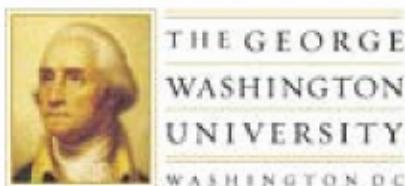


# The Burger Court Opinion Writing Database

*Moorman Manufacturing Co. v. Blair*  
437 U.S. 267 (1978)

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 10, 1978

Re: 77-454 - Moorman Manufacturing v. Bair

Dear John:

I join.

Regards,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 3, 1978

RE: No. 77-454 Moorman Manufacturing Co. v. Bair

Dear Harry and Lewis:

The three of us are the dissenters in the above. I thought I should let you know that my dissent is based upon what I said in dissent in General Motors Corporation v. Washington, 377 U.S. 436, at 449. I am not sure whether that view has the support of either of you.

Sincerely,

*Bill*

Mr. Justice Blackmun

Mr. Justice Powell

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

SUPREME COURT OF THE UNITED STATES

NO. 77-454

From: Mr. Justice [initials]

Circulated: ✓

Recirculated:   

Moorman Mfg. Co.,  
Appellant  
v.  
Bair

)  
)  
)  
)  
)

) On Appeal from the  
Supreme Court of  
the State of Iowa

June \_\_, 1978

MR. JUSTICE BRENNAN, dissenting.

I agree with the Court that, for purposes of constitutional review, there is no distinction between a corporate income tax and a gross receipts tax. I do not agree, however, that Iowa's single-factor sales apportionment formula meets the Commerce Clause requirement that a State's taxation of interstate business must be "fairly apportioned to the commerce carried on within the taxing state." Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 256 (1938). As I have previously explained, where a sale

"exhibits significant contacts with more than one State . . . it is the commercial activity within the State, and not the sales volume, which determines the

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

From: Mr. Justice Brennan

Circulated: 6/21

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

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-454

Moorman Manufacturing Company, Appellant,  
v.  
G. D. Bair, Etc. } On Appeal from the  
Supreme Court of  
Iowa.

[June —, 1978]

MR. JUSTICE BRENNAN, dissenting.

I agree with the Court that, for purposes of constitutional review, there is no distinction between a corporate income tax and a gross receipts tax. I do not agree, however, that Iowa's single-factor sales apportionment formula meets the Commerce Clause requirement that a State's taxation of interstate business must be "fairly apportioned to the commerce carried on within the taxing state." *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, 256 (1938). As I have previously explained, where a sale

"exhibits significant contacts with more than one State . . . it is the commercial activity within the State, and not the sales volume, which determines the State's power to tax, and by which the tax must be apportioned. While the ratio of in-state to out-of-state sales is often taken into account as one factor among others in apportioning a firm's total net income, see, e. g., the description of the 'Massachusetts Formula' in Note, 75 Harv. L. Rev. 953, 1011 (1962), it nevertheless remains true that if commercial activity in more than one State results in a sale in one of them, that State may not claim as all its own the gross receipts to which the activity within its borders has contributed only a part. Such a tax must be apportioned to reflect the business activity within the taxing

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1978

Re: No. 77-454, Moorman Mfg. Co. v. Bair

Dear John,

I am glad to join your opinion for  
the Court.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 9, 1978

Re: 77-454 - Moorman Manufacturing Co.  
v. Bair

Dear John,

Harry and Lewis have mounted a powerful attack on the vote of the conference in this case. But if the Commerce Clause, of its own force, invalidates the Iowa single-formula factor, every instance of non-uniformity among state income tax systems would be a candidate for constitutional litigation. I would stay out of this and let Congress (or that sub-government, the Interstate Tax Commission) finish its job. In short, I join your opinion.

Sincerely yours,



Mr. Justice Stevens  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

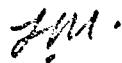
June 7, 1978

Re: No. 77-454--Moorman Mfg. Co. v. Bair

Dear John:

Please join me.

Sincerely,



T.M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 3, 1978

Re: No. 77-454 - Moorman Mfg. Co. v. Bair

Dear Bill:

Lewis indicates that he is working on a dissent. I therefore shall await your respective drafts in dissent.

Sincerely,

*Harry*  
/

Mr. Justice Brennan

cc: Mr. Justice Powell

*Brennan 77*

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 5, 1978

Re: No. 77-454 - Moorman Manufacturing Co. v. Bair

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Mr. Justice Powell

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: JUN 5 1978

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

No. 77-454 - Moorman Manufacturing Co. v. Bair

MR. JUSTICE BLACKMUN, dissenting.

