IRS, you make a deal

1 with them, you sell the property, you pay the proceeds
2 into the fund, and you conduct your argument vis-a-vis the
3 proceeds.

4 Now, there's a flaw in that route. The flaw is
5 the word "may" which in the regs have turned into
6 "discretionary," but they say that flaw in practice is not
7 important, while the other flaw of accepting your argument
8 is very important, because if we accept your argument, A
9 can litigate the underlying tax liability of B, and that
10 violates the sacred principle.

11 So where we all are is, how sacred -- or, at
12 least where I am is, how sacred is this principle, what
13 will happen -- I'm spelling out because --

14 MR. PANITZ: Sure.

15 QUESTION: -- I want you to -- yes, to reply to
16 it.

17 MR. PANITZ: We're not arguing that she's going
18 to go into court and litigate the liability of her ex-
19 husband. We --

20 QUESTION: But you asked for that.

21 MR. PANITZ: We're --

22 QUESTION: I gather.

23 MR. PANITZ: No.

24 QUESTION: But if we agree with you, it would
25 happen. It wouldn't happen if --

1 MR. PANITZ: We mentioned in a footnote as an
2 irony that not only did she not owe the taxes, but her ex-
3 husband didn't owe the taxes, either, but we're not saying
4 that she was go into court and litigate his tax liability.
5 That's his problem, not hers.

6 QUESTION: But that doesn't matter, because even
7 if you won't, the next person could. Their problem is,
8 once we take this route on the law, it's open to A's to
9 litigate the tax liability of B's.

10 MR. PANITZ: No, I think this Court can limit
11 its holding to simply whether or not the person that paid
12 the taxes owed the taxes.

13 QUESTION: Sure we could. I mean, we could make
14 up a whole new revenue code. Where do you get that from
15 the language?

16 MR. PANITZ: The language -- owed by her husband.

17 QUESTION: The language of this thing either
18 permits a suit or it doesn't permit a suit. It doesn't
19 say we're --

20 MR. PANITZ: Exactly, and the language of the
21 jurisdictional statute focuses on the language, erroneous
22 collection. Was there an erroneous collection as to
23 Mrs. Williams? Yes, there was.

24 QUESTION: Well, it doesn't say --

25 MR. PANITZ: She didn't owe the taxes.

1 QUESTION: -- as to Mrs. Williams. It says,
2 erroneous collection. It could be erroneous --

3 MR. PANITZ: Any --

4 QUESTION: -- because they moved against the
5 wrong person, it could be erroneous because the tax wasn't
6 due.

7 MR. PANITZ: Any sum alleged to have been
8 excessive, or in any manner wrongfully collected under the
9 Internal Revenue.

10 QUESTION: Isn't it wrongfully collected if it
11 wasn't owed?

12 MR. PANITZ: Yes, it is.

13 QUESTION: Okay, so there you are. You're in
14 the soup, and anybody, even though your client may not
15 have wanted it, somebody else can come in and try to
16 litigate whether the tax was actually owed by her husband.

17 MR. PANITZ: Let's say that she litigates, and
18 the district court rules that she didn't owe the taxes,
19 and the taxes were erroneously collected as to her. The
20 Government then proceeds against the ex-husband.

21 Why shouldn't he have the right to go into court
22 and litigate whether he owed the taxes or not?

23 QUESTION: Well, of course he does. The
24 question is whether she does as well, and I'd like to get
25 a clear answer from you on what it is exactly that she can

1 contest. You assert that she can contest the propriety of
2 the lien on her property.

3 MR. PANITZ: Correct.

4 QUESTION: You have a footnote that she, as
5 well, can contest whether he ever owed the tax, and
6 Justice Scalia pointed out that there's nothing in the
7 statute, no language in the statute that would distinguish
8 her contesting the lien on her property as distinguished
9 from her contesting the amount of taxes her husband owes.

10 MR. PANITZ: I'm going to give you sort of an
11 abstract analogy, but I'd like you to follow along just
12 for a second.

13 There's a bridge that spans from San Francisco
14 to Oakland called the Oakland Bay Bridge, and in the
15 middle is -- it's actually two bridges, because there's a
16 span that goes to Angel Island, and then there's a span
17 that goes on to Oakland.

18 The Government has to prove in this case,
19 Number 1, if they're going to say that Lori Rabin
20 Williams' property was liable for these taxes, they have
21 to show why. They have to show that her ex-husband owed
22 the taxes, number 1, and that number 2, he still had some
23 interest in this property, and then move that across the
24 second span to her.

25 Our argument is, in this -- the facts in this

1 particular case, the second span of that bridge, they
2 can't cross that at all, and the first span of the bridge,
3 they can only cross that for about 25 percent, because in
4 the facts of this case, he didn't even owe 75 percent of
5 the taxes.

6 QUESTION: It's not clear to me, what is it that
7 she wants to contest if she goes into the district court?
8 You're saying that she is not going to contest the
9 validity of the tax assessed against the husband?

