

376

### QUESTION PRESENTED

Before 1996, the circuits held that district courts and the Court of Federal Claims had 28 U.S.C. §§1346(a)(1) and 1491(a)(1) refund jurisdiction over claims to abate interest under 26 U.S.C. §6404(e)(1), but were barred from exercising that jurisdiction because abatement was discretionary and there was no articulated standard for reviewing denials of those requests. The Tax Court held it had no prepayment jurisdiction over §6404(e)(1) at all and followed the circuit courts' discretionary analysis in the exceptional cases where it had overpayment jurisdiction.

In 1996, Congress amended §6404, giving the Tax Court prepayment jurisdiction to review IRS denials of some taxpayer §6404(e)(1) abatement requests using an abuse of discretion standard.

The IRS now asserts the Tax Court has exclusive jurisdiction over both §6404(e)(1) prepayment and refund cases. In *Beall v. U.S.*, 336 F.3d 419 (5<sup>th</sup> Cir. 2003), the Fifth Circuit held that the 1996 amendments resolved the lack of a justiciable standard issue that precluded exercise of district court refund jurisdiction and resulted in exclusive but limited Tax Court prepayment jurisdiction and limited concurrent refund jurisdiction. The Federal Circuit acknowledged it created a conflict with the Fifth Circuit. The Federal Circuit's exclusivity holding precludes any judicial review of many claims.

The question presented here is:

Did the grant of selective, limited jurisdiction in the 1996 amendments give the Tax Court exclusive jurisdiction over all §6404(e)(1) claims, deny all relief for many taxpayers, and repeal by implication the existing 28 U.S.C. §§1346(a)(1) and 1491(a)(1) refund jurisdiction of the district courts and the Court of Federal Claims?