

# The Burger Court Opinion Writing Database

*Commissioner v. Idaho Power Co.*  
418 U.S. 1 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 20, 1974

Re: 73-263 - CIR v. Idaho Power Co.

Dear Harry:

Please join me.

Regards,

*WB*

Mr. Justice Blackmun

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: DOUGLAS, J.

No. 73-263

Circulated: 6/13/74

Commissioner of Internal Revenue, Petitioner  
v.  
Idaho Power Company. } On Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit.

[March —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

This Court has, to many, seemed particularly ill-equipped to resolve income tax disputes between the Commissioner and the taxpayers. The reasons are (1) that the field has become increasingly technical and complicated due to the expansions of the Code and the proliferation of decisions and, (2) that we seldom see enough of them to develop any expertise in the area. Indeed, we are called upon mostly to resolve conflicts between the Circuits which more providently should go to the Standing Committee of the Congress for resolution.

That was the sentiments behind *Dobson v. Commissioner*, 320 U. S. 489, written by Justice Jackson and enthusiastically promoted by Justice Black, Justice Frankfurter, and myself. *Dobson*, save for egregious error and constitutional questions, would have left pica-yune cases such as the present one largely to the Tax Court, whose expertise is well recognized. But *Dobson* was short-lived, as Congress made clear its purpose that we were to continue on our leaden-footed pursuit of law and justice in this field. 62 Stat. 991.

Now that we are on our own I disagree with the Court in disallowing the present claim for depreciation. A company truck has, let us say, a life of 10 years. If it cost \$10,000, one would expect that "a reasonable allow-

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 17, 1974

RE: No. 73-263 Comm. Int. Revenue v. Idaho  
Power Company

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

CORRECTED COPY

June 17, 1974

73-263, Comm'r v. Idaho Power Co.

Dear Harry,

I am glad to join your opinion  
for the Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

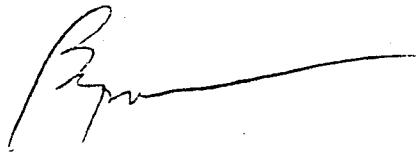
June 17, 1974

Re: No. 73-263 - CIR v. Idaho Power Co.

Dear Harry:

Join me, please.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 18, 1974

Re: No. 73-263 -- Commissioner of Internal Revenue v.  
Idaho Power Company

Dear Harry:

Please join me.

Sincerely,

*J.M.*  
T. M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 12, 1974

Dear Bill:

Re: No. 73-263 - Commissioner v.  
Idaho Power Company

My proposed opinion for this case has gone to the printer. I do not know when he will be able to get it out. I, therefore, impose on you with a xerox copy of the opinion so that you may know what I have written before you get away.

Sincerely,



Mr. Justice Douglas

Copies to the Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 6/13/

No. 73-263

Recirculated: \_\_\_\_\_

Commissioner of Internal Revenue, Petitioner,  
*v.*  
Idaho Power Company. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the sole issue whether, for federal income tax purposes, a taxpayer is entitled to a deduction from gross income, under § 167 (a) of the Internal Revenue Code of 1954, 26 U. S. C. § 167 (a),<sup>1</sup> for depreciation on equipment the taxpayer owns and uses in the construction of its own capital facilities, or whether the capitalization provision of § 263 (a) of the Code, 26 U. S. C. § 263 (a),<sup>2</sup> bars the deduction.

The taxpayer claimed the deduction, but the Commissioner of Internal Revenue disallowed it. The Tax Court

<sup>1</sup> "§ 167. Depreciation.

"(a) General rule.

"There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

"(1) of property used in the trade or business, or

"(2) of property held for the production of income."

<sup>2</sup> "§ 263. Capital expenditures.

"(a) General rule.

"No deduction shall be allowed for—

"(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate."

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

No. 73-263

Recirculated: 6/20/74

Commissioner of Internal Revenue, Petitioner, v. Idaho Power Company. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the sole issue whether, for federal income tax purposes, a taxpayer is entitled to a deduction from gross income, under § 167 (a) of the Internal Revenue Code of 1954, 26 U. S. C. § 167 (a),<sup>1</sup> for depreciation on equipment the taxpayer owns and uses in the construction of its own capital facilities, or whether the capitalization provision of § 263 (a) of the Code, 26 U. S. C. § 263 (a),<sup>2</sup> bars the deduction.

The taxpayer claimed the deduction, but the Commissioner of Internal Revenue disallowed it. The Tax Court

<sup>1</sup> "§ 167. Depreciation.

"(a) General rule.

"There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

"(1) of property used in the trade or business, or

"(2) of property held for the production of income."

<sup>2</sup> "§ 263. Capital expenditures.

"(a) General rule.

"No deduction shall be allowed for—

"(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate."

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 17, 1974

No. 73-263 Commissioner v. Idaho  
Power Company

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 18, 1974

Re: No. 73-363 - CIR v. Idaho Power

Dear Harry:

Please join me.

Sincerely,

W.H.R.

Mr. Justice Blackmun

Copies to the Conference