

# The Burger Court Opinion Writing Database

*Otte v. United States*

419 U.S. 43 (1974)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

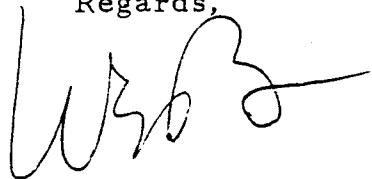
November 15, 1974

Re: 73-375 - Otte v. U. S.

Dear Harry:

Please join me.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 9, 1974

Dear Harry:

In 73-375, Otte v. United States, I have a different view on the treatment of "wages" and on the priority issue, but I will acquiesce in what you have written (unless perchance some one writes in dissent) as I think it more important that the rule of bankruptcy administration be settled than that it be settled right.

William O. Douglas

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 11, 1974

RE: William Otte v. United States, et al.

73-375

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

November 11, 1974

No. 73-375 - Otte v. U. S.

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

November 13, 1974

Re: No. 73-375 - Otte v. United States and the  
City of New York

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 14, 1974

Re: No. 73-375 -- William Otte, Trustee in Bankruptcy  
of Freedomland, Inc., v. United States  
and the City of New York

---

Dear Harry:

Please join me in your opinion in this case.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Blackmun

cc: 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

From: Blackmun, J.

Circulated: 11/17

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-375

William Otte, Trustee in Bankruptcy of Freedomland, Inc., Petitioner,  
v.  
United States and the City of New York.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[November —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This bankruptcy case raises issues (a) as to whether priority claims for wages earned by employees prior to an employer's bankruptcy, but unpaid at the inception of the bankruptcy proceeding, are subject to withholding taxes, and, if so, (b) as to whether the taxing entities must file proofs of claim, and (c) as to which priority of payment, if any, the withholding taxes enjoy under § 64 (a) of the Bankruptcy Act (the Act), 11 U. S. C. § 104 (a).<sup>1</sup>

<sup>1</sup> "§ 104. Debts which have priority.  
(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition . . . (2) wages and commissions, not to exceed \$600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen. . . . (4) taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof which are not released by a discharge in bankruptcy . . . ."

ff 2/17

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

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES  
Circulated:

No. 73-375

Recirculated: 11/14/74

William Otte, Trustee in Bank-  
ruptcy of Freedomland,  
Inc., Petitioner,  
v.  
United States and the City of  
New York.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Second Circuit.

[November —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This bankruptcy case raises issues (a) as to whether priority claims for wages earned by employees prior to an employer's bankruptcy, but unpaid at the inception of the bankruptcy proceeding, are subject to withholding taxes, and, if so, (b) as to whether the taxing entities must file proofs of claim, and (c) as to which priority of payment, if any, the withholding taxes enjoy under § 64 (a) of the Bankruptcy Act (the Act), 11 U. S. C. § 104 (a).<sup>1</sup>

<sup>1</sup> "§ 104. Debts which have priority

"(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition . . . . (2) wages and commissions, not to exceed \$600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen. . . . (4) taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof which are not released by a discharge in bankruptcy . . . ."

73-375

Supreme Court of the United States

Memorandum

11-15, 19

Harry —

Please give  
your dicta  
opinion.

John

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

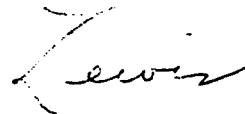
November 15, 1974

No. 73-375 Otte v. U.S. and City of  
New York

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

1fp/ss

cc: The Conference

142-2

✓  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 11, 1974

Re: No. 73-375 - Otte v. United States

Dear Harry:

I am happy to join your opinion. While I voted at Conference to give these claims a first priority, I do not think the point worth pursuing in a dissent.

Sincerely,

*Wm*

Mr. Justice Blackmun

Copies to the Conference