

# The Burger Court Opinion Writing Database

## *Ivan Allen Co. v. United States*

422 U.S. 617 (1975)

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

June 9, 1975

Re: 74-22 - Ivan Allen Co. v. United States

Dear Harry:

I join you.

Regards,

WBJ

Mr. Justice Blackmun

Copies to the Conference

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THE MANUSCRIPT DIVISION

SSRCNOU 30 ADV 1 IN

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 20, 1975

Re: 74-22 - Ivan Allen Co. v. United States

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,

William O. Douglas

Mr. Justice Powell

cc: The Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 4, 1975

RE: No. 74-22 Ivan Allen Co. v. United States

Dear Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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IN THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 4, 1975

Re: No. 74-22, Ivan Allen Co. v. United States

Dear Harry,

I shall wait to see Lewis Powell's dissenting opinion  
before finally coming to rest in this case.

Sincerely yours,

P.S.  
/

Me too

Mr. Justice Blackmun

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 20, 1975

No. 74-22 - Ivan Allen Co. v. U. S.

Dear Lewis,

Please add my name to your dissent-  
ing opinion in this case.

Sincerely yours,

P.S.  
✓

Mr. Justice Powell

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MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 4, 1975

Re: No. 74-22 - Ivan Allen Co. v. United States

Dear Harry:

Please join me.

Sincerely,

*Byron*

Mr. Justice Blackmun

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 20, 1975

Re: No. 74-22 -- Ivan Allen Company v. United States

Dear Harry:

Please join me.

Sincerely,

*T.M.*  
T. M.

Mr. Justice Blackmun

cc: The Conference

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THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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: 6/4/75

Recirculated:

15610

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-22

Ivan Allen Company,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit.

[June —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Sections 531-537, inclusive, of the Internal Revenue Code of 1954, as amended, 26 U. S. C. §§ 531-537, constitute Part I of subchapter G of the Income Tax Subtitle. These sections subject most corporations to an "accumulated earning tax." Section 531<sup>1</sup> imposes the tax upon the "accumulated taxable income" of every corporation that, as § 532 (a) states,<sup>2</sup> is "formed or

<sup>1</sup> "§ 531. Imposition of accumulated earnings tax.

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

"(1) 27½ percent of the accumulated taxable income not in excess of \$100,000, plus

"(2) 38½ percent of the accumulated taxable income in excess of \$100,000."

<sup>2</sup> "§ 532. Corporations subject to accumulated earnings tax.

"(a) General rule.

"The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other

Join ?

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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: \_\_\_\_\_

Recirculated: 6/18/75

STYLISTIC CHANGES

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-22

Ivan Allen Company,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit.

[June —, 1975]

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<sup>1</sup> "§ 531. Imposition of accumulated earnings tax.

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

"(1) 27½ percent of the accumulated taxable income not in excess of \$100,000, plus

"(2) 38½ percent of the accumulated taxable income in excess of \$100,000."

<sup>2</sup> "§ 532. Corporations subject to accumulated earnings tax.

"(a) General rule.

"The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 20, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-22 - Ivan Allen Co. v. U. S.

I propose making the following changes in the circulation of June 18.

1. Page 1, first paragraph, 5th line -- changing the word "earning" to "earnings."
2. Page 13, note 11 -- changing the last sentence to read: "If such a step, in a given case, amounted to willful evasion of the accumulated earnings tax, it would be subject to criminal penalties."
3. Page 17, next to the last line -- changing the first word of the sentence from "The" to "That."

*H. A. B.*

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U.S. SUPREME COURT MANUSCRIPTS

✓  
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: \_\_\_\_\_

Recirculated: 6/23/75

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-22

Ivan Allen Company,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit.

[June —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Sections 531-537, inclusive, of the Internal Revenue Code of 1954, as amended, 26 U. S. C. §§ 531-537, constitute Part I of subchapter G of the Income Tax Subtitle. These sections subject most corporations to an "accumulated earnings tax." Section 531<sup>1</sup> imposes the tax upon the "accumulated taxable income" of every corporation that, as § 532 (a) states,<sup>2</sup> is "formed or

<sup>1</sup> "§ 531. Imposition of accumulated earnings tax.

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

"(1) 27½ percent of the accumulated taxable income not in excess of \$100,000, plus

"(2) 38½ percent of the accumulated taxable income in excess of \$100,000."

