

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 JOHN F. HINCK, ET UX., :

4 Petitioners :

5 v. : No. 06-376

6 UNITED STATES. :

7 - - - - - x

8 Washington, D.C.

9 Monday, April 23, 2007

10

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 1:00 p.m.

14 APPEARANCES:

15 THOMAS E. REDDING, ESQ., Houston, Tex; on behalf of the
16 Petitioner.

17 JONATHAN L. MARCUS, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington, D.C.; on
19 behalf of the Respondent.

20

21

22

23

24

25

| | C O N T E N T S | |
|----|------------------------------|------|
| 1 | | |
| 2 | ORAL ARGUMENT OF | PAGE |
| 3 | THOMAS E. REDDING, ESQ. | |
| 4 | On behalf of the Petitioners | 3 |
| 5 | ORAL ARGUMENT OF | |
| 6 | JONATHAN L. MARCUS, ESQ. | |
| 7 | On behalf of the Respondent | 23 |
| 8 | REBUTTAL ARGUMENT OF | |
| 9 | THOMAS E. REDDING, ESQ. | |
| 10 | On behalf of the Petitioners | 48 |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(1:00 p.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in case 06-376, Hinck versus United States.

Mr. Redding.

ORAL ARGUMENT OF THOMAS E. REDDING

ON BEHALF OF THE PETITIONERS

MR. REDDING: Mr. Chief Justice, and may it please the Court:

The Federal Circuit's opinion is simply wrong. Enactment of section 6404(h) did not repeal district court and Court of Federal Claims refund jurisdiction over interest by the Internal Revenue Service. Both circuits have found that there was preexisting jurisdiction prior to the enactment of section 6406(h). Nothing in section 6404(h) expressly repeals that jurisdiction, and there are many instances in the code where Congress when it does intend to expressly limit jurisdiction, will state that in the enabling statute. Reference to the Tax Court in section -- a specific reference to the Tax Court in 6404(h) was mandated unnecessary by section 7442 and the nature of the Tax Court. The Tax Court is only given jurisdiction over those matters where it is specifically set out in the Tax Code.

1 And the established framework of pay-and-sue
2 jurisdiction in the district courts and prepayment
3 jurisdiction in the Tax Court is a well-established
4 framework for tax litigation. That has been accepted
5 and enunciated by this Court as far back as the Flora
6 opinions. It's a well established pattern of duality of
7 jurisdiction in the two forums.

8 CHIEF JUSTICE ROBERTS: But not with respect
9 to abatement of interest in particular.

10 MR. REDDING: Not with respect to abatement
11 of interest, Your Honor, but as a general basis. The
12 availability of a prepayment forum that was originally
13 enacted to be complementary to the ability to pay and
14 sue in order to protect smaller taxpayers, and avoid the
15 hardships faced by having to pay in full before having
16 access to refund jurisdiction, and in fact perhaps to
17 avoid bankruptcy. That is completely consistent with
18 the way this section is enacted. Section 6404(h) even
19 includes the limitation that only taxpayers with a net
20 worth below \$2 million or corporations below \$7 million
21 have prepayment access to the Tax Court. And abatement
22 by itself is generally a prepayment remedy.

23 JUSTICE GINSBURG: That's a -- on that
24 point, Mr. Redding, it seems odd that given this
25 tripartite system, Congress would want only the Tax

1 Court to be restricted in the people who could claim the
2 abatement, the net worth test applicable in the Tax
3 Court on your theory, if there is authority in the
4 claims court and in the district courts, they're not
5 limited to the net worth restrictions.

6 MR. REDDING: That is correct, Your Honor,
7 but I do believe that it is consistent with the intent
8 of the formation of the Tax Court to provide a
9 prepayment forum to especially avoid hardship and the
10 potential even of bankruptcy. It's very consistent with
11 that pattern to say that the larger taxpayer can afford
12 to pay the tax and sue, whereas the smaller taxpayer may
13 be in greater need of a prepayment forum. It's also
14 consistent with imposing the very short limitation
15 period for bringing an action in the Tax Court, because
16 there the Government has a very vested interest in being
17 able to proceed with collection of the tax.

18 CHIEF JUSTICE ROBERTS: But why would you
19 not want some -- a larger taxpayer to be able to proceed
20 in the Tax Court if you can also proceed in the claims
21 court?

22 MR. REDDING: Your Honor, I can't speak to
23 Congress's reasoning behind that but I can understand
24 the logic behind saying we're going to create a special
25 prepayment remedy that allows the smaller taxpayer an

1 expedited means of resolving these issues without having
2 to first pay it and sue, whereas the larger taxpayer is
3 not put into a hardship position, is not inconvenienced
4 as bad by having to follow the old, well-established
5 procedures of pay and sue.

6 And I will note that 6404(h) does not apply
7 only to 6404(e)(1), which is the subsection we're coming
8 under. 6404(h) applies to all of the abatement grounds
9 under section 6404. And if we were to repeal
10 jurisdiction in the district court and the Court of
11 Federal Claims over all of those provisions, then we
12 would be completely taking away a remedy that has been
13 there all along to the larger taxpayers. But to create
14 a new remedy that is consistent with the pattern that
15 allows a small taxpayer access to a prepayment forum, I
16 think is completely consistent with the entire history
17 of this court. This court meaning the Tax Court. And
18 its purpose.

19 In evaluating two statutes that appear to
20 either conflict or overlap, I think it is, in reviewing
21 whatever doctrine you call it, whatever canon you call
22 it of interpretation, it appears to me that what this
23 Court has always done is to look to see if the two
24 statutes can be harmonized rather than seeing if one
25 supersedes the other. And here, considering the

1 extension of prepayment jurisdiction to the Tax Court
2 merely an additional form of prepayment jurisdiction
3 being granted to the Tax Court, is completely consistent
4 with the long-standing pattern of pay and sue
5 jurisdiction in the district courts, prepayment
6 jurisdiction in the Tax Court --

7 CHIEF JUSTICE ROBERTS: But you have no
8 basis for an abatement-of-interest action apart from
9 6404(h), correct? That is the only place you get the
10 actual cause of action to sue for abatement of interest?

11 MR. REDDING: Abatement as a prepayment
12 remedy, yes, Your Honor. Once the IRS has failed to
13 abate the interest and you make payment, then you have
14 the normal refund -- refund provisions available.

15 CHIEF JUSTICE ROBERTS: But what would you
16 cite to -- in response to the prior cases that said you
17 had no cause of action for abatement of interest?

18 MR. REDDING: Actually, Your Honor, I don't
19 believe that's what the cases said. They said you had
20 no cause of action that could be pursued under
21 6404(e)(1) but even the seminal cases, Horton -- or
22 Selman and Horton Homes -- compared a section 6404(e)(1)
23 action to a section 6404(e)(2) action and basically said
24 you could have brought a refund claim. If you qualified
25 under (e)(2) there would have been no impediment to

1 bringing that as a refund action because there was a
2 clearly established standard. The (e)(2) provision is a
3 "must" standard.

4 Now, under 6404(h), if it is exclusive over
5 abatement jurisdiction, then any taxpayer who would have
6 had access to the courts, for example for an (e)(2)
7 abatement case, unless they are a small taxpayer they
8 will be completely denied any remedy whatsoever.

9 JUSTICE SCALIA: Where is (e)(2)? Is it
10 reproduced in these materials? I got (e)(1); I don't
11 have (e)(2). I don't really like talking about a
12 section I don't have in front of me.

13 MR. REDDING: I believe all of 6404 was in
14 the appendix but I don't have it in front of me. Yes.
15 It's -- it's immediate, in the code section it's
16 immediately below (e)(1).

17 JUSTICE SCALIA: Ah.

18 MR. REDDING: But I mean -- I'm sorry, Your
19 Honor. That doesn't help you --

20 (Laughter.)

21 MR. REDDING: -- where it is in the
22 materials.

23 JUSTICE SCALIA: That's one thing about this
24 case I'm sure about.

25 (Laughter.)

1 MR. REDDING: I apologize, Your Honor, but I
2 do not have that. It is in the appendix to the
3 petition, the entire code section is set out.

4 JUSTICE KENNEDY: Is that the one that says
5 "interest abated with respect to erroneous refund
6 check"? Or am I reading wrong?

7 MR. REDDING: Yes, Sir, it is.

8 CHIEF JUSTICE ROBERTS: But the one I'm
9 looking at just has (e)(1). Did you have a page number?

10 JUSTICE SOUTER: At page 42 of the appendix,
11 all -- all there is is subsection 1.

12 JUSTICE SCALIA: That's right.

13 MR. REDDING: Well, Your Honor, I have the
14 code section in front of me now but I still do not have
15 the reference in the appendix. I apologize but I simply
16 don't have it, Your Honor.

17 JUSTICE GINSBURG: Can I go back to
18 something you just said, that I thought you said that
19 the people would have no remedy if the Tax Court -- were
20 the only forum for abatement claims? And it would be
21 the exclusive forum but nobody -- it wouldn't deny
22 access to anyone.

23 MR. REDDING: Your Honor --

24 JUSTICE GINSBURG: Abatement claim, if you
25 read this as the Government does, is one place where you

1 go, and the Tax Court but everyone who has an abatement
2 claim could go there. So who's being cut out?

3 MR. REDDING: Well no, Your Honor, everyone
4 cannot go there. You can only go there if you're a
5 taxpayer, an individual taxpayer with a net worth of
6 less than \$2 million.

7 JUSTICE GINSBURG: Oh, yes. Yes.
8 And I had asked you before well doesn't it seem, it
9 seems strange that Congress would want to limit the
10 authority of the -- of the court where most people go
11 and have no limit for the wealthier taxpayers.

12 MR. REDDING: Your Honor, again, my -- my
13 view of that is the Congress intended to limit the
14 special relief of prepayment jurisdiction to the smaller
15 taxpayers. But the availability of a pay and sue remedy
16 was already in existence and continues in existence and
17 those wealthier taxpayers generally can afford to pay
18 the liability in full and sue.

19 A prepayment forum which delays the
20 collection of the tax to the Government, you know, the
21 Government has a special interest there in restricting
22 access to that relief so that it can proceed with
23 collection. And again, it just makes logical sense that
24 as to a larger taxpayer the ability to pay and sue
25 should be a sufficient remedy. Generally speaking --

1 JUSTICE GINSBURG: I thought Congress was
2 operating on the assumption that no court could hear an
3 abatement claim?

4 MR. REDDING: Your Honor, that comes largely
5 from the legislative history, the House Committee report
6 addressing interestingly, subsection (h). And
7 subsection (h), since it applies only to prepayment
8 abatement claims specifically, I think then you, then
9 that legislative history makes sense. Because in that
10 same page in the legislative history --

11 JUSTICE GINSBURG: Well, give me a decision
12 of the claims court or a district court that said courts
13 have authority to abate the interest before Congress
14 enacted this legislation.

15 MR. REDDING: I don't believe there is a
16 specific case out there that I can cite to you where it
17 has happened. It is -- it is reflected in both Horton
18 Homes and Selman that that availability existed with
19 respect to (e)(2) to --

20 JUSTICE KENNEDY: Is it fair to say that
21 Congress acted on the assumption that there was no right
22 to the abatement with -- and to the payment -- unless it
23 enacted the statute?

24 MR. REDDING: Your Honor, I don't believe
25 so. Again, because that legislative history that's

1 referred to is restricted, the House Committee report is
2 restricted only to the subsection creating the Tax Court
3 prepayment jurisdiction. It is not relevant to the rest
4 of the amendments to section 6404. And I note that in
5 doing so Congress also did not make the restriction on
6 the \$2 million/\$7 million net worth relative to the
7 rights being granted under the other provisions of 6404.

8 JUSTICE SCALIA: It's easy to see why the
9 only cases you have relate to (e)(2) rather than (e)(1).
10 (E)(2) which we don't have in the materials, but I have
11 gotten a copy of it.

12 And (e)(1) says that the Secretary "may"
13 abate the assessment of all or any part. And those
14 cases that denied it said this is discretionary; he
15 doesn't have to. (E)(2) on the other hand, interest
16 abated with respect to erroneous refund check, says the
17 Secretary "shall" abate the assessment. So really,
18 (e)(2) doesn't -- doesn't do you any good at all with
19 respect to whether there was a cause of action before
20 (h) was adopted.

21 MR. REDDING: Well -- Your Honor, I
22 respectfully disagree because 6404(h) applies to (e)(2)
23 as much as it does to (e)(1). And any taxpayer that
24 would have met the net worth requirements -- or whether
25 or not they met the net worth requirements that are now

1 in (h), could have brought a refund suit under (e)(2)
2 previously.

3 CHIEF JUSTICE ROBERTS: Well, sure. But --
4 but that's just saying, if -- you used to have the
5 entitlement under (e)(2) and you're saying well, you
6 could bring cases under (e)(2). But 6404(h) allows you
7 to bring cases under (e)(1). It would follow a fortiori
8 that you could bring them for (e)(2) as well, but that
9 doesn't prove that you could bring them under (e)(1) in
10 the claims court or the district court.

11 MR. REDDING: No it does not, Your Honor.
12 What I'm trying to address is the intent to repeal the
13 preexisting jurisdiction, again because 6404(h) does not
14 apply just to (e)(1), where there might be a question
15 about whether or not they could have brought the case
16 previously, although jurisdiction existed. Clearly they
17 could have brought their case under (e)(2).

