

The Burger Court Opinion Writing Database

Mobil Oil Corp. v. Commissioner of Taxes of Vermont
445 U.S. 425 (1980)

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 25, 1980

PERSONAL

Re: 78-1201 - Mobil Oil Corporation v. Vermont

Dear Harry:

One sentence in your proposed opinion in this case gives me pause. At page 15, note 14, you write: "While we do not reject out of hand the propriety of combined apportionment of the type appellant has suggested, at this juncture and on these facts, we simply cannot regard it as constitutionally compelled." As I read it, that is the only part of your opinion that speaks to what is or is not required of a fair apportionment formula. I prefer we say nothing at all on that subject until some future case squarely presents the question. I would prefer we rely instead on the basic point that combined apportionment goes to the fairness of Vermont's apportionment formula, which is not before us.

Regards,

regards

WB

Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

January 31, 1980

Re: 78-1201 - Mobil Oil Corp. v. Commissioner of Taxes

Dear Harry:

I join.

}) Regards,

URB

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 24, 1980

Re: No. 78-1201 Mobile Oil Corporation v. Commissioner of Taxes of Vermont

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun
cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 30, 1980

Re: 78-1201 - Mobil Oil Corporation v.
Commissioner of Taxes of
Vermont

Dear Harry,

Please join me in your excellent
opinion.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1980

Re: No. 78-1201 - Mobil Oil Corp. v. Commissioner
of Taxes of Vermont

Dear Harry:

Please show me as not participating in this
case.

Sincerely,

T. M.

T.M.

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 21, 1980

Re: No. 78-1201 - Mobil Oil Corporation v. Commissioner
of Taxes of Vermont

Dear Thurgood:

I am not sure from my notes whether you will or will not participate in this case. Would you let me know?

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 23, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1201 - Mobil Oil Corporation v. Commissioner
of Taxes of Vermont

I have endeavored to prepare the enclosed proposed draft of an opinion for this case as narrowly as possible. This, I believe, is in line with the general comments made at our conference.

We should bear in mind that No. 79-509, Exxon v. Wisconsin Department of Revenue has been noted. The issues in Exxon are whether its internal corporate organization defeats unitary business treatment, and whether income from its oil production operation should be allocated to the producing State. Neither of those issues is directly presented or proposed for decision in the Mobil draft. This is not to say that the proposed decision in Mobil will not have some bearing on the forthcoming argument and decision in Exxon. The proximity of the claims, however, makes that fact unavoidable.

HAB.
—

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice O'Connor
 Mr. Justice Stevens

From: Mr. Justice Blackmun
 Circulated: JAN 24 1980

1st DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 78-1201

Mobil Oil Corporation,
 Appellant,
 v.
 Commissioner of Taxes of
 Vermont. } On Appeal from the Supreme
 } Court of Vermont.

[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we are called upon to consider constitutional limits on a nondomiciliary State's taxation of income received by a domestic corporation in the form of dividends from subsidiaries and affiliates doing business abroad. The State of Vermont imposed a tax, calculated by means of an apportionment formula, upon appellant's so-called "foreign source" dividend income for the taxable years 1970, 1971, and 1972. The Supreme Court of Vermont sustained that tax.

I

A

Appellant Mobil Oil Corporation is a corporation organized under the laws of the State of New York. It has its principal place of business and its "commercial domicile" in New York City. It is authorized to do business in Vermont.

Mobil engages in an integrated petroleum business, ranging from exploration for petroleum reserves to production, refining, transportation, and distribution and sale of petroleum and petroleum products. It also engages in related chemical and mining enterprises. It does business in over 40 of our States and in the District of Columbia as well as in a number of foreign countries.

January 28, 1980

Re: No. 78-1201 - Mobil Oil Corp. v. Commissioner of Taxes

Dear Chief:

This is in response to your note of January 25.

I do not share your concern about the sentence in note 14. I am willing, however, to accommodate you by replacing the sentence in question with the following:

"At this juncture and on these facts, we need not, and do not, decide whether combined apportionment of this type is constitutionally required."

I think this will solve the problem.

Sincerely,

HAB

The Chief Justice

STYLISTIC CHANGES
2/15/80

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

From: Mr. Justice Blackmun

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1201

Mobil Oil Corporation, Appellant, v. Commissioner of Taxes of Vermont.	{	On Appeal from the Supreme Court of Vermont.
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[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we are called upon to consider constitutional limits on a nondomiciliary State's taxation of income received by a domestic corporation in the form of dividends from subsidiaries and affiliates doing business abroad. The State of Vermont imposed a tax, calculated by means of an apportionment formula, upon appellant's so-called "foreign source" dividend income for the taxable years 1970, 1971, and 1972. The Supreme Court of Vermont sustained that tax.

I

A

Appellant Mobil Oil Corporation is a corporation organized under the laws of the State of New York. It has its principal place of business and its "commercial domicile" in New York City. It is authorized to do business in Vermont.

Mobil engages in an integrated petroleum business, ranging from exploration for petroleum reserves to production, refining, transportation, and distribution and sale of petroleum and petroleum products. It also engages in related chemical and mining enterprises. It does business in over 40 of our States and in the District of Columbia as well as in a number of foreign countries.

PP. 84/6
and footnotes renumbered

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: _____

Recirculated: MAR 4 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1201

Mobil Oil Corporation,
Appellant,
v.
Commissioner of Taxes of
Vermont. } On Appeal from the Supreme
Court of Vermont.

[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we are called upon to consider constitutional limits on a nondomiciliary State's taxation of income received by a domestic corporation in the form of dividends from subsidiaries and affiliates doing business abroad. The State of Vermont imposed a tax, calculated by means of an apportionment formula, upon appellant's so-called "foreign source" dividend income for the taxable years 1970, 1971, and 1972. The Supreme Court of Vermont sustained that tax.