The unspoken, but obvious, premise of the majority opinion is the fear that a Commerce Clause invalidation of Iowa's single-factor sales formula will lead the Court into problems and difficulties in other cases yet to come. I reject that premise.

I agree generally with the content of Mr. Justice Powell's opinion in dissent. I join that opinion because I, too, feel that the Court has a duty to resolve, not to avoid, these problems of "delicate adjustment," Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 329 (1977), and because the opinion well demonstrates that Iowa's now anachronistic single-factor sales formula runs headlong into overriding Commerce Clause considerations and demands.

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

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Recirculated: JUN 7 1978

**SUPREME COURT OF THE UNITED STATES**

No. 77-454

Moorman Manufacturing Company, Appellant,  
v.  
G. D. Bair, Etc. } On Appeal from the  
Supreme Court of  
Iowa.

[June —, 1978]

MR. JUSTICE BLACKMUN, dissenting.

The unspoken, but obvious, premise of the majority opinion is the fear that a Commerce Clause invalidation of Iowa's single-factor sales formula will lead the Court into problems and difficulties in other cases yet to come. I reject that premise.

I agree generally with the content of MR. JUSTICE POWELL'S opinion in dissent. I join that opinion because I, too, feel that the Court has a duty to resolve, not to avoid, these problems of "delicate adjustment," *Boston Stock Exchange v. State Tax Comm'n*, 429 U. S. 318, 329 (1977), and because the opinion well demonstrates that Iowa's now anachronistic single-factor sales formula runs headlong into overriding Commerce Clause considerations and demands.

Today's decision is bound to be regressive.<sup>1</sup> Single-factor formulas are relics of the early days of state income taxation.<sup>2</sup> The three-factor formulas were inevitable improvements and, while not perfect, reflect more accurately the realities of the business and tax world. With their almost universal adoption

<sup>1</sup> Iowa is not a member of the Multistate Tax Commission. Tr. of Oral Arg. 33. See *United States Steel Corp. v. Multistate Tax Comm'n*, — U. S. — (1978).

<sup>2</sup> Iowa's income tax was first adopted in 1934. 1933-1934 Iowa Acts, Ex. Sess., ch. 82; Tr. of Oral Arg. 29. Its single-factor sales formula was embraced in § 28 of that original Act.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 3, 1978

✓

No. 77-454 Moorman Mfg. Co. v. Bair

Dear Bill and Harry:

This refers to Bill's letter of this date.

As I have a somewhat different view of this case from that expressed in Bill's dissent in General Motors Corp. v. Washington, I have commenced working on a dissent. Thus, I doubt that Bill and I will have a common position except with respect to the judgment.

Sincerely,

Mr. Justice Brennan  
Mr. Justice Blackmun

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 3, 1978

No. 77-454 Moorman Mfg. Co. v. Bair

Dear Bill and Harry:

This refers to Bill's letter of this date.

As I have a somewhat different view of this case from that expressed in Bill's dissent in General Motors Corp. v. Washington, I have commenced working on a dissent. Thus, I doubt that Bill and I will have a common position except with respect to the judgment.

Sincerely,

Lewis

Mr. Justice Brennan  
Mr. Justice Blackmun

lfp/ss

Harry, I do not know whether we will be together. I will give you my draft before circulation, and we can then decide.

L

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

From: Mr. Justice Powell

Circulated: 1 JUN 1978

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

## SUPREME COURT OF THE UNITED STATES

No. 77-454

Moorman Manufacturing Company,  
Appellant,  
v.  
G. D. Bair, Etc. } On Appeal from the  
Supreme Court of  
Iowa.

[May —, 1978]

MR. JUSTICE POWELL, dissenting.

It is the duty of this Court "to make the delicate adjustment between the national interest in free and open trade and the legitimate interest of the individual States in exercising their taxing powers." *Boston Stock Exchange v. State Tax Commission*, 429 U. S. 318, 329 (1977). This duty must be performed with careful attention to the settings of particular cases and consideration of their special facts. See *Raymond Motor Transp., Inc. v. Rice*, — U. S. —, 18 n. 25 (1978). Consideration of all the circumstances of this case leads me to conclude that Iowa's use of a single-factor sales formula to apportion the net income of multistate corporations results in the imposition of "a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, 458 (1959). I therefore dissent.