18 JUSTICE SCALIA: I see. What you're saying
19 is that cases that used to be bringable under (e)(2)
20 would now be bringable only under (h) which would in
21 effect be an implicit repeal of (e)(2).

22 MR. REDDING: Of (e)(2) --

23 JUSTICE SCALIA: At least as far as suits
24 elsewhere than in the Tax Court.

25 MR. REDDING: That's correct. And

1 additionally further limit it solely to the small
2 taxpayer. The larger taxpayer who had a prior remedy
3 would have none.

4 JUSTICE BREYER: It seems to apply just to
5 abuse of discretion.

6 MR. REDDING: I'm sorry, Your Honor?

7 JUSTICE BREYER: Doesn't the new statute
8 just apply to abuse of discretion?

9 MR. REDDING: No, Your Honor, it does not.
10 It creates the standard under which the Tax Court may
11 review any interest abatement claim under section --

12 JUSTICE BREYER: It says you have
13 jurisdiction to determine whether it's an abuse of
14 discretion. Maybe I'm reading the wrong place. 6404 --

15 MR. REDDING: Yes, Your Honor, that is the
16 standard it applies to.

17 JUSTICE BREYER: Right. Well that standard
18 doesn't apply to the (e)(2). It has nothing to do with
19 it; (e)(2) says if it's a refund, abate; if not, not.
20 It's not a question of abuse of discretion or not.

21 MR. REDDING: Well I think it's the standard
22 on which they are to review the Government's action.
23 And I believe I cannot cite the case but there are cases
24 that hold that a violation of law is a per se abuse of
25 discretion. There are also other subsections --

1 subsections under 6404 which are made provisions in
2 other 6404 subsections, which are must provisions.
3 There are about five different subsections under 6404
4 that provide for interest abatement.

5 Again, I come back to the long-established
6 pattern of having prepayment jurisdiction in the Tax
7 Court and postpayment refund jurisdiction in the
8 district courts and Court of Federal Claims. It's a
9 well established system, and adding a new prepayment
10 form of relief into the Tax Court in no way should be
11 implied to be a repeal of the long-established refund --
12 pay and sue refund jurisdiction that normally exists.

13 CHIEF JUSTICE ROBERTS: But if you went into
14 the district court and claimed that the failure to abate
15 interest was an abuse of discretion, what would you rely
16 on for the -- for the cause of action?

17 MR. REDDING: If the failure to abate
18 interest was an abuse of discretion under (e)(1) you
19 would rely on (e)(1) for the cause of action. The right
20 is created by the other subsections of (h) -- I mean of
21 6404.

22 CHIEF JUSTICE ROBERTS: I thought the prior
23 cases consistently, consistently said that there was no
24 judicial review because it was "may abate" and that it
25 was only with the arrival of 6404(h)(1) that there was a

1 cause of action for abuse of discretion?

2 MR. REDDING: Yes, Your Honor, but I believe
3 what they actually said is that there was jurisdiction
4 to hear it but there was not a justiciable standard that
5 could be applied with regard to (e)(1). However, once
6 Congress came in and says to the Tax Court you're going
7 to apply this standard, there is a standard of review.
8 That now indicates Congress did not intend it to be
9 solely discretionary, and that the district courts or
10 Court of Federal Claims would look to the general common
11 law; it would look to precedents, such as the APAA
12 abuse-of-discretion standard is consistently used
13 throughout the court systems in --

14 CHIEF JUSTICE ROBERTS: So you want to look
15 at 6404(h)(1) saying now we have a standard, but you
16 don't want the other stuff that goes along with
17 6404(h)(1), which is it's in the Tax Court; you got to
18 have less than \$2 million, blah, blah, blah?

19 MR. REDDING: That is correct, Your Honor.
20 The abuse of discretion standard is a common law
21 standard which has been carried over into -- into this
22 statute. But to create a --

23 JUSTICE GINSBURG: But it didn't exist
24 before this statute. I mean, the lower courts as I
25 understand it said, routinely, yes, you can have

1 jurisdiction, but you have no claim for relief because
2 there is no, no law to apply. This is a totally
3 discretionary matter of the Commissioner's grace. So
4 Congress perhaps didn't grasp the subtle distinction
5 between no jurisdiction and
6 you-can-walk-in-the-door-but-you-go-out-the-next-door,
7 because there is no justiciable claim. And it provided
8 peculiarly in the Tax Court for relief that was not
9 available anyplace before.

10 MR. REDDING: I understand and that's
11 basically the Fifth Circuit's view, Your Honor. I do
12 not agree with that view. I think that the Congress was
13 merely expanding the existing structure of prepayment
14 jurisdiction for the Tax Court --

15 JUSTICE GINSBURG: The Fifth Circuit -- I
16 thought the Fifth Circuit went your way.

17 MR. REDDING: Pardon?

18 JUSTICE GINSBURG: I thought the Fifth
19 Circuit went your way.

20 MR. REDDING: It did, Your Honor. I'm
21 sorry. The Federal Circuit -- analyzed it as you have.
22 I do not believe that that is the correct analysis. I
23 think the Fifth Circuit has this one right. What you
24 have is a grant of jurisdiction to the United States Tax
25 Court for a prepayment forum of relief which is

1 consistent with the existing pattern, and in no other
2 instance where that has been done has there been an
3 implied repeal.

4 JUSTICE SCALIA: Mr. -- Mr. Redding, let me
5 come back to the phantom (e)(2) which we have finally
6 traced down.

7 MR. REDDING: I apologize, Your Honor.

8 JUSTICE SCALIA: I am not sure that (h)
9 would impliedly repeal (e)(2), because (e)(2) is
10 mandatory. There isn't any question under (e)(2)
11 whether there has been an abuse of discretion. There is
12 no discretion. It is mandatory to the extent that the
13 Administrative Procedure Act would govern (e)(2), it
14 would be for a violation of law not for abuse of
15 discretion.

16 So when (h) says the Tax Court shall have
17 jurisdiction to determine whether "the Secretary's
18 failure to abate interest was an abuse of discretion," I
19 would take that to apply only to (e)(1), which says the
20 Secretary "may" abate and not to (e)(2) which says the
21 Secretary "shall" abate. There is no question of -- of
22 discretion in (e)(2) at all.

23 MR. REDDING: I understand that argument,
24 Your Honor. And --

25 JUSTICE SCALIA: It was a pretty good

1 argument, I thought.

2 (Laughter.)

3 MR. REDDING: I agree, Your Honor. I would
4 note to the Court, though, that 6404(d) is also a
5 may-abate provision which is in the code. 6404(a) is
6 also a permissive abatement provision, and those
7 provisions would clearly be covered by it. I -- when it
8 says it may -- may review a failure to abate interest
9 under 6404, I read that as encompassing all of 6404 and
10 creating their standard for review. I do not review
11 that as a new standard that applies.

12 JUSTICE SCALIA: What about those other
13 sections, (c) and (d), which say the Secretary "is
14 authorized"? Have there been cases which, which said
15 that you could sue for -- for his failure to make use of
16 that?

17 MR. REDDING: Your Honor, I've been able to
18 find no case --

19 JUSTICE SCALIA: It's the same as with (e)?

20 MR. REDDING: Yes, Your Honor.

21 JUSTICE SCALIA: As with (e)(1).

22 MR. REDDING: Yes, Your Honor. There's no
23 clear history of cases.

24 I would also submit, Your Honor, that
25 because of the established pattern of pay and sue versus

1 prepayment jurisdiction and the necessity to make a
2 specific reference to the Tax Court in any grant of
3 jurisdiction in the Tax Code in order to enable the Tax
4 Court to have jurisdiction, that if this is the ruling
5 of this Court with regard to 6404(h), it is going to
6 raise a question every time prepayment jurisdiction is
7 extended to the Tax Court over any matter as to whether
8 that somehow now becomes exclusive of the conventional
9 pay and sue remedy.

10 CHIEF JUSTICE ROBERTS: Of course, there's a
11 fundamental difference on this particular question
12 between pay and sue and sue --

13 MR. REDDING: Prepay.

14 CHIEF JUSTICE ROBERTS: -- prepay, because
15 if you -- in the district court if you're paying and
16 suing you're not really subject to the accrual of
17 interest, right?

18 MR. REDDING: No, Your Honor, that is not
19 correct.

20 CHIEF JUSTICE ROBERTS: If I owe the IRS
21 1,000 dollars and they send me a bill and I paid the
22 1,000 dollars, they've got the money, I don't. So I
23 don't owe interest on that, do I?

24 MR. REDDING: Your Honor, may I reflect it
25 back to the facts in this case. The time period with

1 respect to which abatement is requested occurs many
2 years before the IRS ever sent the taxpayer a bill. The
3 errors and delays complained of in this case occurred
4 during the course of the partnership level examination
5 and proceedings. The taxpayer at that time doesn't even
6 have a notice of what the adjustments are going to be,
7 let alone what his tax liability is. In a partnership
8 case, the partnership level determinations are made at
9 the partnership level. The Government then, without any
10 further notice to the taxpayer, is free to make the
11 computation of the taxpayer's liability and send him a
12 bill.

13 During the pendency of the proceedings at
14 the partnership level, there is virtually no way to
15 tell, except as to what the outside maximum liability
16 might be if the Government prevails, what your liability
17 is going to be. And if --

18 CHIEF JUSTICE ROBERTS: So you are saying
19 the initial bill includes the interest?

20 MR. REDDING: Absolutely, Your Honor, that's
21 being asked to be relieved of in this case.

22 CHIEF JUSTICE ROBERTS: But I suppose it's
23 still -- in the Tax Court situation it's still accruing?

24 MR. REDDING: Well, yes. It's accruing
25 during the course of the Tax Court proceeding. And

1 again, even there for an individual if the time period
2 involved was prior to the assessment, the pay, the being
3 able to pay it and cut off the interest really wouldn't
4 make sense.

5 Basically, Your Honor, I believe that -- I
6 believe that this case really rests on what I think the
7 Fifth Circuit summarized quite well when it says that it
8 makes more sense in this case to simply believe the
9 Congress, quote, "simply intended" -- "simply chose to
10 extend concurrent jurisdiction to the Tax Court over a
11 certain class of claims." And that's all it really has
12 done here. It has implemented and expanded the
13 conventional jurisdiction of the Tax Court as a
14 prepayment forum before you do have to pay the liability
15 to resolve a dispute with the Internal Revenue Service.

16 There is no reason, I don't believe, to see
17 this as a major departure from the existing structure of
18 pay and sue jurisdiction versus prepayment jurisdiction.
19 This is just a well established plan that's been in the
20 code for many, many years.

21 Mr. Chief Justice, if the Court has no other
22 questions I would reserve my remaining time for
23 rebuttal.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 Mr. Redding.

1 Mr. Marcus.

2 ORAL ARGUMENT OF JONATHAN L. MARCUS

3 ON BEHALF OF THE RESPONDENT

4 MR. MARCUS: Thank you, Mr. Chief Justice,
5 and may it please the Court:

6 The court of appeals correctly held that the
7 Tax Court has exclusive jurisdiction over actions
8 challenging interest abatement determinations under
9 section 6404(e)(1). The language, structure and history
10 of the interest abatement review statute supports the
11 court of appeals' decision as do principles of sovereign
12 immunity. Under Petitioner's theory the specific
13 restrictions on the remedy that Congress created may be
14 avoided by the simple expedient of filing a challenge in
15 another forum. Nothing in the interest abatement review
16 statute or this Court's precedent permits that result.

17 The place to start is the language of the
18 interest abatement review statute. Section 6404(h)
19 provides the Tax Court shall have jurisdiction over an
20 interest abatement action brought by taxpayers who meet
21 the net worth limitations set out in another part of the
22 code and who file their claim within 180 days of the
23 Secretary's mailing of a final determination not to
24 abate interest.

25 JUSTICE KENNEDY: If -- if the history of

1 this issue had been such that before the enactment of
2 this section the courts of appeals were divided -- or
3 the courts were divided as to whether or not there was
4 jurisdiction in the Court of Claims and in the district
5 court, would your position be different?

6 MR. MARCUS: No, our position would be the
7 same. We would first look to the statutory language of
8 section 6404(e)(1) and that provision provides that the
9 Secretary may abate interest when there is an error or
10 delay committed by an IRS employee in the performance of
11 a ministerial act, and that "may" language contrasts
12 with other provisions that have mandatory language that
13 requires the Secretary to abate. In addition, if you
14 look at the nature of the --

15 JUSTICE KENNEDY: So it's, so it's only (h)
16 that gives any court any jurisdiction at all?

17 MR. MARCUS: That's correct.

18 JUSTICE KENNEDY: Even though in our
19 hypothetical world some courts of general jurisdiction
20 thought that they did have jurisdiction?

21 MR. MARCUS: That's correct, Justice
22 Kennedy. Up until 1986 the IRS didn't even have the
23 authority to abate in these circumstances.

24 JUSTICE SCALIA: Did (h) apply to (e)(2) as
25 well as to (e)(1)? Does it apply only to discretionary

1 abatement provisions?