I

A

Appellant Mobil Oil Corporation is a corporation organized under the laws of the State of New York. It has its principal place of business and its "commercial domicile" in New York City. It is authorized to do business in Vermont.

Mobil engages in an integrated petroleum business, ranging from exploration for petroleum reserves to production, refining, transportation, and distribution and sale of petroleum and petroleum products. It also engages in related chemical and mining enterprises. It does business in over 40 of our States and in the District of Columbia as well as in a number of foreign countries.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 14, 1980

Dear Chief:

No. 78-1201, Mobil Oil Corp. v. Commissioner of Taxes of Vermont, is presently scheduled to come down Tuesday. This is the same day that No. 79-509, Exxon Corp. v. Wisconsin Department of Revenue, is set for oral argument.

The Conference recognized that Mobil bore on Exxon but did not control it. I wonder, however, whether it might not be discomforting for counsel in Exxon to have the case announced just prior to their argument. I mildly suggest that Mobil be rescheduled for Wednesday.

Sincerely,

Ha. S.

The Chief Justice

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 19, 1980

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 78-1201 - Mobil Oil Corp. v.
Commissioner of Taxes of Vermont

One case was held for No. 78-1201. It is No. 78-1839,
Asarco, Inc. v. Idaho State Tax Comm'n.

Asarco is a multistate-multinational corporation engaged in mining, smelting, and refining nonferrous metals. It has two mines in Idaho. That State, also, is the location of its northwest mining department headquarters. Asarco sells small amounts of scrap metal in Idaho. The corporation's domicile is New York.

For the taxable years in question Asarco took the position that its dividend income, some of its interest income, and its capital gains and losses were "nonbusiness income" for purposes of the Idaho tax, and allocated these items to New York. The Idaho Tax Commission "unitized" Asarco with six wholly owned subsidiaries. It included in the taxpayer's Idaho business income dividends paid by other corporations that were partially, but not wholly, owned by Asarco. It also included as business income interest and capital gains. Asarco accepted the adjustments due to the dividends from wholly owned subsidiaries but contested all other aspects of the deficiency assessment. In the trial court, the taxpayer prevailed. The Tax Commission appealed to the State's Supreme Court. That court held that certain dividends constituted business income but that other dividends (the product of "passive investment") were separate and unrelated to Asarco's mining and smelting business. A like division was made between certain interest and capital gains. The Supreme Court also held that the Idaho statute as so construed did not violate the Due Process or Commerce Clauses.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 31, 1980

No. 78-1201 Mobil Oil Corp. v. Commr. of Taxes of Vermont

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 30, 1980

Re: No. 78-1201 Mobil Oil Corp. v. Commissioner of Taxes
of Vermont

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

February 5, 1980

Re: 78-1201 - Mobil Oil v. Comm'r of Taxes
of Vermont

Dear Harry:

Although footnote 14 addresses the problem that troubles me the most, I remain persuaded that Vermont cannot include foreign income in the numerator without including the assets, etc. that generated the foreign income in the denominator. Accordingly, I still plan to dissent.

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: FFB 29 '80

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SUPREME COURT OF THE UNITED STATES

No. 78-1201

Mobil Oil Corporation,
 Appellant,
 v.
 Commissioner of Taxes of
 Vermont. } On Appeal from the Supreme
 } Court of Vermont.

[March —, 1980]

MR. JUSTICE STEVENS, dissenting.

The Court today decides one substantive question and two procedural questions. Because of the way in which it resolves the procedural issues, the Court's substantive holding is extremely narrow. It is carefully "confined to the question whether there is something about the character of income earned from investments in affiliates and subsidiaries operating abroad that precludes, as a constitutional matter, state taxation of that income by the apportionment method." *Ante*, at 8.¹ Since that question has long since been answered in the negative, see, *e. g.*, *Bass, Ratcliff & Gretton, Ltd. v. State Tax Commission*, 266 U. S. 271, the Court's principal holding is unexceptional.

¹ Moreover, in the last few sentences of n. 14, *ante*, at 15, the Court emphatically repeats that it has decided nothing more than that the Due Process Clause does not preclude the attribution of foreign source income to a parent and subjecting such income to fair apportionment. It states: "Appellant, we reiterate, took this appeal on the assumption that Vermont's apportionment formula was fair. At this juncture and on these facts, we need not, and do not, decide whether combined apportionment of this type is constitutionally required. In any event, we note that appellant's latter-day advocacy of this combined approach virtually concedes that income from foreign sources, produced by the operations of subsidiaries and affiliates, as a matter of due process is attributable to the parent and amenable to fair apportionment. That is all we decide today."

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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7,9
 Footnotes and Cross-references removed
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SUPREME COURT OF THE UNITED STATES

No. 78-1201

Mobil Oil Corporation,
 Appellant,
 v.
 Commissioner of Taxes of
 Vermont. } On Appeal from the Supreme
 } Court of Vermont,

[March —, 1980]

MR. JUSTICE STEVENS, dissenting.

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¹ Moreover, in the last few sentences of n. 15, *ante*, at 15, the Court emphatically repeats that it has decided nothing more than that the Due Process Clause does not preclude the attribution of foreign source income to a parent and subjecting such income to fair apportionment. It states: "Appellant, we reiterate, took this appeal on the assumption that Vermont's apportionment formula was fair. At this juncture and on these facts, we need not, and do not, decide whether combined apportionment of this type is constitutionally required. In any event, we note that appellant's latter-day advocacy of this combined approach virtually concedes that income from foreign sources, produced by the operations of subsidiaries and affiliates, as a matter of due process is attributable to the parent and amenable to fair apportionment. That is all we decide today."