

The Burger Court Opinion Writing Database

Don E. Williams Co. v. Commissioner
429 U.S. 569 (1977)

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

January 22, 1977

RE: 75-1312 - Williams v. Comm'r. of Internal
Revenue

Dear Harry:

I join.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

✓✓

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 12, 1977

RE: No. 75-1312 Williams v. Commissioner of Internal
Revenue

Dear Harry:

I agree.

Sincerely,

W. J. Brennan, Jr.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 12, 1977

Re: No. 75-1312, Don E. Williams Co.
v. Commissioner

Dear Harry,

In due course I shall circulate a dissenting
opinion in this case.

Sincerely yours,

P.S.
1.5

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States

Memorandum

1-17-77

19

Harry -

I worked out a fairly short and superficial summary in Don Williams Co. over the weekend, and hope to get it cleaned up and to the printer today - so your opinion can be heard next Monday. P.S.

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

From: Mr. Justice Stewart

Circulated: JAN 18 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-1312

Don E. Williams Company, Petitioner, v. Commissioner of Internal Revenue.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Seventh Circuit.
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[January —, 1977]

MR. JUSTICE STEWART, dissenting.

The Court says that § 404 (a) "places all taxpayers on a cash basis with respect to payments to a qualified profit-sharing trust." *Ante*, at 9. This assumption is the keystone of today's decision, for only by treating the petitioner as a cash-method taxpayer can the Court apply the rule of *Eckert v. Burnet*, 283 U. S. 140, and *Helvering v. Price*, 309 U. S. 409, to require the petitioner to have paid out "cash or its equivalent" in order to be allowed a deduction. But the assumption is just that—an *assumption* that is not and cannot be supported.

It is true, as the Court observes, *ante*, at 4-7, that the statute, the applicable committee reports, and the underlying treasury regulations all emphasize that the employer's contribution must be "paid";¹ mere accrual of the obligation is therefore insufficient to obtain the deduction. The question in this case, however, is whether the word "paid" requires an accrual-basis taxpayer to part with "cash or its equivalent" or whether the obligation may be "paid" by the delivery of a negotiable, interest bearing, fully secured demand note. When the Court responds by stating baldly that "the lan-

¹ In some instances the language is "actually paid," see, e. g., H. R. Rep. No. 2087, 80th Cong., 2d Sess., 13 (1948) (emphasis added), quoted *ante*, at 6, an embellishment that adds nothing of substance.

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

From: Mr. Justice Stewart

Circulated: _____

Recirculated: Feb 1 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1312

Don E. Williams Company,
 Petitioner,
 v.
 Commissioner of Internal
 Revenue.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Seventh Circuit.

[January —, 1977]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL joins, dissenting.

The Court says that § 404 (a) "places all taxpayers on a cash basis with respect to payments to a qualified profit-sharing trust." *Ante*, at 9. This assumption is the keystone of today's decision, for only by treating the petitioner as a cash-method taxpayer can the Court apply the rule of *Eckert v. Burnet*, 283 U. S. 140, and *Helvering v. Price*, 309 U. S. 409, to require the petitioner to have paid out "cash or its equivalent" in order to be allowed a deduction. But the assumption is just that—an *assumption* that is not and cannot be supported.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 13, 1977

Re: No. 75-1312 - Don E. Williams Co. v. CIR

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

January 13, 1977

Re: No. 75-1312, Don E. Williams Company v. Commissioner
of Internal Revenue

Dear Harry:

Please join me.

Sincerely,

JM.
T. M.

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 1/11/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1312

Don E. Williams Company,
 Petitioner,
 v.
 Commissioner of Internal
 Revenue.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Seventh Circuit.

[January —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court. *case*

The issue in this federal income tax¹ is whether an accrual basis corporate taxpayer, by delivering its fully secured promissory demand note to the trustees of its qualified employees' profit-sharing trust, is entitled to a deduction therefor under § 404 (a) of the Internal Revenue Code of 1954, 26 U. S. C. § 404 (a).¹

¹ Section 404 (a), as amended by § 24 of the Technical Amendments Act of 1958, 72 Stat. 1623, reads in pertinent part:

"(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, . . . such contributions . . . shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

"(3) STOCK BONUS AND PROFIT-SHARING TRUSTS.—

"(A) LIMITS ON DEDUCTIBLE CONTRIBUTIONS.—In the taxable year when paid, if the contributions are paid into a . . . profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501 (a), in an amount not in excess of 15 percent of the compensation

✓
typographical and editorial corrections

✓
To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Chief Justice
Mr. Justice Stevens

From: Mr. Justice Blackmun

2nd DRAFT

Circulation: _____

SUPREME COURT OF THE UNITED STATES

No. 75-1312

Don E. Williams Company,
Petitioner,
v.
Commissioner of Internal
Revenue.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Seventh Circuit.

[January —, 1977]

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to trade or business expenses) or section 212 (relating to expenses
for the production of income); but, if they satisfy the conditions of either
of such sections, they shall be deductible under this section, subject,
however, to the following limitations as to the amounts deductible in
any year:

"(3) STOCK BONUS AND PROFIT-SHARING TRUSTS.—

"(A) LIMITS ON DEDUCTIBLE CONTRIBUTIONS.—In the tax-
able year when paid, if the contributions are paid into a . . . profit-
sharing trust, and if such taxable year ends within or with a taxable
year of the trust with respect to which the trust is exempt under section
501 (a), in an amount not in excess of 15 percent of the compensation

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 28, 1977

No. 75-1312 Don E. Williams Co. v. Comm'r

Dear Potter:

Please join me in your dissenting opinion.

Sincerely,

L. F. Powell

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 28, 1977

No. 75-1312 Don E. Williams Co. v. Comm'r

Dear Harry:

As you know, I have had some difficulty coming finally to rest in this case.

I voted with you and the majority at Conference, but I have had second thoughts based on the particular facts of this case. I have concluded that Potter's dissent more nearly reflects my present thinking, and accordingly I am asking him to add my name to his opinion.

As you have a solid Court, it is somewhat easier for me to "defect" and will be painless for you.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 25, 1977

Re: No. 75-1312 - Williams v. Commissioner of
Internal Revenue

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

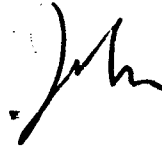
January 12, 1977

Re: 75-1312 - Don E. Williams Co. v. CIR

Dear Harry:

Please join me.

Respectfully,



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

From: Mr. Justice Stevens

Circulated: 1/24/77

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1312

Don E. Williams Company,
 Petitioner,
 v.
 Commissioner of Internal
 Revenue.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Seventh Circuit.

[January —, 1977]

MR. JUSTICE STEVENS, concurring.

MR. JUSTICE BLACKMUN's opinion for the Court, which I join, construes the word "paid" to require the delivery of cash or its equivalent. In my judgment, that construction best serves the statutory purpose of protecting the integrity of pension plans because the employer and the pension trust are often controlled by the same interests.