2 MR. MARCUS: No, it's our position it
3 applies only to discretionary abatement determinations
4 by the Secretary. The language -- typically when abuse
5 of discretion standard is imposed, it presupposes that
6 the decision being reviewed involves an exercise of
7 discretion.

8 JUSTICE SCALIA: So what happens with
9 (e)(2)? You use the pay and sue provisions?

10 MR. MARCUS: Yes, you could use it, although
11 it typically comes up when the Government has filed an
12 action to recover an erroneous refund. It's usually
13 raised as a defense. But you could bring it that way.

14 JUSTICE KENNEDY: Well, isn't it an abuse --
15 isn't it an abuse of discretion for the Secretary to
16 fail to do what the statute tells him he absolutely
17 must?

18 MR. MARCUS: I think as a technical matter,
19 Justice Kennedy, that's correct. But I don't think
20 that's the natural way to read the statute, and when
21 Congress imposed that abuse of discretion standard it
22 assumed that the decisions that were being -- that were
23 subject to review involved the exercise of a discretion.

24 JUSTICE SCALIA: I don't think it's a -- I
25 don't even think it's technically correct. How is it an

1 abuse of discretion? He has no discretion. He must do
2 it. How could you say he has abused his discretion?
3 What discretion?

4 MR. MARCUS: Well I think some cases --
5 there is some case law that has said that when there is
6 an error of law committed by a lower court that can
7 constitute an abuse of discretion. But in our view
8 again that's not the natural reading of the standard
9 that Congress put in. And also, if you look at the
10 legislative history, Justice Kennedy, you'll see that
11 Congress was focused on the absence of a judicial remedy
12 with respect to determinations by the Secretary that
13 involve an exercise in discretion.

14 CHIEF JUSTICE ROBERTS: But what the cases
15 said prior to 6404(h) when they asked for interest
16 abatement was not that we don't have jurisdiction to
17 consider that claim. They would just say there's no
18 standard to apply, so it's committed to agency
19 discretion by law. Then all of a sudden 6404(h) comes
20 along and gives you a standard, so that removes that
21 objection. What's wrong with that?

22 MR. MARCUS: I think that's -- with respect,
23 I think the Fifth Circuit's reasoning is too clever by
24 half. The Fifth Circuit basically extracted one piece
25 of section 6404(h)'s integrated whole and held that

1 there now is a refund cause of action that's not subject
2 to the specific restrictions.

3 CHIEF JUSTICE ROBERTS: Well, that's because
4 of the way that Congress enacted the language. It
5 doesn't say that the Tax Court and only the Tax Court
6 shall have jurisdiction. It says the Tax Court shall
7 have jurisdiction. That is a, in many respects a
8 preferred forum and they're saying you can bring it
9 there as well, but it doesn't take away the jurisdiction
10 that the prior courts had recognized.

11 MR. MARCUS: Well, I think you need to look
12 at what the state of the law was when Congress enacted
13 this provision and think about what Congress would have
14 wanted to do. If Congress had wanted to reverse those
15 decisions that had said there was no cause -- no refund
16 cause of action for interest abatement, they could have
17 easily referenced the refund statute and said there is a
18 refund action available. They also could have specified
19 that the Court of Federal Claims or the district courts
20 can exercise jurisdiction over interest abatement
21 issues.

22 CHIEF JUSTICE ROBERTS: Don't you think it's
23 kind of strange, though, if you have the interest
24 abatement is available only for a particular category of
25 taxpayer and not others?

1 MR. MARCUS: No.

2 CHIEF JUSTICE ROBERTS: If you have a net
3 worth of two million and one dollar you can't get any
4 interest abatement, but if it's \$2 million you can.

5 MR. MARCUS: I don't think, I don't think
6 it's anomalous. I think if you consider the concept of
7 interest under the Tax Code, the way it works under the
8 Tax Code is interest accrues on an unpaid tax liability
9 from the time the tax is due until the time the tax is
10 paid. So the amount of underpayment is the amount the
11 taxpayer is borrowing from the Government. The interest
12 that accrues on that underpayment is not a penalty; it's
13 just a charge basically for the time value of money.

14 CHIEF JUSTICE ROBERTS: Right, but you abate
15 it in some cases, but you don't abate it in the others.

16 MR. MARCUS: Right. But I think -- I think
17 the idea was that Congress was concerned that some
18 taxpayers, taxpayers that fall within the net worth
19 limitations, might be in positions where they are less
20 well-positioned to pay the full tax liability up front.

21 CHIEF JUSTICE ROBERTS: That's what I
22 thought, too. But then your friend explained that in
23 the initial bill is where the interest is contained in a
24 lot of these cases and in this case in particular. So
25 it's not as if you have the opportunity to pay it in

1 advance to stop the accrual of interest. Just you get
2 the bill and you find out, you know, you owe a 1,000
3 dollars and \$300 of it is interest.

4 MR. MARCUS: I don't think that's correct,
5 Your Honor. The way this is -- the interest that's
6 abatable is -- the taxpayer is in full control of
7 whether that interest runs or not. If the taxpayer pays
8 his full tax liability on time, interest doesn't accrue,
9 so there's no interest to abate. Or --

10 JUSTICE SCALIA: But he doesn't even know
11 what his tax liability is, especially in a partnership
12 situation.

13 MR. MARCUS: Well, the taxpayer --

14 JUSTICE SCALIA: He makes the partnership
15 calculation, it goes to the IRS, and then they figure
16 out what the tax is. And meanwhile, you know, the
17 interest is running.

18 MR. MARCUS: Well, Justice Scalia, first of
19 all, the taxpayer is in the best position to know what
20 their tax liability is. If a taxpayer is going to make
21 certain investments, they should understand what the tax
22 consequences are.

23 JUSTICE SCALIA: This is quite a different
24 argument. You're saying, you know, he should have paid
25 the full tax in the first place, not he could have paid

1 the interest that he knew was accruing.

2 MR. MARCUS: Right. But he could have
3 prevented that, the abatable interest, from accruing.
4 This abatable interest doesn't accrue until the taxpayer
5 receives notice from the IRS that there is a problem
6 with the return. So the -- in other words, that first
7 period from the time the underpayment is made until the
8 IRS notifies the taxpayer, that, that interest is not
9 subject to abatement. That automatically accrues and
10 there is no remedy. Congress has created no remedy for
11 that period, and there's just a period, there's a
12 provision in section --

13 JUSTICE SCALIA: Excuse me. I didn't
14 understand that. Say that again? There's no abatement
15 for the interest that accrues until you're notified of
16 what the --

17 MR. MARCUS: Until you're notified, until
18 the IRS notifies you that they are looking further at
19 your return. They might not at that point tell you
20 precisely how much you owe, but you're on notice that
21 the IRS is looking into your return further and that you
22 can at that point make a payment or put down a deposit
23 that doesn't compromise your ability as a taxpayer to go
24 into the Tax Court, but it does stop the accrual of
25 abatable interest.

1 JUSTICE SOUTER: But you don't know how much
2 to pay, do you? I mean, when they send you the notice
3 they don't send a notice that says, we're looking into
4 this and we think you're going to end up owing \$5,000,
5 do they? They don't give you a figure.

6 MR. MARCUS: Again, they don't necessarily
7 tell you exactly how much you owe, but it's the
8 taxpayer's --

9 JUSTICE SOUTER: Well, they don't -- do they
10 name a figure at all --

11 MR. MARCUS: They sometimes do.

12 JUSTICE SOUTER: -- when they give you the
13 initial notice?

14 MR. MARCUS: They sometimes do, and then at
15 18 months, at 18 months under subsection (g), under 18
16 months under a provision that was acted in 1998, the IRS
17 has to at 18 months tell you how much you owe;
18 otherwise, the interest cannot continue to accrue after
19 that 18-month period. But you should -- but it is the
20 taxpayer's responsibility to know what their tax
21 liability is. And they can also --

22 JUSTICE SOUTER: That's true. That's true.
23 But you can make that argument. That argument, if you
24 accepted it, would be an argument for having no
25 amendment to subsection (h) at all.

1 MR. MARCUS: Right, but that's the idea.
2 Until 18 -- until 1986 there was no authority at all for
3 the Secretary to abate, and then Congress gave the
4 Secretary that authority as a matter of grace in 1986,
5 to extend this relief to forgive the accrual of
6 interest. I mean, after all this is money --

7 JUSTICE SOUTER: And the question is, why is
8 the grace confined to some taxpayers and not to others?

9 MR. MARCUS: The short answer is because
10 Congress has said that, said that, and the Congress
11 decided to impose the net worth limitation.

12 JUSTICE SOUTER: It'd have said it if we
13 accept your view of the exclusivity of the amendment to
14 (h).

15 MR. MARCUS: Right. And typically when
16 Congress imposes restrictions on a remedy this Court
17 reads that -- reads that as an intentional --

18 JUSTICE BREYER: Is there any other instance
19 in the law? I mean there probably is, but what
20 surprised me about that is this: Imagine we have two
21 citizens and they are identical in every respect in
22 terms of their claim, they each believe the Government
23 owes them \$50,000. They each have identically strong
24 claims. And Congress passes a law and says one of you
25 can come into court and the other can't. Now suppose it

1 said the poor person can't come into court. Do you
2 think there wouldn't be a constitutional problem there?
3 Remember, they have the same claim for the same amounts,
4 with the same precise strength of their argument. But
5 we say rich people can go in -- so why did you do that?
6 We say poor people don't have as much stake in society.
7 They don't have -- now suppose you heard such an
8 argument. How long would it take you to feel there's a
9 constitutional problem?

10 MR. MARCUS: Well, I think there has to be a
11 rational basis for drawing --

12 JUSTICE BREYER: No. No. No. The rational
13 basis is that the poor person doesn't have the stake in
14 society that a rich person does.

15 MR. MARCUS: Well, I don't think --

16 JUSTICE BREYER: Worthless. Okay. Now I
17 guess, if you can't keep the poor person out for such a
18 reason then you can't keep the rich person out for such
19 a reason. So you tell me what the rationale is in
20 keeping the rich person out any more than the poor
21 person. They have the same claim, same amount, same
22 cause. The cause, by the way, was that some bureaucrat
23 in the IRS forgot to send a notice so nobody knew what
24 was happening. That was the cause. And the reason it
25 didn't get abated is a different bureaucrat got mixed

1 up, okay? Same claims.

2 MR. MARCUS: Keep in mind, this is -- what
3 you're talking about is money -- this is interest that's
4 running on money that the taxpayer is borrowing from the
5 Government. This is money that the Government is
6 legally entitled to as of the date it was originally
7 due.

8 JUSTICE BREYER: Yeah.

9 MR. MARCUS: And so this is money that the
10 taxpayer is borrowing. A large net, high net worth
11 taxpayer can invest that money elsewhere and may well
12 even make out even better.

13 JUSTICE BREYER: But at the end of the day,
14 the claim happens to be interest worth \$5,000. The IRS
15 abused its discretion under the statute in failing to
16 write a check for \$5,000 to both. What we do is we
17 allow one of them to bring a lawsuit to get the 5,000,
18 and we say to the other one, you can't bring the lawsuit
19 to get the 5,000.

20 Now my question is, what's the basis for
21 that distinction?

22 MR. MARCUS: And the rational basis is that
23 Congress believed that taxpayers of a high net worth,
24 there would be no hardship, but -- in them not having a
25 cause of action.

1 JUSTICE BREYER: Why would there be no
2 hardship?

3 MR. MARCUS: Because they can use the money,
4 invest the money.

5 JUSTICE BREYER: And so can a poor person.

6 MR. MARCUS: Well, but they're not as well
7 positioned as the wealthy taxpayer, to invest that --

8 JUSTICE SCALIA: The next thing you know,
9 they will enact a progressive income tax.

10 (Laughter.)

11 JUSTICE SCALIA: Where will we all be then?

12 JUSTICE BREYER: This, by the way, this has
13 nothing to do with the progressive income tax. What I
14 have not seen anywhere is the use of wealth, totally
15 different from the dollar value of a claim, to shut the
16 courthouse door. I'm just saying, is there such a case
17 anywhere, and if there is no such case, then I'd say I
18 wonder about this assumption. The assumption that the
19 reason that you cannot keep the courthouse door open to
20 everyone is because what?

21 MR. MARCUS: Well, first of all, there are
22 other examples. There's --

23 JUSTICE BREYER: Well what?

24 MR. MARCUS: This is derived from,
25 ultimately derived from the Equal Access to Justice Act,

1 there are attorneys' fees provisions, that also exist in
2 the Tax Code, and those net worth limitations apply to
3 --

4 JUSTICE BREYER: We know, attorneys' fees
5 you give to poor people more than to rich people. That
6 makes sense. That has nothing to do with having a
7 formal rule saying you cannot enter the courthouse.

8 JUSTICE SCALIA: Is it a
9 cannot-enter-the-courthouse provision here, or is it --
10 as I understand your case, it is that it remains
11 discretionary with the Secretary with respect to people
12 who have more money, but it is not discretionary with
13 respect to people who have less money.

14 MR. MARCUS: That's correct.

15 JUSTICE BREYER: I don't understand.

16 JUSTICE SCALIA: So one has a cause of
17 action and the other doesn't have a cause of action.
18 And the difference you're making between the two is
19 you're permitting the Secretary to waive the interest
20 with respect to the rich. You're requiring him to do it
21 with respect to the poor. Isn't that the difference?