### I

Iowa's use of a single-factor sales apportionment formula—though facially neutral—operates as a tariff on goods manufactured in other States and as a subsidy to Iowa manufacturers selling their goods outside of Iowa. Because 44 of the 45 other States which impose corporate income taxes use a three-factor formula involving property, payroll, and sales,<sup>1</sup> Iowa's practice

<sup>1</sup> Those 44 States are as follows: Alabama, Alaska, Arizona, Arkansas,

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

From: Mr. Justice Powell

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Recirculated: 6 JUN 1978

## SUPREME COURT OF THE UNITED STATES

No. 77-454

Moorman Manufacturing Company,  
Appellant,  
v.  
G. D. Bair, Etc. } On Appeal from the  
Supreme Court of  
Iowa.

[May —, 1978]

Mr. JUSTICE POWELL dissenting.

with whom  
MR. JUSTICE  
BLACKMUN jo

It is the duty of this Court "to make the delicate adjustment between the national interest in free and open trade and the legitimate interest of the individual States in exercising their taxing powers." *Boston Stock Exchange v. State Tax Commission*, 429 U. S. 318, 329 (1977). This duty must be performed with careful attention to the settings of particular cases and consideration of their special facts. See *Raymond Motor Transp., Inc. v. Rice*, — U. S. —, 18 n. 25 (1978). Consideration of all the circumstances of this case leads me to conclude that Iowa's use of a single-factor sales formula to apportion the net income of multistate corporations results in the imposition of "a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, 458 (1959). I therefore dissent.

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5, 9, 10

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

From: Mr. Justice Powell

2nd DRAFT

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

Recirculated: 7 JUN 13/8

**SUPREME COURT OF THE UNITED STATES**

No. 77-454

Moorman Manufacturing Company, |  
Appellant, |  
v. | On Appeal from the  
G. D. Bair, Etc. | Supreme Court of  
Iowa.

[May —, 1978]

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

It is the duty of this Court "to make the delicate adjustment between the national interest in free and open trade and the legitimate interest of the individual States in exercising their taxing powers." *Boston Stock Exchange v. State Tax Commission*, 429 U. S. 318, 329 (1977). This duty must be performed with careful attention to the settings of particular cases and consideration of their special facts. See *Raymond Motor Transp., Inc. v. Rice*, — U. S. —, 18 n. 25 (1978). Consideration of all the circumstances of this case leads me to conclude that Iowa's use of a single-factor sales formula to apportion the net income of multistate corporations results in the imposition of "a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, 458 (1959). I therefore dissent.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

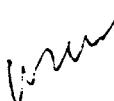
June 2, 1978

Re: No. 77-454 Moorman Mfg. Co. v. Bair

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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  
MAY 31 '73  
Circulated: \_\_\_\_\_

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

77-454 - Moorman Mfg. Co. v. Bair

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question in this case is whether the single-factor sales formula employed by Iowa to apportion the income of an interstate business for income tax purposes is prohibited by the Federal Constitution.

I

Appellant, Moorman Manufacturing Company, is an Illinois corporation engaged in the manufacture and sale of animal feeds. Although the products it sells to Iowa customers are manufactured in Illinois, appellant has over 500 salesmen in Iowa and it owns six warehouses in the State from which deliveries are made to Iowa customers. Iowa sales account for about 20% of appellant's total sales.

Corporations, both foreign and domestic, doing business in Iowa are subject to the State's income tax. The taxable income for federal income tax purposes, with certain adjustments, is treated as the corporation's "net income" under the Iowa

*pp. 5, 9*

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*1st DRAFT*

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: \_\_\_\_\_

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## SUPREME COURT OF THE UNITED STATES

No. 77-454

Moorman Manufacturing Company,  
Appellant,  
*v.*  
G. D. Bair, Etc. } On Appeal from the  
Supreme Court of  
Iowa.

[June —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question in this case is whether the single-factor sales formula employed by Iowa to apportion the income of an interstate business for income tax purposes is prohibited by the Federal Constitution.

### I

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Corporations, both foreign and domestic, doing business in Iowa are subject to the State's income tax. The taxable income for federal income tax purposes, with certain adjustments, is treated as the corporation's "net income" under the Iowa statute. If a corporation's business is not conducted entirely within Iowa, the statute imposes a tax only on the portion of its income "reasonably attributable" to the business within the State.

There are essentially two steps in computing the share of a corporation's income "reasonably attributable" to Iowa. First,