<sup>2</sup> "§ 532. Corporations subject to accumulated earnings tax.

"(a) General rule.

"The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: 12/6/74

IVAN ALLEN COMPANY v. UNITED STATES

Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 74-121 Decided December --, 1974

Mr. Justice Powell, dissenting.

In my view, the petition for certiorari should have been granted. The question presented is whether, in determining if a corporation has accumulated earnings and profits in excess of the reasonable needs of its business within the meaning of § 533(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. § 533(a)), its investment in corporate securities should be taken into account at cost or at current market value. The Court of Appeals for the Fifth Circuit held that market value was the determinative factor. This is an unrealized appreciation of the value of these securities years in advance of the six year imputed dividend. The corporation presumptively liable for the additional accumulated earnings tax imposed by § 531 (a) (5)(A). The question decided in this case involves a matter of considerable importance both to taxpayers and to the Government. Additionally, the Fifth Circuit's opinion is in direct conflict with a decision of the Sixth Circuit and is at least arguably incorrect.

Section 531 of the Internal Revenue Code imposes an additional accumulated earnings tax on every corporation "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." 47, § 532. The tax imposed by § 531 is to be paid in addition to the normal

cc: 74  
Mr. [signature]

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 4, 1975

No. 74-22 Ivan Allen v. U.S.

Dear Harry:

You will not be surprised to know that in due time  
I will circulate a dissent.

Sincerely,

*Lewis*

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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SSA/CNOC JO ADV DDI IN

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Harpquist

Revised: [unclear]

Revised: JUN 19 1975

Revised: [unclear]

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-22

Ivan Allen Company, Petitioner, v. United States.	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
--	--

[June —, 1975]

MR. JUSTICE POWELL, dissenting.

The Court's decision departs significantly from the relevant statutory language, creates a rule of additional tax liability that places business management in a perilous position, and vests in the Internal Revenue Service an inappropriate degree of discretion in administering a punitive statute. I therefore dissent.

### I

Petitioner, a corporation with 34 stockholders, is engaged in selling office supplies and equipment. In the late 1950's, because petitioner was a retail outlet for equipment of the Xerox Corporation, it invested \$147,000 of its earnings and profits in securities of Xerox. The market value of that investment increased substantially over the years, and by the end of petitioner's 1965 and 1966 tax years the unrealized market appreciation<sup>1</sup> of those securities approximated \$1,475,000 and \$2,416,000 respectively.<sup>2</sup> For the purpose of determin-

<sup>1</sup> Unrealized appreciation is the difference between the cost basis of a retained asset and its market or appraised value, where the latter exceeds cost.

<sup>2</sup> The cost basis for petitioner's Xerox securities for the 1966 tax year was some \$19,000 less than for 1965, apparently reflecting the payment as a dividend of 870 shares of Xerox stock in 1965. The

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

From: Powell, J.

Circulated: \_\_\_\_\_

Recirculated: JUN 23 1975

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-22

Ivan Allen Company, Petitioner, v. United States.	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
--	--

[June 26, 1975]

MR. JUSTICE POWELL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART join, dissenting.

The Court's decision departs significantly from the relevant statutory language, creates a rule of additional tax liability that places business management in a perilous position, and vests in the Internal Revenue Service an inappropriate degree of discretion in administering a punitive statute. I therefore dissent.

### I

Petitioner, a corporation with 34 stockholders, is engaged in selling office supplies and equipment. In the late 1950's, because petitioner was a retail outlet for equipment of the Xerox Corporation, it invested \$147,000 of its earnings and profits in securities of Xerox. The market value of that investment increased substantially over the years, and by the end of petitioner's 1965 and 1966 tax years the unrealized market appreciation<sup>1</sup> of those securities approximated \$1,475,000 and \$2,416,000 respectively.<sup>2</sup> For the purpose of determin-

<sup>1</sup> Unrealized appreciation is the difference between the cost basis of a retained asset and its market or appraised value, where the latter exceeds cost.

<sup>2</sup> The cost basis for petitioner's Xerox securities for the 1966 tax year was some \$14,000 less than for 1965, apparently reflecting the payment as a dividend of 870 shares of Xerox stock in 1965. The

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 11, 1975

Re: No. 74-22 - Ivan Allen v. United States

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

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U.S. DEPARTMENT OF JUSTICE