22 MR. MARCUS: That's correct. There is an
23 administrative claim that --

24 JUSTICE BREYER: Wait. That might be the
25 answer.

1 JUSTICE KENNEDY: And the poor do not have
2 the incentive or even the ability to defer paying a tax,
3 where the people that have large bank accounts may, and
4 investments, may well profit by just paying the interest
5 to the Government.

6 MR. MARCUS: That's exactly right. And
7 Justice Breyer, if you want, if you --

8 JUSTICE BREYER: Wait. Wait. There are two
9 separate things. I want to understand this. In other
10 words, the Secretary does not have the power to abate
11 the interest in respect to the rich person?

12 MR. MARCUS: No. He does have the
13 authority.

14 JUSTICE BREYER: Oh.

15 JUSTICE SCALIA: But it's permissive, not
16 mandatory.

17 MR. MARCUS: Yeah, the Secretary has the
18 authority to abate interest with for wealthy --

19 JUSTICE BREYER: But he doesn't have -- he
20 can do it -- in the first case with the rich person, he
21 can abuse his discretion?

22 MR. MARCUS: With respect to taxpayers who
23 meet the net worth limitations.

24 JUSTICE BREYER: In other words, in the one
25 case Congress has passed a law saying with a poor person

1 you cannot abuse your discretion, but with a rich person
2 you can abuse your discretion. That's what the
3 underlying substantive statute says?

4 MR. MARCUS: And there's another provision
5 --

6 JUSTICE BREYER: Where does it say --

7 JUSTICE SCALIA: They are not really saying
8 that. They're saying it's totally within your
9 discretion. You can't possibly abuse your discretion
10 when you have total discretion. They're just saying,
11 you know, do it if you want, don't do it if you don't.

12 MR. MARCUS: That's right. It's a matter of
13 administrative grace for the taxpayers who
14 are --

15 JUSTICE SOUTER: No. But the standard of
16 discretion is the same for the poor and the rich, isn't
17 it? The only difference is that the poor can get into
18 court and the rich cannot.

19 MR. MARCUS: They have an enforceable right.

20 JUSTICE SOUTER: So it's a question of
21 remedy, not standing.

22 MR. MARCUS: Right. There's a judicial
23 remedy in one case and only an administrative remedy in
24 the other.

25 JUSTICE ALITO: Is that the poverty line?

1 MR. MARCUS: And if there's another
2 provision in the tax -- I'm sorry, Justice Alito.

3 JUSTICE ALITO: Is a net worth of \$2 million
4 the poverty line now?

5 (Laughter.)

6 MR. MARCUS: Not that I'm aware of.

7 JUSTICE ALITO: So what is -- so what's the
8 rationale? This isn't treating the rich and the poor
9 differently, is it?

10 MR. MARCUS: It's treating exceedingly high
11 net worth individuals and corporations differently from
12 everyone else.

13 JUSTICE ALITO: Someone with a net worth of
14 \$1.5 million couldn't invest the money in the interim?

15 MR. MARCUS: They could. Congress chose to
16 draw the line where it used this provision that was
17 already in place under the Equal Access to Justice Act.
18 It referred to that provision --

19 JUSTICE GINSBURG: This was for purposes of
20 attorneys' fees?

21 MR. MARCUS: Right, the provision that
22 applies to attorneys' fees. Congress has also imposed
23 this provision in a burden shifting provision in the Tax
24 Code, section 7491. If the Court wants to get a better
25 idea of what Congress's concern for what it called the

1 average taxpayer, or the smaller taxpayers, it can look
2 at the legislative history. There was a hearing in
3 March of 1995 that's cited on page 98 of the
4 supplemental appendix to the cert petition, and that was
5 the Court of Federal Claims' decision. It's footnote
6 19. It refers to a hearing in March 1995. And if you
7 read through that, you can see where that concern for
8 the -- for average taxpayers and lower net worth
9 taxpayers came from.

10 Nothing in section 6404(h) gives rise to an
11 inference that Congress intended to establish additional
12 remedies in the district courts and Court of Federal
13 Claims. To the contrary, this Court has consistently
14 applied the rule that when Congress creates a specific
15 remedy, it intends that remedy to be exclusive. That
16 rule is fully applicable here. Otherwise, the specific
17 restrictions Congress imposed on the remedy could be
18 defeated by bringing the claim in a different forum.
19 This case --

20 JUSTICE GINSBURG: Wouldn't it have been so
21 simple if Congress just said the Tax Court shall have
22 exclusive jurisdiction, instead of just saying
23 jurisdiction?

24 MR. MARCUS: That might have made it
25 simpler, Justice Ginsburg, but it accomplished the same

1 result by imposing the specific restrictions that it
2 did. And again, it would have -- there's another --
3 there are two other provisions in the Tax Code where
4 Congress -- where the Tax Court effectively has -- one
5 of the provisions where the Tax Court has exclusive
6 jurisdiction under section 6330(d), where also it
7 doesn't specify that -- the Congress didn't specify the
8 Tax Court has exclusive jurisdiction but it does. And
9 it's another case where there's an administrative
10 determination, it doesn't go to the underlying
11 substantive tax liability.

12 CHIEF JUSTICE ROBERTS: But the difference
13 -- the difference is that the district court, the claims
14 court already have jurisdiction for pay and sue claims,
15 if you pay the IRS you can sue to get a refund. And so
16 this isn't as if we're looking at something that says
17 the Tax Court has jurisdiction and trying to use that as
18 a wedge to get other jurisdiction. There's already a
19 grant of jurisdiction. The problem was, there was no
20 standard of review for these "may abate" claims, and all
21 of a sudden we find in this provision there is a
22 standard of review, it's abuse of discretion, and that
23 fills the void. Why can't they just use that?

24 MR. MARCUS: Well, again, Mr. Chief Justice,
25 I don't think it was just a matter of not being a

1 standard of review. I think it was a matter of this
2 being -- of intent by Congress to have this just be a
3 matter of administrative grace. And again, if you
4 contrast the language of the different --

5 CHIEF JUSTICE ROBERTS: But I thought what
6 you had argued before when people would try to seek this
7 relief was that there's no standard of review to hold
8 the Secretary's exercise of discretion up against.

9 MR. MARCUS: I think that was one of the
10 reasons that the Government cited, but I think there was
11 others as well.

12 CHIEF JUSTICE ROBERTS: But one thing you
13 never said was that there was no jurisdiction, because
14 there is jurisdiction in the district court. If you've
15 paid money to the IRS and you want it back, you can
16 bring a refund action.

17 MR. MARCUS: If you have a legal entitlement
18 to it, and the point is you didn't have a legal
19 entitlement to it before. That's what the courts held,
20 and Congress responded to that, not by saying you do
21 have a legal entitlement to this through a refund
22 action, which they easily could have said if they wanted
23 to reject those prior decisions, but instead they
24 created a limited remedy in the Tax Court. I don't see
25 how you can read that limited remedy in the Tax Court to

1 give rise to a broader remedy that doesn't have those
2 restrictions that Congress imposed on the Tax Court
3 remedy.

4 So it should be -- I think 6404(h) should be
5 read as an integrated whole and you can't just extract
6 one piece and then bring that over, as the Fifth Circuit
7 said, to apply to a refund action. I don't think that's
8 the proper way to interpret the statute.

9 JUSTICE BREYER: I now think maybe I don't
10 agree on this point that there are different standards,
11 because it does say in this abuse of discretion. And
12 indeed that's a normal administrative standard, and so
13 as you read this you would think that the IRS does not
14 have any legal power substantively to abuse its
15 discretion in refusing to bring an abatement -- refusing
16 to abate the interest. So far do you agree?

17 MR. MARCUS: I'm sorry, Justice Breyer?
18 That Congress --

19 JUSTICE BREYER: Once they make clear the
20 standard is abuse of discretion, it only makes clear
21 what's there in the law anyway, that administrative
22 authorities do not have the authority to abuse their
23 discretion. Now, sometimes we don't review that in the
24 courts. That doesn't make it legal. It just means you
25 can't catch them out in court.

1 MR. MARCUS: Right.

2 JUSTICE BREYER: So there's a standard that
3 applies to everybody. Then all that this does, to go
4 back to it is it closes the courthouse door. Now I want
5 to know what your rationale was for doing that. It had
6 nothing to do with the standards that applied. It has
7 to have something to do with why one class of people by
8 wealth are kept out of court. I think if it were the
9 other way around it wouldn't last for three seconds, and
10 the only reason maybe I don't think about it as hard
11 this way because I think, well, privilege is involved,
12 et cetera. But when you force me to think about it, I
13 want to know what the reason is.

14 MR. MARCUS: Well, I don't think it's right
15 to characterize it as the closing of the courthouse
16 door. Congress opened the courthouse door in a limited
17 fashion in 1996. That's what happened. There was no
18 courthouse door opened in 1986 --

19 JUSTICE BREYER: I'll accept that
20 characterization. Now you give me the reason why we've
21 opened the courthouse door to individuals who are alike
22 in every respect but for their net worth? Now give me
23 that, the same reason? I always want to know what the
24 specific reason is, the specific rationale. And I'm not
25 saying there isn't one. I just want to know what it is.

1 MR. MARCUS: Justice Breyer, I don't know if
2 I can give you a better one than I gave before. But
3 it's that high net worth taxpayers are better positioned
4 to pay their full tax liability up front and to handle
5 the accumulation of interest in the event that there is
6 some delay in the processing of their return.

7 JUSTICE KENNEDY: They're exactly alike but
8 for their ability to earn interest in different ways.

9 MR. MARCUS: Yes.

10 JUSTICE SCALIA: And I would not concede, as
11 you seem to have, that the consequence of (h) is simply
12 to open the door. I think the category of decisions
13 that are committed to agency discretion by law within
14 the meaning of the APA are agency decisions as to which
15 the term "abuse of discretion" makes no sense. There's
16 no such thing. It is totally committed to agency
17 discretion. It's only other decisions that are not
18 committed to agency discretion by law where you -- where
19 the discretion can be abused. If you look at it that
20 way, it isn't a matter of closing the door to one
21 category and opening it to another; it's a matter of
22 different substantive laws applying to the two, to the
23 two classes. Anyway, I choose to look at it that way.
24 You can talk about closing --

25 MR. MARCUS: That's a fine way of looking at

1 it, Justice Scalia.

2 (Laughter.)

3 MR. MARCUS: The other -- the other anomaly
4 the Fifth Circuit identified was the taxpayer -- a
5 taxpayer seeking a refund having to split off his
6 claims. This too is not a significant anomaly. The
7 vast majority of taxpayers seek redetermination of their
8 tax liability in the Tax Court and those taxpayers must
9 split their claims because the interest abatement claim
10 doesn't ripen until the taxpayer's underlying liability
11 has been assessed. Moreover, the interest abatement
12 question is distinct from the taxpayer's underlying
13 liability.

14 CHIEF JUSTICE ROBERTS: They don't bring it
15 as this additional claim after they get the final
16 determination? They start a whole separate action for
17 interest abatement?

18 MR. MARCUS: That's -- if they -- if they
19 got -- if they got relief on their refund claim, if they
20 prevail on their refund claim there would be no need to
21 do that. The interest would automatically abate. But if
22 they were unsuccessful they could still pursue an
23 interest abatement claim on the grounds that the IRS
24 committed an error in delay in performing a material
25 act.

1 CHIEF JUSTICE ROBERTS: Is it part of the
2 same proceeding or is it a separate proceeding?

3 MR. MARCUS: Well, it would be -- it would
4 be a proceeding that would follow the proceeding on the
5 underlying liability.

6 CHIEF JUSTICE ROBERTS: No, I'm sure it
7 follows it. But I mean, you're making the claim that
8 it's no big deal that you have to go to the district
9 court to get your refund and then go to the Tax Court to
10 get the interest abatement, which does seem like a big
11 deal to me. And you say, well, in the Tax Court you
12 have to do it separately, too. But it seems to me, that
13 if it's the same proceeding, it's not much -- the
14 argument --

15 MR. MARCUS: It's not as inconvenient --
16 well, it, it may be inconvenient but it's a necessary
17 consequence of the exclusive review scheme the Congress
18 set up. And there is no reason -- to take that policy
19 concern and have that trump the statutory language and
20 the regime that Congress clearly established.

21 JUSTICE GINSBURG: And there is no linkage
22 between the two, with -- it's one thing to split a claim
23 when they have common elements, but the interest
24 abatement has nothing to do with the substantive
25 underlying -- substantive liability?

1 MR. MARCUS: That's correct, Justice
2 Ginsburg. It involves questions about administrative
3 problems that might arise during the processing of the
4 taxpayer's case. A ministerial act, the failure to
5 transfer a file when a taxpayer moves from one
6 jurisdiction to another, or after, or notice of
7 deficiency if the agent just delays in issuing the
8 notice because he forgot about it and it just sat on his
9 desk for a couple of days. Those are the kinds of
10 issues that -- that come up in the interest abatement
11 actions.

12 If the Court has no further questions the
13 court of appeals should be affirmed. Thank you.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 Mr. Marcus.

