

# The Burger Court Opinion Writing Database

*Exxon Corp. v. Department of Revenue of Wisconsin*

447 U.S. 207 (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

February 21, 1980

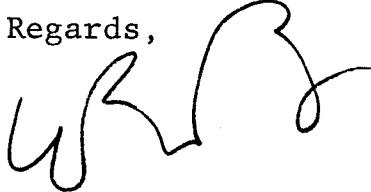
79-509

MEMORANDUM TO THE CONFERENCE:

I received the attached memo from Mr. Caldwell  
late today.

This can be discussed at Conference tomorrow.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 4, 1980

RE: 79-509 - Exxon Corporation v. Wisconsin  
Department of Revenue

Dear Thurgood:

I join.

Regards,

WRB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 3, 1980

RE: No. 79-509 Exxon Corporation v. Wisconsin  
Department of Revenue

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 2, 1980

Re: No. 79-509, Exxon Corporation v.  
Wisconsin Dept. of Revenue

Dear Thurgood,

Please add the following at the foot of your  
opinion for the Court in this case:

Mr. Justice Stewart took no part in  
the consideration or decision of  
this case.

Sincerely yours,

P.S.  
1

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1980

1

Re: 79-509 - Exxon Corporation v. Wisconsin  
Department of Revenue

Dear Thurgood,

Join me, please.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

30 MAY 1980

1st Draft

No. 79-509

Exxon Corporation, Appellant, v. Wisconsin Department of Revenue  
On Appeal from the Supreme Court of Wisconsin

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case raises three important questions regarding State taxation of the income of a vertically integrated corporation doing business in several States. The first issue is whether the Due Process Clause of the Fourteenth Amendment prevents a State from applying its statutory apportionment formula to the total corporate income of the taxpayer when the taxpayer's functional accounting separates its income into the three distinct categories of marketing, exploration and production, and refining, and when the taxpayer performs only marketing operations within the State. The second issue is whether the Due Process Clause permits a State to subject to taxation under its statutory apportionment formula income derived from the extraction of oil and gas located outside the State which is used by the refining department of the taxpayer, or whether the State is required to allocate such income to the situs State. The third issue is whether the Commerce Clause requires such an allocation to the situs State.

I

A

Appellant Exxon Corporation, 1/ a vertically integrated petroleum company, is organized under the laws of Delaware,

79-509

Mr Justice,  
The Marshall clerk

who's working on Exxon  
brought this by for  
your approval. It looks  
fine to me.

OK

6-3-80

OK  
W.H.P.

12/ Appellant presses the argument here that the risk of multiple taxation of income violates the Commerce Clause. Brief for Appellant 46-48; Reply Brief for Appellant 15-18; Supplemental Brief for Appellant 8. There was testimony by one witness before the Tax Appeals Commission that some states imposed "severance taxes" on oil and gas production. App. 432. Based on this brief testimony, the Tax Appeals Commission concluded that application of the state apportionment formula to Exxon's net income from its exploration, production and refining functions subjected that income to multiple taxation, CCH Wis. Tax Rep. ¶ 201-223, p. 10,410 (1976), and the Circuit Court for Dane County reached a similar result solely as to the exploration and production income, CCH Wis. Tax Rep. ¶ 201-373, p. 10,503 (1977). Severance taxes, however, are directed at the gross value of the mineral extracted or the quantity of production rather than the net income derived from the production activities. See R. Sullivan, Handbook of Oil and Gas Law § 238, p. 490 (1955); 4 W. Summers, The Law of Oil and Gas § 801 (1938). See, e.g., La. Rev. Stat. Ann. §§ 47:633(7) & (9) (Supp. 1980). The Wisconsin Supreme Court therefore properly concluded that "[t]he fact that the producing states may impose ... severance taxes which have been held to be occupation taxes or property taxes does not render unfair or unconstitutional Wisconsin's efforts to reach a proportionate share of the taxpayer's income." 90 Wis. 2d, at 731, 281 N.W.2d, at 110-111 (footnotes omitted).