10 MR. PANITZ: She's going to contest the validity
11 of the tax lien that was placed on her property after she
12 had been conveyed the property for adequate consideration
13 and under the Internal Revenue Code that lien was in
14 error. It was based on that lien that the Government
15 collected the taxes.

16 QUESTION: Is the only way she can challenge
17 that is by first paying the tax?

18 MR. PANITZ: By first paying -- no. She had
19 three alternatives. She could have filed an action for
20 quiet title. She could have put the money in the trust
21 fund if the Government acquiesced in that.

22 QUESTION: Would the quiet title have been
23 adequate?

24 MR. PANITZ: Absolutely not, under the facts of
25 this case, because of the way the lien arose. She

1 received the lien notice 7 days --

2 QUESTION: Is what you're saying is that she'd
3 lose on the merits?

4 MR. PANITZ: No, she would not lose on the
5 merits. The facts -- a lien is filed 7 days before escrow
6 is closed. That means that the quiet title option is not
7 a viable alternative. It does not mean that in other
8 facts it may be a viable alternative. The key focus,
9 though, is that these remedies are not mutually exclusive.

10 QUESTION: All right, so quiet title is one.
11 Substitute property, by putting the funds in escrow is
12 another, but that's discretionary.

13 MR. PANITZ: Correct.

14 QUESTION: Anything else?

15 MR. PANITZ: And she could file a claim for
16 refund if she acquiesces in the payment of the taxes under
17 duress --

18 QUESTION: Although that's the issue that is
19 before us.

20 MR. PANITZ: That is the issue here.

21 QUESTION: Mr. Panitz --

22 MR. PANITZ: Yes.

23 QUESTION: -- a moment ago you said that, I
24 believe, 6532 could be relied on to file -- for filing the
25 claim, you didn't have to rely on 6511, and that 6532

1 didn't mention the word "taxpayer." 6632 does use the
2 term, "taxpayer."

3 MR. PANITZ: 6532 is the statute that provides
4 that the administrative claim filed with the Internal
5 Revenue Service must be allowed to be considered for
6 6 months or --

7 QUESTION: Yes, but it refers to the claim by
8 the taxpayer.

9 MR. PANITZ: I believe that's 6511, Your Honor.

10 QUESTION: No. Let me read you the last three
11 or four lines of 6532. It talks about 2 years from the
12 date of mailing by certified letter by the Secretary to
13 the taxpayer, so that your suggestion there's an alternate
14 way of coming, you don't need to rely on 6511, which uses
15 the term, "taxpayer," your section that you rely on also
16 uses the term, "taxpayer."

17 MR. PANITZ: Well, I'm not relying on that
18 section for jurisdiction.

19 QUESTION: Okay --

20 MR. PANITZ: I'm using it as the statute of
21 limitations as well.

22 QUESTION: Well, okay. What is it that enables
23 you to file a claim for refund, as section 7422 does, that
24 doesn't require that the claim for refund be filed by the
25 taxpayer?

1 MR. PANITZ: Well, the --
2 QUESTION: Tell me what section.
3 MR. PANITZ: Sure.
4 QUESTION: Can you give me a number?
5 MR. PANITZ: Well, for example, the definitional
6 section, 7701(a), as part of the preamble, specifically
7 states, number 1, the definition of taxpayer shall only be
8 used in this title, which means it doesn't apply in the
9 jurisdictional sections, title 28, and it also states that
10 the definitions in 7701 shall not be manifestly
11 incompatible with the intent of the statutes.
12 QUESTION: Well, so you say perhaps the word
13 taxpayer should have a different definition than the
14 person who paid the tax?
15 MR. PANITZ: Well, when the word is used in a
16 statute of limitations --
17 QUESTION: But that would seem -- I mean, that
18 doesn't seem terribly difficult to define taxpayer as the
19 person who paid the tax.
20 MR. PANITZ: That's the generic sense that the
21 word is used, unless it's defined differently --
22 QUESTION: That's your client.
23 MR. PANITZ: -- as a term of art.
24 QUESTION: That's your client.
25 MR. PANITZ: That's right.

1 QUESTION: Your client has paid the tax. It's
2 the Government that's trying to say taxpayer means only
3 the individual who assertedly owed the tax.

4 MR. PANITZ: And we make that point in our
5 brief, that she paid the tax.

6 QUESTION: So your client paid the tax?

7 MR. PANITZ: When the word is used in the
8 generic sense --

9 QUESTION: I asked you a question.

10 MR. PANITZ: Sure.

11 QUESTION: Did your client pay the tax?

12 MR. PANITZ: Absolutely.

13 The fear that I bring up that the Government
14 has --

15 QUESTION: You do concede that you can't just
16 volunteer to pay somebody else's tax and then go litigate
17 it.

18 MR. PANITZ: There's a distinction between
19 volunteering to pay somebody else's tax, and being in a
20 position where you're coerced or persuaded to pay another
21 person's tax. There is a distinction. The distinction,
22 though, is that in the coerced or persuaded situation
23 there's no possibility of the tax evasion or the
24 floodgates argument that the Government is arguing in this
25 case, because it's the Government that initiated the

1 collection action. Where's the scheme there? The
2 Government started the ball rolling.