16 Mr. Redding, you have four minutes
17 remaining.

18 REBUTTAL ARGUMENT OF THOMAS E. REDDING,
19 ON BEHALF OF PETITIONERS

20 MR. REDDING: If I may, there are a couple
21 of brief points I would like to make. In the
22 legislative history of the 6404(h) it concludes with the
23 statement that no inference should be made from that
24 legislation as to other courts' jurisdiction. I think
25 that should be taken very seriously. As to the

1 claim-splitting issue --

2 JUSTICE SCALIA: Who said that?

3 MR. REDDING: That's in the House committee
4 report, Your Honor. As to claim splitting, it is
5 actually a horrendous problem when you're talking
6 especially about partnership-related cases. I will note
7 that there are several hundred cases below waiting the
8 outcome of this case. As in the Cramer and Weiner
9 opinions that came out of the Fifth Circuit, the Court
10 can note that there are claims for interest abatement,
11 abatement not under 6404, but that interest was
12 overcharged by applying the penalty rate of interest.
13 There is a refund claim for the penalty portion of the
14 interest.

15 There is also a refund claim that the tax
16 was assessed outside the statute of limitations; that's
17 clearly a refund claim. None of those claims would be
18 encompassed under 6404(h). These taxpayers would have
19 had to have completely split their claims, asked for an
20 interest abatement in the Tax Court for abuse of
21 discretion on 6404(e)(1).

22 JUSTICE GINSBURG: But the point that
23 Mr. Marcus just made, that the issue is discrete on
24 interest abatement, and it involves mishandling within
25 the Internal Revenue processing, and it's not like other

1 questions that have to do with the -- with the
2 intricacies of the Internal Revenue Code.

3 MR. REDDING: That's only relatively true to
4 6404(e)(1), Your Honor. But I will note that under
5 6404(a), where cases are now coming out of the Tax Court
6 for the first time, because it now has jurisdiction
7 under (h), it provides authority for the Commissioner to
8 abate interest where the IRS has erroneously or
9 illegally assessed the tax liability after the statute
10 of limitations runs or whether it's simply an erroneous
11 assessment. Those claims have nothing to do with
12 discretion, and they are not really just ancillary to
13 the tax liability; they arise out of the substantive
14 challenge to the liability itself. The Woodral case
15 that has come out -- which is the, I think the first of
16 the 6404(a) cases -- was an assertion that the
17 interest had been charged after the tax had been paid.
18 Now that's not a discretionary abatement; that's an
19 illegal assessment of interest and that's a 6404(h)
20 claim now.

21 Previously it would have been strictly a
22 refund claim under 16 -- under 1346.

23 I would also note that in terms of the being
24 able to pay it to cut off the interest accrual, that in
25 these cases, these cases that are before the Court, the

1 F quality -- the document the Government first sent out
2 proposing adjustments to the partnership level, if you
3 had computed the liability based on what the
4 Government's position was, the ultimate tax liability
5 including interest to any point in time would have been
6 at least three times the amount that results from the
7 Tax Court decision.

8 It's just ludicrous to say the taxpayer
9 should be expected to take whatever the Government's
10 proposed adjustments are, compute what his maximum
11 liability may be, and pay it in advance or post a bond
12 in advance in order to cut off the interest accrual.
13 That argument just doesn't -- in my mind does not fly,
14 Your Honor.

15 This -- this Court in Bob Jones University
16 did address the pay and sue versus prepayment
17 jurisdiction issue in terms of constitutionality and due
18 process.

19 And -- and basically said that as long as there is a pay
20 and sue remedy available, the taxpayer has no due
21 process rights to a prepayment remedy, but that the
22 Court might have come down differently had there been no
23 remedy available in terms of pay and sue.

24 I would also note that both the Tax Court,
25 the district courts, the Court of Federal Claims and the

1 appellate courts have long reviewed other discretionary
2 acts within the Tax Code by the Commissioner where no
3 standard is set forth on an abuse of discretion
4 standard, such as the authorization of the Commissioner
5 to abate certain penalties where the taxpayer has sought
6 an independent appraisal on the overvaluation penalty
7 under 6659. Those cases have been reviewed for years by
8 the Tax Court and by the district courts in refund cases
9 on an abuse of discretion standard. It is the Federal
10 common law standard for reviewing an abuse of
11 discretion.

12 The determinations in Horton and Selman
13 Homes are unique in holding that it is totally
14 discretionary.

15 Thank you, Your Honor.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.
17 The case is submitted.

18 (Whereupon, at 1:56 p.m., the case in the
19 above-entitled matter was submitted.)

20
21
22
23
24
25

| A | | | | |
|--|---|--|---|---|
| abatement 7:17 43:15 | 14:20,24 15:15 15:18 16:1,20 18:11,14,18 25:4,14,15,21 26:1,7 37:21 38:1,2,9 41:22 43:11,14,20,22 45:15 49:20 52:3,9,10 | 27:18 34:25 36:17,17 42:16 42:22 43:7 46:16 | 28:10 33:21 51:6 | 18:23 19:1 23:2 29:24 31:23,23,24 33:4,8 47:14 48:18 51:13 |
| abatable 29:6 30:3,4,25 | abused 26:2 34:15 45:19 | actions 23:7 48:11 | amounts 33:3 | arrival 15:25 |
| abate 7:13 11:13 12:13,17 14:19 15:14,17,24 18:18,20,21 19:8 23:24 24:9,13,23 28:14,15 29:9 32:3 37:10,18 41:20 43:16 46:21 50:8 52:5 | abuse-of-discr... 16:12 | acts 52:2 | analyzed 17:22 | asked 10:8 21:21 26:15 49:19 |
| abated 9:5 12:16 33:25 | abuse-of-discr... 16:12 | actual 7:10 | ancillary 50:12 | assertion 50:16 |
| abatement 4:9 4:10,21 5:2 6:8 7:10,11 8:5,7 9:20,24 10:1 11:3,8,22 14:11 15:4 19:6 21:1 23:8 23:10,15,18,20 25:1,3 26:16 27:16,20,24 28:4 30:9,14 46:9,11,17,23 47:10,24 48:10 49:10,11,20,24 50:18 | accepted 4:4 31:24 | adding 15:9 | anomalous 28:6 | assessed 46:11 49:16 50:9 |
| abatement-of-... 7:8 | accept 32:13 44:19 | addition 24:13 | anomaly 46:3,6 | assessment 12:13,17 22:2 50:11,19 |
| ability 4:13 10:24 30:23 37:2 45:8 | access 4:16,21 6:15 8:6 9:22 10:22 35:25 39:17 | additional 7:2 40:11 46:15 | answer 32:9 36:25 | Assistant 1:17 |
| able 5:17,19 19:17 22:3 50:24 | accomplished 40:25 | address 13:12 51:16 | anyplace 17:9 | assumed 25:22 |
| above-entitled 1:11 52:19 | accounts 37:3 | addressing 11:6 | anyway 43:21 45:23 | assumption 11:2 11:21 35:18,18 |
| absence 26:11 | accrual 20:16 29:1 30:24 32:5 50:24 51:12 | adjustments 21:6 51:2,10 | APA 45:14 | attorneys 36:1,4 39:20,22 |
| absolutely 21:20 25:16 | accrue 29:8 30:4 31:18 | administrative 18:13 36:23 38:13,23 41:9 42:3 43:12,21 48:2 | APAA 16:11 | authorities 43:22 |
| abuse 14:5,8,13 | accrues 28:8,12 30:9,15 | affirmed 48:13 | apart 7:8 | authority 5:3 10:10 11:13 24:23 32:2,4 37:13,18 43:22 50:7 |
| | accruing 21:23 21:24 30:1,3 | afford 5:11 10:17 | apologize 9:1,15 18:7 | authorization 52:4 |
| | accumulation 45:5 | agency 26:18 45:13,14,16,18 | appeals 23:6,11 24:2 48:13 | authorized 19:14 |
| | act 18:13 24:11 35:25 39:17 46:25 48:4 | agent 48:7 | appear 6:19 | automatically 30:9 46:21 |
| | acted 11:21 31:16 | agree 17:12 19:3 43:10,16 | APPEARAN... 1:14 | availability 4:12 10:15 11:18 |
| | action 5:15 7:8 7:10,17,20,23 7:23 8:1 12:19 14:22 15:16,19 16:1 23:20 25:12 27:1,16 | Ah 8:17 | appears 6:22 | available 7:14 17:9 27:18,24 51:20,23 |
| | | alike 44:21 45:7 | appellate 52:1 | average 40:1,8 |
| | | Alito 38:25 39:2 39:3,7,13 | appendix 8:14 9:2,10,15 40:4 | avoid 4:14,17 5:9 |
| | | allow 34:17 | applicable 5:2 40:16 | avoided 23:14 |
| | | allows 5:25 6:15 13:6 | applied 16:5 40:14 44:6 | aware 39:6 |
| | | amendment 31:25 32:13 | applies 6:8 11:7 12:22 14:16 19:11 25:3 39:22 44:3 | |
| | | amendments 12:4 | apply 6:6 13:14 14:4,8,18 16:7 17:2 18:19 24:24,25 26:18 36:2 43:7 | |
| | | amount 28:10 | applying 45:22 49:12 | |
| | | | appraisal 52:6 | |
| | | | April 1:9 | |
| | | | argued 42:6 | |
| | | | argument 1:12 2:2,5,8 3:3,6 | |
| | | | | B |
| | | | | back 4:5 9:17 |

| | | | | |
|---|---|---|---|---|
| 15:5 18:5 20:25 42:15 44:4 bad 6:4 bank 37:3 bankruptcy 4:17 5:10 based 51:3 basically 7:23 17:11 22:5 26:24 28:13 51:19 basis 4:11 7:8 33:11,13 34:20 34:22 behalf 1:15,19 2:4,7,10 3:7 23:3 48:19 believe 5:7 7:19 8:13 11:15,24 14:23 16:2 17:22 22:5,6,8 22:16 32:22 believed 34:23 best 29:19 better 34:12 39:24 45:2,3 big 47:8,10 bill 20:21 21:2 21:12,19 28:23 29:2 blah 16:18,18,18 Bob 51:15 bond 51:11 borrowing 28:11 34:4,10 Breyer 14:4,7 14:12,17 32:18 33:12,16 34:8 34:13 35:1,5 35:12,23 36:4 36:15,24 37:7 37:8,14,19,24 38:6 43:9,17 43:19 44:2,19 45:1 brief 48:21 | bring 13:6,7,8,9 25:13 27:8 34:17,18 42:16 43:6,15 46:14 bringable 13:19 13:20 bringing 5:15 8:1 40:18 broader 43:1 brought 7:24 13:1,15,17 23:20 burden 39:23 bureaucrat 33:22,25 <hr/> C <hr/> c 2:1 3:1 19:13 calculation 29:15 call 6:21,21 called 39:25 cannot-enter-t... 36:9 canon 6:21 carried 16:21 case 3:4 8:7,24 11:16 13:15,17 14:23 19:18 20:25 21:3,8 21:21 22:6,8 26:5 28:24 35:16,17 36:10 37:20,25 38:23 40:19 41:9 48:4 49:8 50:14 52:17,18 cases 7:16,19,21 12:9,14 13:6,7 13:19 14:23 15:23 19:14,23 26:4,14 28:15 28:24 49:6,7 50:5,16,25,25 52:7,8 catch 43:25 category 27:24 | 45:12,21 cause 7:10,17,20 12:19 15:16,19 16:1 27:1,15 27:16 33:22,22 33:24 34:25 36:16,17 cert 40:4 certain 22:11 29:21 52:5 cetera 44:12 challenge 23:14 50:14 challenging 23:8 characterizati... 44:20 characterize 44:15 charge 28:13 charged 50:17 check 9:6 12:16 34:16 Chief 3:3,8 4:8 5:18 7:7,15 9:8 13:3 15:13,22 16:14 20:10,14 20:20 21:18,22 22:21,24 23:4 26:14 27:3,22 28:2,14,21 41:12,24 42:5 42:12 46:14 47:1,6 48:14 52:16 choose 45:23 chose 22:9 39:15 Circuit 17:15,16 17:19,21,23 22:7 26:24 43:6 46:4 49:9 circuits 3:14 Circuit's 3:10 17:11 26:23 circumstances 24:23 cite 7:16 11:16 14:23 | cited 40:3 42:10 citizens 32:21 claim 5:1 7:24 9:24 10:2 11:3 14:11 17:1,7 23:22 26:17 32:22 33:3,21 34:14 35:15 36:23 40:18 46:9,15,19,20 46:23 47:7,22 49:4,13,15,17 50:20,22 claimed 15:14 claims 3:12 5:4 5:20 6:11 9:20 11:8,12 13:10 15:8 16:10 22:11 24:4 27:19 32:24 34:1 40:5,13 41:13,14,20 46:6,9 49:10 49:17,19 50:11 51:25 claim-splitting 49:1 class 22:11 44:7 classes 45:23 clear 19:23 43:19,20 clearly 8:2 13:16 19:7 47:20 49:17 clever 26:23 closes 44:4 closing 44:15 45:20,24 code 3:18,25 8:15 9:3,14 19:5 20:3 22:20 23:22 28:7,8 36:2 39:24 41:3 50:2 52:2 collection 5:17 10:20,23 | come 15:5 18:5 32:25 33:1 48:10 50:15 51:22 comes 11:4 25:11 26:19 coming 6:7 50:5 Commissioner 50:7 52:2,4 Commissioner's 17:3 committed 24:10 26:6,18 45:13,16,18 46:24 committee 11:5 12:1 49:3 common 16:10 16:20 47:23 52:10 compared 7:22 complained 21:3 complementary 4:13 completely 4:17 6:12,16 7:3 8:8 49:19 compromise 30:23 computation 21:11 compute 51:10 computed 51:3 concede 45:10 concept 28:6 concern 39:25 40:7 47:19 concerned 28:17 concludes 48:22 concurrent 22:10 confined 32:8 conflict 6:20 Congress 3:18 4:25 10:9,13 11:1,13,21 |
|---|---|---|---|---|