4 JUN 1980

pp. 19-21

printed  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-509

Exxon Corporation, Appellant,  
v. Wisconsin Department of Revenue. | On Appeal from the Supreme Court of Wisconsin,

[June —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case raises three important questions regarding state taxation of the income of a vertically integrated corporation doing business in several States. The first issue is whether the Due Process Clause of the Fourteenth Amendment prevents a State from applying its statutory apportionment formula to the total corporate income of the taxpayer when the taxpayer's functional accounting separates its income into the three distinct categories of marketing, exploration and production, and refining, and when the taxpayer performs only marketing operations within the State. The second issue is whether the Due Process Clause permits a State to subject to taxation under its statutory apportionment formula income derived from the extraction of oil and gas located outside the State which is used by the refining department of the taxpayer, or whether the State is required to allocate such income to the situs State. The third issue is whether the Commerce Clause requires such an allocation to the situs State.

I

A

Appellant Exxon Corporation,<sup>1</sup> a vertically integrated

<sup>1</sup> The original taxpayer during the years in question was Humble Oil and Refining Company, a wholly owned subsidiary of Standard Oil Com-

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case held for 79-509, Exxon Corp. v. Wisc. Dept.  
of Revenue

There is one case held for Exxon. It is  
No. 79-843, Exxon Corp. v. South Carolina Tax  
Commission.

In this appeal, Exxon challenges application of the South Carolina apportionment formula to its total corporate income (with minor adjustments). During the years in question, 1970 through 1972, Exxon had only marketing operations in that State; the corporate structure was the same as in 79-509. In preparing its corporate income and franchise tax returns, Exxon allocated the income from Exploration and Production to the situs States; the balance of Exxon's income, including the Refining Department income and all of the Marketing income, was included by Exxon in the state formula and apportioned. Juris. Statement 8. (In 79-509, appellant used separate state accounting to prepare its returns.) The South Carolina Tax Commission audited Exxon and concluded that the Exploration and Production income must also be included within the apportionment formula. Additional taxes of \$1,490,855 plus interest were assessed, which Exxon paid under protest. Exxon then filed this action to recover that money. The company alleged that the Tax Commission had illegally included in the income base for apportionment purposes income from Exploration and Production and income from Refining, and that the statute as applied violated the Due Process and Commerce Clauses. Juris. Statement 48-49. The trial court agreed with the Tax Commission, and the South Carolina Supreme Court affirmed.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 5, 1980

Re: No. 79-509 - Exxon Corp. v. Wisc. Dept. of Revenue

Dear Thurgood:

Please join me.

Sincerely,

*WAD*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 2, 1980

79-509 Exxon Corp. v. Wis. Dep't of Rev.

Dear Thurgood:

I am in accord with your fine opinion in this case except for what you say in footnote 12, page 20, about Exxon's claim that severance taxes imposed by the situs states create actual double taxation.

Exxon did not really press this claim, probably because severance taxes and income taxes are like apples and oranges. The former tax the gross value of the mineral extracted; the latter tax the net income derived from production activities. Severance taxes, as the Wisconsin Supreme Court observed, are really quite like property or occupation taxes. Thus, I would be inclined to think that Exxon loses on this point not because its factual showing was inadequate, but because its legal theory is wrong. If this Court were to proceed on this basis, the opinion could avoid the appearance of ignoring troublesome fact-findings by the State Tax Appeals Commission and the State Circuit Court.

If you could make some change in footnote 12 along these lines, I would be happy to join your opinion.

Sincerely,



Mr. Justice Marshall

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 4, 1980

79-509 Exxon Corp. v. Wisconsin

Dear Thurgood:

As I understand you will add a bit to footnote 12,  
I am glad to join your opinion for the Court.

Sincerely,



Mr. Justice Marshall

1fp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 2, 1980

Re: No. 79-509 Exxon Corp. v. Wisconsin Dept. of  
Revenue

Dear Thurgood:

Please join me in your first draft circulation of  
May 30th.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

12

June 2, 1980

Re: No. 79-509 Exxon Corp. v. Wisconsin  
Department of Revenue

Dear Thurgood:

Please join me.

Respectfully,

*John*

Mr. Justice Marshall  
Copies to Conference