

05-1541 EC TERM OF YEARS TRUST V. UNITED STATES

DECISION BELOW:434F3d807

LOWER COURT CASE NUMBER: 05-50068

QUESTIONS PRESENTED:

In September 1999, the Internal Revenue Service levied on a bank account owned by Petitioner containing \$3,389,426.37. The purpose of the levy was to pay federal income taxes, penalties and interest assessed against Elmer W. Cullers, Jr. and Dorothy Cullers. On September 7, 2000, Petitioner filed a complaint against Respondent under 26 U.S.C. §7426 for a wrongful levy. On December 28, 2000, the district court dismissed the complaint for wrongful levy for lack of subject matter jurisdiction because it had been filed more than nine months after the levy and was time barred under 26 U.S.C. §7426. Petitioner then filed a claim under 28 U.S.C. § 1346 to recover the funds seized through the levy. When the claim proved unsuccessful, Petitioner filed suit against Respondent to recover the sum of \$3,389,426.37 under 28 U.S.C. § 1346. On November 22, 2004, the district court dismissed Petitioner's Complaint on the ground that a claim under 26 U.S.C. §7426 is the sole and exclusive remedy for a wrongful levy. Since Petitioner's complaint for a wrongful levy under 26 U.S.C. §7426 had been dismissed earlier due to being time barred, its complaint for a refund under 28 U.S.C. §1346(a) was also dismissed. The Fifth Circuit affirmed the dismissal of Petitioner's complaint under 28 U.S.C. § 1346 and held that 26 U.S.C. §7426 is the sole and exclusive remedy for a wrongful levy.

The following question is presented:

May a person who is not the assessed taxpayer utilize 28 U.S.C. § 1346 to seek a refund when its funds were seized through a wrongful levy and it had an opportunity to utilize the wrongful levy procedure under 26 U.S.C. §7426?

CERT. GRANTED 10/27/2006