| | | | | |
|--|--|--|---|---|
| 12:5 16:6,8 17:4,12 22:9 23:13 25:21 26:9,11 27:4 27:12,13,14 28:17 30:10 32:3,10,10,16 32:24 34:23 37:25 39:15,22 40:11,14,17,21 41:4,7 42:2,20 43:2,18 44:16 47:17,20 Congress's 5:23 39:25 consequence 45:11 47:17 consequences 29:22 consider 26:17 28:6 considering 6:25 consistent 4:17 5:7,10,14 6:14 6:16 7:3 18:1 consistently 15:23,23 16:12 40:13 constitute 26:7 constitutional 33:2,9 constitutionali... 51:17 contained 28:23 continue 31:18 continues 10:16 contrary 40:13 contrast 42:4 contrasts 24:11 control 29:6 conventional 20:8 22:13 copy 12:11 corporations 4:20 39:11 correct 5:6 7:9 | 13:25 16:19 17:22 20:19 24:17,21 25:19 25:25 29:4 36:14,22 48:1 correctly 23:6 counsel 52:16 couple 48:9,20 course 20:10 21:4,25 court 1:1,12 3:9 3:12,12,20,21 3:23,23 4:3,5 4:21 5:1,3,4,8 5:15,20,21 6:10,10,17,17 6:17,23 7:1,3,6 9:19 10:1,10 11:2,12,12 12:2 13:10,10 13:24 14:10 15:7,8,10,14 16:6,10,13,17 17:8,14,25 18:16 19:4 20:2,4,5,7,15 21:23,25 22:10 22:13,21 23:5 23:6,7,11,19 24:4,5,16 26:6 27:5,5,6,19 30:24 32:16,25 33:1 38:18 39:24 40:5,12 40:13,21 41:4 41:5,8,13,14 41:17 42:14,24 42:25 43:2,25 44:8 46:8 47:9 47:9,11 48:12 48:13 49:9,20 50:5,25 51:7 51:15,22,24,25 52:8 courthouse 35:16,19 36:7 44:4,15,16,18 | 44:21 courts 4:2 5:4 7:5 8:6 11:12 15:8 16:9,24 24:2,3,19 27:10,19 40:12 42:19 43:24 48:24 51:25 52:1,8 Court's 23:16 covered 19:7 Cramer 49:8 create 5:24 6:13 16:22 created 15:20 23:13 30:10 42:24 creates 14:10 40:14 creating 12:2 19:10 cut 10:2 22:3 50:24 51:12 | Department 1:18 departure 22:17 deposit 30:22 derived 35:24 35:25 desk 48:9 determination 23:23 41:10 46:16 determinations 21:8 23:8 25:3 26:12 52:12 determine 14:13 18:17 difference 20:11 36:18,21 38:17 41:12,13 different 15:3 24:5 29:23 33:25 35:15 40:18 42:4 43:10 45:8,22 differently 39:9 39:11 51:22 disagree 12:22 discrete 49:23 discretion 14:5 14:8,14,20,25 15:15,18 16:1 16:20 18:11,12 18:15,18,22 25:5,7,15,21 25:23 26:1,1,2 26:3,7,13,19 34:15 37:21 38:1,2,9,9,10 38:16 41:22 42:8 43:11,15 43:20,23 45:13 45:15,17,18,19 49:21 50:12 52:3,9,11 discretionary 12:14 16:9 17:3 24:25 25:3 36:11,12 | 50:18 52:1,14 dispute 22:15 distinct 46:12 distinction 17:4 34:21 district 3:12 4:2 5:4 6:10 7:5 11:12 13:10 15:8,14 16:9 20:15 24:4 27:19 40:12 41:13 42:14 47:8 51:25 52:8 divided 24:2,3 doctrine 6:21 document 51:1 doing 12:5 44:5 dollar 28:3 35:15 dollars 20:21,22 29:3 door 35:16,19 44:4,16,16,18 44:21 45:12,20 draw 39:16 drawing 33:11 duality 4:6 due 28:9 34:7 51:17,20 D.C 1:8,18 |
| | | D | | E |
| | | d 3:1 19:13 date 34:6 day 34:13 days 23:22 48:9 deal 47:8,11 decided 32:11 decision 11:11 23:11 25:6 40:5 51:7 decisions 25:22 27:15 42:23 45:12,14,17 defeated 40:18 defense 25:13 defer 37:2 deficiency 48:7 delay 24:10 45:6 46:24 delays 10:19 21:3 48:7 denied 8:8 12:14 deny 9:21 | e 1:15 2:1,3,9 3:1,1,6 7:25 8:2,6,9,10,11 8:16 9:9 11:19 12:9,9,10,12 12:15,18,22,23 13:1,5,6,7,8,9 13:14,17,19,21 13:22 14:18,19 15:18,19 16:5 18:5,9,9,10,13 18:19,20,22 19:19,21 24:24 24:25 25:9 | |

| | | | | |
|---|---|---|---|---|
| 48:18 earn 45:8 easily 27:17 42:22 easy 12:8 effect 13:21 effectively 41:4 either 6:20 elements 47:23 employee 24:10 enable 20:3 enabling 3:20 enact 35:9 enacted 4:13,18 11:14,23 27:4 27:12 enactment 3:11 3:15 24:1 encompassed 49:18 encompassing 19:9 enforceable 38:19 enter 36:7 entire 6:16 9:3 entitled 34:6 entitlement 13:5 42:17,19,21 enunciated 4:5 Equal 35:25 39:17 erroneous 9:5 12:16 25:12 50:10 erroneously 50:8 error 24:9 26:6 46:24 errors 21:3 especially 5:9 29:11 49:6 ESQ 1:15,17 2:3 2:6,9 establish 40:11 established 4:1 4:6 8:2 15:9 | 19:25 22:19 47:20 et 1:3 44:12 evaluating 6:19 event 45:5 everybody 44:3 exactly 31:7 37:6 45:7 examination 21:4 example 8:6 examples 35:22 exceedingly 39:10 exclusive 8:4 9:21 20:8 23:7 40:15,22 41:5 41:8 47:17 exclusivity 32:13 Excuse 30:13 exercise 25:6,23 26:13 27:20 42:8 exist 16:23 36:1 existed 11:18 13:16 existence 10:16 10:16 existing 17:13 18:1 22:17 exists 15:12 expanded 22:12 expanding 17:13 expected 51:9 expedient 23:14 expedited 6:1 explained 28:22 expressly 3:16 3:19 extend 22:10 32:5 extended 20:7 extension 7:1 extent 18:12 extract 43:5 | extracted 26:24 <hr/> F <hr/> F 1:3 51:1 faced 4:15 fact 4:16 facts 20:25 fail 25:16 failed 7:12 failing 34:15 failure 15:14,17 18:18 19:8,15 48:4 fair 11:20 fall 28:18 far 4:5 13:23 43:16 fashion 44:17 Federal 3:10,12 6:11 15:8 16:10 17:21 27:19 40:5,12 51:25 52:9 feel 33:8 fees 36:1,4 39:20 39:22 Fifth 17:11,15 17:16,18,23 22:7 26:23,24 43:6 46:4 49:9 figure 29:15 31:5,10 file 23:22 48:5 filed 25:11 filing 23:14 fills 41:23 final 23:23 46:15 finally 18:5 find 19:18 29:2 41:21 fine 45:25 first 6:2 24:7 29:18,25 30:6 35:21 37:20 50:6,15 51:1 five 15:3 | Flora 4:5 fly 51:13 focused 26:11 follow 6:4 13:7 47:4 follows 47:7 footnote 40:5 force 44:12 forgive 32:5 forgot 33:23 48:8 form 7:2 15:10 formal 36:7 formation 5:8 forth 52:3 fortiori 13:7 forum 4:12 5:9 5:13 6:15 9:20 9:21 10:19 17:25 22:14 23:15 27:8 40:18 forums 4:7 found 3:14 four 48:16 framework 4:1 4:4 free 21:10 friend 28:22 front 8:12,14 9:14 28:20 45:4 full 4:15 10:18 28:20 29:6,8 29:25 45:4 fully 40:16 fundamental 20:11 further 14:1 21:10 30:18,21 48:12 <hr/> G <hr/> g 3:1 31:15 general 1:18 4:11 16:10 24:19 | generally 4:22 10:17,25 Ginsburg 4:23 9:17,24 10:7 11:1,11 16:23 17:15,18 39:19 40:20,25 47:21 48:2 49:22 give 11:11 31:5 31:12 36:5 43:1 44:20,22 45:2 given 3:23 4:24 gives 24:16 26:20 40:10 go 9:17 10:1,2,4 10:4,10 30:23 33:5 41:10 44:3 47:8,9 goes 16:16 29:15 going 5:24 16:6 20:5 21:6,17 29:20 31:4 good 12:18 18:25 gotten 12:11 govern 18:13 Government 5:16 9:25 10:20,21 21:9 21:16 25:11 28:11 32:22 34:5,5 37:5 42:10 51:1 Government's 14:22 51:4,9 grace 17:3 32:4 32:8 38:13 42:3 grant 17:24 20:2 41:19 granted 7:3 12:7 grasp 17:4 greater 5:13 grounds 6:8 46:23 guess 33:17 |
|---|---|---|---|---|

| H | | | | J |
|---|---|--|--|--|
| h 11:6,7 12:20 13:1,20 15:20 18:8,16 24:15 24:24 31:25 32:14 45:11 50:7 | 14:15 16:2,19 17:11,20 18:7 18:24 19:3,17 19:20,22,24 20:18,24 21:20 22:5 29:5 49:4 50:4 51:14 52:15 | 41:1 incentive 37:2 includes 4:19 21:19 including 51:5 income 35:9,13 inconvenienced 6:3 inconvenient 47:15,16 independent 52:6 indicates 16:8 individual 10:5 22:1 individuals 39:11 44:21 inference 40:11 48:23 initial 21:19 28:23 31:13 instance 18:2 32:18 instances 3:17 integrated 26:25 43:5 intend 3:18 16:8 intended 10:13 22:9 40:11 intends 40:15 intent 5:7 13:12 42:2 intentional 32:17 interest 3:13 4:9 4:11 5:16 7:10 7:13,17 9:5 10:21 11:13 12:15 14:11 15:4,15,18 18:18 19:8 20:17,23 21:19 22:3 23:8,10 23:15,18,20,24 24:9 26:15 27:16,20,23 28:4,7,8,11,23 | 29:1,3,5,7,8,9 29:17 30:1,3,4 30:8,15,25 31:18 32:6 34:3,14 36:19 37:4,11,18 43:16 45:5,8 46:9,11,17,21 46:23 47:10,23 48:10 49:10,11 49:12,14,20,24 50:8,17,19,24 51:5,12 interestingly 11:6 interim 39:14 Internal 3:13 22:15 49:25 50:2 interpret 43:8 interpretation 6:22 intricacies 50:2 invest 34:11 35:4,7 39:14 investments 29:21 37:4 involve 26:13 involved 22:2 25:23 44:11 involves 25:6 48:2 49:24 IRS 7:12 20:20 21:2 24:10,22 29:15 30:5,8 30:18,21 31:16 33:23 34:14 41:15 42:15 43:13 46:23 50:8 issue 24:1 49:1 49:23 51:17 issues 6:1 27:21 48:10 issuing 48:7 It'd 32:12 | JOHN 1:3 JONATHAN 1:17 2:6 23:2 Jones 51:15 judicial 15:24 26:11 38:22 jurisdiction 3:13,15,17,19 3:23 4:2,3,7,16 6:10 7:1,2,5,6 8:5 10:14 12:3 13:13,16 14:13 15:6,7,12 16:3 17:1,5,14,24 18:17 20:1,3,4 20:6 22:10,13 22:18,18 23:7 23:19 24:4,16 24:19,20 26:16 27:6,7,9,20 40:22,23 41:6 41:8,14,17,18 41:19 42:13,14 48:6,24 50:6 51:17 Justice 1:18 3:3 3:8 4:8,23 5:18 7:7,15 8:9,17 8:23 9:4,8,10 9:12,17,24 10:7 11:1,11 11:20 12:8 13:3,18,23 14:4,7,12,17 15:13,22 16:14 16:23 17:15,18 18:4,8,25 19:12,19,21 20:10,14,20 21:18,22 22:21 22:24 23:4,25 24:15,18,21,24 25:8,14,19,24 26:10,14 27:3 27:22 28:2,14 28:21 29:10,14 |
| | I | | | |
| | idea 28:17 32:1 39:25 identical 32:21 identically 32:23 identified 46:4 illegal 50:19 illegally 50:9 Imagine 32:20 immediate 8:15 immediately 8:16 immunity 23:12 impediment 7:25 implemented 22:12 implicit 13:21 implied 15:11 18:3 impliedly 18:9 impose 32:11 imposed 25:5,21 39:22 40:17 43:2 imposes 32:16 imposing 5:14 | | | |