3 In the pure, true volunteer situation -- let's
4 say a father pays the taxes of a son to help him out for
5 altruistic reasons, and a year later discovers that the
6 taxes were paid in error because, for example, there was
7 something wrong on the son's return. Why should not that
8 father be allowed to proceed to court and prove that there
9 was an error in collection here?

10 Now, the Government contends, well, there's
11 possibilities of evasion here. There's possibilities that
12 there will be a slew of litigation on refund suits. I'd
13 like to take a moment --

14 QUESTION: So you're not limiting your argument,
15 then --

16 MR. PANITZ: No.

17 QUESTION: -- to the coercion case?

18 MR. PANITZ: No, I'm not.

19 QUESTION: So you disagree, as Mr. Kent did,
20 with that manual that says you can pay someone else's tax
21 in a situation of duress and then sue for a refund, but
22 absent duress, if you're just a mere volunteer, you have
23 no claim?

24 MR. PANITZ: The facts in this case obviously
25 were the duress situation, and we absolutely say that

1 there's no possibility for the Government's fears to come
2 forward in that particular situation, but in the volunteer
3 sense, and this Court doesn't necessarily have to go that
4 far, but as a matter of tax policy, why not? Why can't a
5 person who in error paid tax, voluntarily even, why --

6 QUESTION: Well, it seems to me we do have to go
7 that far, under your interpretation of the statute.

8 Let me ask you one question before you get back
9 to the Internal Revenue Code section. What about a
10 mechanic's lien? Suppose that a person closes an escrow
11 knowing that there's a mechanic's lien on the house, so
12 that the mechanic's lien passes to the subsequent
13 purchaser, can the purchaser challenge the mechanic's lien
14 on the ground that the work was never performed?

15 MR. PANITZ: I would assume so, under the facts
16 of that hypothetical, that if the work was never
17 performed, it would be a defense to a mechanic's lien,
18 although I'm not an expert in mechanic's lien law, so I
19 might be misspeaking.

20 Your honor, I would like, once again, to just
21 take a moment to go into what the Government's concerns
22 are, and to perhaps alleviate some of their fears.

23 In the situation that the Government cites in
24 their brief, the possibility for tax evasion, you would
25 have to have, in essence, two parties, on one hand a

1 taxpayer, the person that owes the tax under their
2 definition, and a friend -- let's call him a
3 coconspirator.

4 That coconspirator says to his taxpayer friend,
5 I'm going to pay your taxes, we're going to wait for the
6 statute of limitations to expire, I'm going to help you
7 evade taxes, and then I'm going to file a refund suit.
8 That situation is somewhat preposterous in real life.

9 You're talking about a situation where a
10 person's going to come out of pocket, using the numbers in
11 this case, \$40,000, on the hopes that they might get their
12 money back if they file a refund claim, just to help their
13 friend evade taxes because the statute of limitations is
14 expiring.

15 QUESTION: That's fanciful, but they're worried,
16 I think, about another thing. What statute of limitations
17 would govern? You'd have to either call your client a
18 taxpayer, which would then give the words "taxpayer"
19 different meanings in different sections of the code,
20 which is worrying them, or alternatively you'd have to
21 say, she's not a taxpayer, and then it would seem that no
22 statute of limitations would govern. We'd have to create
23 one. So that's one of the problems they've raised. So
24 how do you respond to that one?

25 MR. PANITZ: My response is on line with the

1 courts that have ruled on this, and I cited a few in my
2 brief, which were not authority to this Court, but I cited
3 them just so that you could see how other judges have gone
4 through the same analysis, which is that the word
5 "taxpayer" in 6511 is used in its generic sense, that it's
6 used as the person who pays the taxes. It's not used as a
7 term of art in that sense.

8 If Congress had wanted to use it as a term of
9 art, why wouldn't they have just put it in the cause of
10 action section, 7422?

11 QUESTION: Don't we also assume that Congress
12 wants some sort of a statute of limitations, and there is
13 none on that reading. How do we get the statute of
14 limitations? Do we do it the Lampf way?

15 MR. PANITZ: I agree, in essence with what the
16 justice was just asking me, which is that it's construed
17 in its generic sense in 6511, which makes 6511 the statute
18 of limitations --

19 QUESTION: I'm sorry, I misunderstood what you
20 were saying. I see.

21 MR. PANITZ: If there are no further questions,
22 Your Honor, I thank you for your time.

23 CHIEF JUSTICE REHNQUIST: Very well, Mr. Panitz.
24 The case is submitted.

25 (Whereupon, at 12:01 p.m., the case in the

1 above-entitled matter was submitted.)
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UNITED STATES, Petitioner v. LORI RABIN WILLIAMS

CASE NO.: 94-395

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BY *Ann Marie Federico*

(REPORTER)

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