| | | | | |
|---|--|--|--|---|
| 29:18,23 30:13 31:1,9,12,22 32:7,12,18 33:12,16 34:8 34:13 35:1,5,8 35:11,12,23,25 36:4,8,15,16 36:24 37:1,7,8 37:14,15,19,24 38:6,7,15,20 38:25 39:2,3,7 39:13,17,19 40:20,25 41:12 41:24 42:5,12 43:9,17,19 44:2,19 45:1,7 45:10 46:1,14 47:1,6,21 48:1 48:14 49:2,22 52:16 justiciable 16:4 17:7 | 27:4 42:4 47:19 large 34:10 37:3 largely 11:4 larger 5:11,19 6:2,13 10:24 14:2 Laughter 8:20 8:25 19:2 35:10 39:5 46:2 law 14:24 16:11 16:20 17:2 18:14 26:5,6 26:19 27:12 32:19,24 37:25 43:21 45:13,18 52:10 laws 45:22 lawsuit 34:17,18 legal 42:17,18 42:21 43:14,24 legally 34:6 legislation 11:14 48:24 legislative 11:5 11:9,10,25 26:10 40:2 48:22 level 21:4,8,9,14 51:2 liability 10:18 21:7,11,15,16 22:14 28:8,20 29:8,11,20 31:21 41:11 45:4 46:8,10 46:13 47:5,25 50:9,13,14 51:3,4,11 limit 3:19 10:9 10:11,13 14:1 limitation 4:19 5:14 32:11 limitations 23:21 28:19 36:2 37:23 | 49:16 50:10 limited 5:5 42:24,25 44:16 line 38:25 39:4 39:16 linkage 47:21 litigation 4:4 logic 5:24 logical 10:23 long 33:8 51:19 52:1 long-established 15:5,11 long-standing 7:4 look 6:23 16:10 16:11,14 24:7 24:14 26:9 27:11 40:1 45:19,23 looking 9:9 30:18,21 31:3 41:16 45:25 lot 28:24 lower 16:24 26:6 40:8 ludicrous 51:8 | 31:14 32:1,9 32:15 33:10,15 34:2,9,22 35:3 35:6,21,24 36:14,22 37:6 37:12,17,22 38:4,12,19,22 39:1,6,10,15 39:21 40:24 41:24 42:9,17 43:17 44:1,14 45:1,9,25 46:3 46:18 47:3,15 48:1,15 49:23 material 46:24 materials 8:10 8:22 12:10 matter 1:11 17:3 20:7 25:18 32:4 38:12 41:25 42:1,3 45:20,21 52:19 matters 3:24 maximum 21:15 51:10 may-abate 19:5 mean 8:18 15:20 16:24 31:2 32:6,19 47:7 meaning 6:17 45:14 means 6:1 43:24 meet 23:20 37:23 merely 7:2 17:13 met 12:24,25 million 4:20,20 10:6 12:6,6 16:18 28:3,4 39:3,14 mind 34:2 51:13 ministerial 24:11 48:4 minutes 48:16 mishandling 49:24 | mixed 33:25 Monday 1:9 money 20:22 28:13 32:6 34:3,4,5,9,11 35:3,4 36:12 36:13 39:14 42:15 months 31:15,15 31:16,17 moves 48:5 |
| <hr/> N <hr/> | | | | |
| <p>N 2:1,1 3:1 name 31:10 natural 25:20 26:8 nature 3:22 24:14 necessarily 31:6 necessary 47:16 necessity 20:1 need 5:13 27:11 46:20 net 4:19 5:2,5 10:5 12:6,24 12:25 23:21 28:2,18 32:11 34:10,10,23 36:2 37:23 39:3,11,13 40:8 44:22 45:3 never 42:13 new 6:14 14:7 15:9 19:11 normal 7:14 43:12 normally 15:12 note 6:6 12:4 19:4 49:6,10 50:4,23 51:24 notice 21:6,10 30:5,20 31:2,3 31:13 33:23 48:6,8 notified 30:15</p> | | | | |
| <hr/> K <hr/> | | | | |
| <p>keep 33:17,18 34:2 35:19 keeping 33:20 Kennedy 9:4 11:20 23:25 24:15,18,22 25:14,19 26:10 37:1 45:7 kept 44:8 kind 27:23 kinds 48:9 knew 30:1 33:23 know 10:20 29:2 29:10,16,19,24 31:1,20 35:8 36:4 38:11 44:5,13,23,25 45:1</p> | | | | |
| <hr/> L <hr/> | | | | |
| <p>L 1:17 2:6 23:2 language 23:9 23:17 24:7,11 24:12 25:4</p> | | | | |
| <hr/> M <hr/> | | | | |
| <p>mailing 23:23 major 22:17 majority 46:7 making 36:18 47:7 mandated 3:22 mandatory 18:10,12 24:12 37:16 March 40:3,6 Marcus 1:17 2:6 23:1,2,4 24:6 24:17,21 25:2 25:10,18 26:4 26:22 27:11 28:1,5,16 29:4 29:13,18 30:2 30:17 31:6,11</p> | | | | |

| | | | | |
|---|---|--|---|---|
| <p>30:17 notifies 30:8,18 number 9:9</p> <hr/> <p style="text-align: center;">O</p> <p>O 2:1 3:1 objection 26:21 occurred 21:3 occurs 21:1 odd 4:24 Oh 10:7 37:14 okay 33:16 34:1 old 6:4 once 7:12 16:5 43:19 open 35:19 45:12 opened 44:16,18 44:21 opening 45:21 operating 11:2 opinion 3:10 opinions 4:6 49:9 opportunity 28:25 oral 1:11 2:2,5 3:6 23:2 order 4:14 20:3 51:12 originally 4:12 34:6 outcome 49:8 outside 21:15 49:16 overcharged 49:12 overlap 6:20 overvaluation 52:6 owe 20:20,23 29:2 30:20 31:7,17 owes 32:23 owing 31:4</p> <hr/> <p style="text-align: center;">P</p> <p>P 3:1</p> | <p>page 2:2 9:9,10 11:10 40:3 paid 20:21 28:10 29:24,25 42:15 50:17 Pardon 17:17 part 12:13 23:21 47:1 particular 4:9 20:11 27:24 28:24 partnership 21:4,7,8,9,14 29:11,14 51:2 partnership-r... 49:6 passed 37:25 passes 32:24 pattern 4:6 5:11 6:14 7:4 15:6 18:1 19:25 pay 4:13,15 5:12 6:2,5 7:4 10:15 10:17,24 15:12 19:25 20:9,12 22:2,3,14,18 25:9 28:20,25 31:2 41:14,15 45:4 50:24 51:11,16,19,23 paying 20:15 37:2,4 payment 7:13 11:22 30:22 pays 29:7 pay-and-sue 4:1 peculiarly 17:8 penalties 52:5 penalty 28:12 49:12,13 52:6 pendency 21:13 people 5:1 9:19 10:10 33:5,6 36:5,5,11,13 37:3 42:6 44:7 performance 24:10</p> | <p>performing 46:24 period 5:15 20:25 22:1 30:7,11,11 31:19 permissive 19:6 37:15 permits 23:16 permitting 36:19 person 33:1,13 33:14,17,18,20 33:21 35:5 37:11,20,25 38:1 petition 9:3 40:4 Petitioner 1:16 Petitioners 1:4 2:4,10 3:7 48:19 Petitioner's 23:12 phantom 18:5 piece 26:24 43:6 place 7:9 9:25 14:14 23:17 29:25 39:17 plan 22:19 please 3:9 23:5 point 4:24 30:19 30:22 42:18 43:10 49:22 51:5 points 48:21 policy 47:18 poor 33:1,6,13 33:17,20 35:5 36:5,21 37:1 37:25 38:16,17 39:8 portion 49:13 position 6:3 24:5 24:6 25:2 29:19 51:4 positioned 35:7 45:3</p> | <p>positions 28:19 possibly 38:9 post 51:11 postpayment 15:7 potential 5:10 poverty 38:25 39:4 power 37:10 43:14 precedent 23:16 precedents 16:11 precise 33:4 precisely 30:20 preexisting 3:15 13:13 preferred 27:8 prepay 20:13,14 prepayment 4:2 4:12,21,22 5:9 5:13,25 6:15 7:1,2,5,11 10:14,19 11:7 12:3 15:6,9 17:13,25 20:1 20:6 22:14,18 51:16,21 presupposes 25:5 pretty 18:25 prevail 46:20 prevails 21:16 prevented 30:3 previously 13:2 13:16 50:21 principles 23:11 prior 3:15 7:16 14:2 15:22 22:2 26:15 27:10 42:23 privilege 44:11 probably 32:19 problem 30:5 33:2,9 41:19 49:5 problems 48:3</p> | <p>Procedure 18:13 procedures 6:5 proceed 5:17,19 5:20 10:22 proceeding 21:25 47:2,2,4 47:4,13 proceedings 21:5,13 process 51:18,21 processing 45:6 48:3 49:25 profit 37:4 progressive 35:9 35:13 proper 43:8 proposed 51:10 proposing 51:2 protect 4:14 prove 13:9 provide 5:8 15:4 provided 17:7 provides 23:19 24:8 50:7 provision 8:2 19:5,6 24:8 27:13 30:12 31:16 36:9 38:4 39:2,16 39:18,21,23,23 41:21 provisions 6:11 7:14 12:7 15:1 15:2 19:7 24:12 25:1,9 36:1 41:3,5 purpose 6:18 purposes 39:19 pursue 46:22 pursued 7:20 put 6:3 26:9 30:22 p.m 1:13 3:2 52:18</p> <hr/> <p style="text-align: center;">Q</p> |
|---|---|--|---|---|

| | | | | |
|--|--|---|---|--|
| <p>qualified 7:24 quality 51:1 question 13:14 14:20 18:10,21 20:6,11 32:7 34:20 38:20 46:12 questions 22:22 48:2,12 50:1 quite 22:7 29:23 quote 22:9</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 3:1 raise 20:6 raised 25:13 rate 49:12 rational 33:11 33:12 34:22 rationale 33:19 39:8 44:5,24 read 9:25 19:9 25:20 40:7 42:25 43:5,13 reading 9:6 14:14 26:8 reads 32:17,17 really 8:11 12:17 20:16 22:3,6,11 38:7 50:12 reason 22:16 33:18,19,24 35:19 44:10,13 44:20,23,24 47:18 reasoning 5:23 26:23 reasons 42:10 rebuttal 2:8 22:23 48:18 receives 30:5 recognized 27:10 recover 25:12 Redding 1:15 2:3,9 3:5,6,8</p> | <p>4:10,24 5:6,22 7:11,18 8:13 8:18,21 9:1,7 9:13,23 10:3 10:12 11:4,15 11:24 12:21 13:11,22,25 14:6,9,15,21 15:17 16:2,19 17:10,17,20 18:4,7,23 19:3 19:17,20,22 20:13,18,24 21:20,24 22:25 48:16,18,20 49:3 50:3 redeterminati... 46:7 reference 3:20 3:21 9:15 20:2 referenced 27:17 referred 12:1 39:18 refers 40:6 reflect 20:24 reflected 11:17 refund 3:12 4:16 7:14,14,24 8:1 9:5 12:16 13:1 14:19 15:7,11 15:12 25:12 27:1,15,17,18 41:15 42:16,21 43:7 46:5,19 46:20 47:9 49:13,15,17 50:22 52:8 refusing 43:15 43:15 regard 16:5 20:5 regime 47:20 reject 42:23 relate 12:9 relative 12:6 relatively 50:3 relevant 12:3</p> | <p>relief 10:14,22 15:10 17:1,8 17:25 32:5 42:7 46:19 relieved 21:21 rely 15:15,19 remaining 22:22 48:17 remains 36:10 remedies 40:12 remedy 4:22 5:25 6:12,14 7:12 8:8 9:19 10:15,25 14:2 20:9 23:13 26:11 30:10,10 32:16 38:21,23 38:23 40:15,15 40:17 42:24,25 43:1,3 51:20 51:21,23 Remember 33:3 removes 26:20 repeal 3:11 6:9 13:12,21 15:11 18:3,9 repeals 3:17 report 11:5 12:1 49:4 reproduced 8:10 requested 21:1 requirements 12:24,25 requires 24:13 requiring 36:20 reserve 22:22 resolve 22:15 resolving 6:1 respect 4:8,10 9:5 11:19 12:16,19 21:1 26:12,22 32:21 36:11,13,20,21 37:11,22 44:22 respectfully 12:22</p> | <p>respects 27:7 responded 42:20 Respondent 1:19 2:7 23:3 response 7:16 responsibility 31:20 rest 12:3 restricted 5:1 12:1,2 restricting 10:21 restriction 12:5 restrictions 5:5 23:13 27:2 32:16 40:17 41:1 43:2 rests 22:6 result 23:16 41:1 results 51:6 return 30:6,19 30:21 45:6 Revenue 3:13 22:15 49:25 50:2 reverse 27:14 review 14:11,22 15:24 16:7 19:8,10,10 23:10,15,18 25:23 41:20,22 42:1,7 43:23 47:17 reviewed 25:6 52:1,7 reviewing 6:20 52:10 rich 33:5,14,18 33:20 36:5,20 37:11,20 38:1 38:16,18 39:8 right 9:12 11:21 14:17 15:19 17:23 20:17 28:14,16 30:2</p> | <p>32:1,15 37:6 38:12,19,22 39:21 44:1,14 rights 12:7 51:21 ripen 46:10 rise 40:10 43:1 ROBERTS 3:3 4:8 5:18 7:7,15 9:8 13:3 15:13 15:22 16:14 20:10,14,20 21:18,22 22:24 26:14 27:3,22 28:2,14,21 41:12 42:5,12 46:14 47:1,6 48:14 52:16 routinely 16:25 rule 36:7 40:14 40:16 ruling 20:4 running 29:17 34:4 runs 29:7 50:10</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 sat 48:8 saying 5:24 13:4 13:5,18 16:15 21:18 27:8 29:24 35:16 36:7 37:25 38:7,8,10 40:22 42:20 44:25 says 9:4 12:12 12:16 14:12,19 16:6 18:16,19 18:20 19:8 22:7 27:6 31:3 32:24 38:3 41:16 Scalia 8:9,17,23 9:12 12:8 13:18,23 18:4</p> |
|--|--|---|---|--|

| | | | | |
|--|--|---|---|---|
| 18:8,25 19:12 19:19,21 24:24 25:8,24 29:10 29:14,18,23 30:13 35:8,11 36:8,16 37:15 38:7 45:10 46:1 49:2 scheme 47:17 se 14:24 seconds 44:9 Secretary 12:12 12:17 18:20,21 19:13 24:9,13 25:4,15 26:12 32:3,4 36:11 36:19 37:10,17 Secretary's 18:17 23:23 42:8 section 3:11,16 3:16,20,22 4:18,18 6:9 7:22,23 8:12 8:15 9:3,14 12:4 14:11 23:9,18 24:2,8 26:25 30:12 39:24 40:10 41:6 sections 19:13 see 6:23 12:8 13:18 22:16 26:10 40:7 42:24 seeing 6:24 seek 42:6 46:7 seeking 46:5 seen 35:14 Selman 7:22 11:18 52:12 seminal 7:21 send 20:21 21:11 31:2,3 33:23 sense 10:23 11:9 22:4,8 36:6 | 45:15 sent 21:2 51:1 separate 37:9 46:16 47:2 separately 47:12 seriously 48:25 Service 3:14 22:15 set 3:24 9:3 23:21 47:18 52:3 shifting 39:23 short 5:14 32:9 shut 35:15 significant 46:6 simple 23:14 40:21 simpler 40:25 simply 3:10 9:15 22:8,9,9 45:11 50:10 Sir 9:7 situation 21:23 29:12 small 6:15 8:7 14:1 smaller 4:14 5:12,25 10:14 40:1 society 33:6,14 solely 14:1 16:9 Solicitor 1:17 sorry 8:18 14:6 17:21 39:2 43:17 sought 52:5 SOUTER 9:10 31:1,9,12,22 32:7,12 38:15 38:20 sovereign 23:11 speak 5:22 speaking 10:25 special 5:24 10:14,21 specific 3:21 11:16 20:2 | 23:12 27:2 40:14,16 41:1 44:24,24 specifically 3:24 11:8 specified 27:18 specify 41:7,7 split 46:5,9 47:22 49:19 splitting 49:4 stake 33:6,13 standard 8:2,3 14:10,16,17,21 16:4,7,7,12,15 16:20,21 19:10 19:11 25:5,21 26:8,18,20 38:15 41:20,22 42:1,7 43:12 43:20 44:2 52:3,4,9,10 standards 43:10 44:6 standing 38:21 start 23:17 46:16 state 3:19 27:12 statement 48:23 States 1:1,6,12 3:4 17:24 statute 3:20 11:23 14:7 16:22,24 23:10 23:16,18 25:16 25:20 27:17 34:15 38:3 43:8 49:16 50:9 statutes 6:19,24 statutory 24:7 47:19 stop 29:1 30:24 strange 10:9 27:23 strength 33:4 strictly 50:21 strong 32:23 | structure 17:13 22:17 23:9 stuff 16:16 subject 20:16 25:23 27:1 30:9 submit 19:24 submitted 52:17 52:19 subsection 6:7 9:11 11:6,7 12:2 31:15,25 subsections 14:25 15:1,2,3 15:20 substantive 38:3 41:11 45:22 47:24,25 50:13 substantively 43:14 subtle 17:4 sudden 26:19 41:21 sue 4:14 5:12 6:2,5 7:4,10 10:15,18,24 15:12 19:15,25 20:9,12,12 22:18 25:9 41:14,15 51:16 51:20,23 sufficient 10:25 suing 20:16 suit 13:1 suits 13:23 summarized 22:7 supersedes 6:25 supplemental 40:4 supports 23:10 suppose 21:22 32:25 33:7 Supreme 1:1,12 sure 8:24 13:3 18:8 47:6 surprised 32:20 | system 4:25 15:9 systems 16:13 <hr/> T <hr/> T 2:1,1 take 18:19 27:9 33:8 47:18 51:9 taken 48:25 talk 45:24 talking 8:11 34:3 49:5 tax 3:20,21,23 3:23,25 4:3,4 4:21,25 5:2,8 5:12,15,17,20 6:17 7:1,3,6 9:19 10:1,20 12:2 13:24 14:10 15:6,10 16:6,17 17:8 17:14,24 18:16 20:2,3,3,7 21:7 21:23,25 22:10 22:13 23:7,19 27:5,5,6 28:7,8 28:8,9,9,20 29:8,11,16,20 29:21,25 30:24 31:20 35:9,13 36:2 37:2 39:2 39:23 40:21 41:3,4,5,8,11 41:17 42:24,25 43:2 45:4 46:8 46:8 47:9,11 49:15,20 50:5 50:9,13,17 51:4,7,24 52:2 52:8 taxpayer 5:11 5:12,19,25 6:2 6:15 8:5,7 10:5 10:5,24 12:23 14:2,2 21:2,5 21:10 27:25 28:11 29:6,7 |
|--|--|---|---|---|

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|--|---|---|-------------------------------------|---|--|--|--|
| 29:13,19,20 30:4,8,23 34:4 34:10,11 35:7 40:1 46:4,5 48:5 51:8,20 52:5 taxpayers 4:14 4:19 6:13 10:11,15,17 23:20 28:18,18 32:8 34:23 37:22 38:13 40:1,8,9 45:3 46:7,8 49:18 taxpayer's 21:11 31:8,20 46:10,12 48:4 technical 25:18 technically 25:25 tell 21:15 30:19 31:7,17 33:19 tells 25:16 term 45:15 terms 32:22 50:23 51:17,23 test 5:2 Tex 1:15 Thank 22:24 23:4 48:13,14 52:15,16 theory 5:3 23:12 thing 8:23 35:8 42:12 45:16 47:22 things 37:9 think 6:16,20 11:8 14:21 17:12,23 22:6 25:18,19,24,25 26:4,22,23 27:11,13,22 28:5,5,6,16,16 29:4 31:4 33:2 33:10,15 41:25 42:1,9,10 43:4 43:7,9,13 44:8 | 44:10,11,12,14 45:12 48:24 50:15 THOMAS 1:15 2:3,9 3:6 48:18 thought 9:18 11:1 15:22 17:16,18 19:1 24:20 28:22 42:5 three 44:9 51:6 time 20:6,25 21:5 22:1,22 28:9,9,13 29:8 30:7 50:6 51:5 times 51:6 total 38:10 totally 17:2 35:14 38:8 45:16 52:13 traced 18:6 transfer 48:5 treating 39:8,10 tripartite 4:25 true 31:22,22 50:3 trump 47:19 try 42:6 trying 13:12 41:17 two 4:7 6:19,23 28:3 32:20 36:18 37:8 41:3 45:22,23 47:22 typically 25:4,11 32:15 | 16:25 17:10 18:23 29:21 30:14 36:10,15 37:9 unique 52:13 United 1:1,6,12 3:4 17:24 University 51:15 unnecessary 3:22 unpaid 28:8 unsuccessful 46:22 use 19:15 25:9 25:10 35:3,14 41:17,23 usually 25:12 UX 1:3 | <hr/> U <hr/> ultimate 51:4 ultimately 35:25 underlying 38:3 41:10 46:10,12 47:5,25 underpayment 28:10,12 30:7 understand 5:23 | 16:25 17:10 18:23 29:21 30:14 36:10,15 37:9 unique 52:13 United 1:1,6,12 3:4 17:24 University 51:15 unnecessary 3:22 unpaid 28:8 unsuccessful 46:22 use 19:15 25:9 25:10 35:3,14 41:17,23 usually 25:12 UX 1:3 | <hr/> V <hr/> v 1:5 value 28:13 35:15 vast 46:7 versus 3:4 19:25 22:18 51:16 vested 5:16 view 10:13 17:11,12 26:7 32:13 violation 14:24 18:14 virtually 21:14 void 41:23 | <hr/> W <hr/> Wait 36:24 37:8 37:8 waiting 49:7 waive 36:19 want 4:25 5:19 10:9 16:14,16 37:7,9 38:11 42:15 44:4,13 44:23,25 wanted 27:14,14 42:22 | wants 39:24 Washington 1:8 1:18 way 4:18 15:10 17:16,19 21:14 25:13,20 27:4 28:7 29:5 33:22 35:12 43:8 44:9,11 45:20,23,25 ways 45:8 wealth 35:14 44:8 wealthier 10:11 10:17 wealthy 35:7 37:18 wedge 41:18 Weiner 49:8 well-established 4:3 6:4 well-positioned 28:20 went 15:13 17:16,19 We'll 3:3 we're 5:24 6:7 31:3 41:16 we've 44:20 whatsoever 8:8 wonder 35:18 Woodral 50:14 words 30:6 37:10,24 works 28:7 world 24:19 worth 4:20 5:2,5 10:5 12:6,24 12:25 23:21 28:3,18 32:11 34:10,14,23 36:2 37:23 39:3,11,13 40:8 44:22 45:3 Worthless 33:16 wouldn't 9:21 | 22:3 33:2 40:20 44:9 write 34:16 wrong 3:11 9:6 14:14 26:21 | <hr/> X <hr/> x 1:2,7 | <hr/> Y <hr/> Yeah 34:8 37:17 years 21:2 22:20 52:7 you-can-walk-... 17:6 | <hr/> \$ <hr/> \$1.5 39:14 \$2 4:20 10:6 12:6 16:18 28:4 39:3 \$300 29:3 \$5,000 31:4 34:14,16 \$50,000 32:23 \$7 4:20 12:6 | <hr/> 0 <hr/> 06-376 1:5 3:4 | <hr/> 1 <hr/> 1 8:10,16 9:9,11 12:9,12,23 13:7,9,14 15:18,19 16:5 18:19 19:21 24:25 1,000 20:21,22 29:2 1:00 1:13 3:2 1:56 52:18 1346 50:22 16 50:22 18 31:15,15,15 31:17 32:2 18-month 31:19 180 23:22 19 40:6 |
|---|---|---|---|---|---|--|---|---|-------------------------------------|---|--|--|--|

| | | | | |
|---|--|--|--|--|
| <p>1986 24:22 32:2 32:4 44:18 1995 40:3,6 1996 44:17 1998 31:16</p> <hr/> <p style="text-align: center;">2</p> <p>2 7:25 8:2,6,9,11 11:19 12:9,10 12:15,18,22 13:1,5,6,8,17 13:19,21,22 14:18,19 18:5 18:9,9,10,13 18:20,22 24:24 25:9 2007 1:9 23 1:9 2:7</p> <hr/> <p style="text-align: center;">3</p> <p>3 2:4</p> <hr/> <p style="text-align: center;">4</p> <p>42 9:10 48 2:10</p> <hr/> <p style="text-align: center;">5</p> <p>5,000 34:17,19</p> <hr/> <p style="text-align: center;">6</p> <p>6330(d) 41:6 6404 6:9 8:13 12:4,7 14:14 15:1,2,3,21 19:9,9 49:11 6404(a) 19:5 50:5,16 6404(d) 19:4 6404(e)(1) 6:7 7:21,22 23:9 24:8 49:21 50:4 6404(e)(2) 7:23 6404(h) 3:11,16 3:21 4:18 6:6,8 7:9 8:4 12:22 13:6,13 20:5 23:18 26:15,19</p> | <p>40:10 43:4 48:22 49:18 50:19 6404(h)'s 26:25 6404(h)(1) 15:25 16:15,17 6406(h) 3:16 6659 52:7</p> <hr/> <p style="text-align: center;">7</p> <p>7442 3:22 7491 39:24</p> <hr/> <p style="text-align: center;">9</p> <p>98 40:3</p> | | | |
|---|--|--|--|--|