

The Burger Court Opinion Writing Database

United States v. Swank

451 U.S. 571 (1981)

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

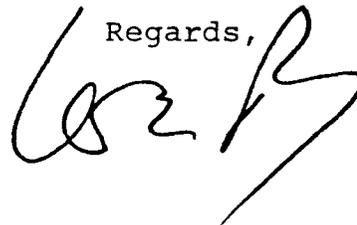
May 7, 1981

RE: 79-1515 - United States v. Swank

Dear John:

I join.

Regards,

A handwritten signature in black ink, appearing to be "Stevens", written over the typed word "Regards,".

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 30, 1981

RE: No. 79-1515 United States v. Swank

Dear John:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stevens".

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 30, 1981

Re: No. 79-1515, U.S. v. Swank

Dear John,

I shall await Byron's possible dissenting
opinion.

Sincerely yours,

P.S.
/

Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 5, 1981

Re: No. 79-1515, U.S. v. Swank

Dear Byron,

Please add my name to your dissenting
opinion.

Sincerely yours,

PS
/

Justice White

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1981

Re: 79-1515 - U. S. v. Swank

Dear John,

I am considering writing a dissent
in this case.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice White

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1515

United States, Petitioner, }
v. } On Writ of Certiorari to the
Elwood Swank et al. } United States Court of Claims,

[May —, 1981]

JUSTICE WHITE, dissenting.

The Court today rejects the Internal Revenue Service's interpretation of §§ 611 and 613 and the applicable regulation because it has not "suggested any rational basis for linking the right to a depletion deduction to the period of time that the taxpayer operates a mine." The Court suggests that depletion tax policy should be the same "whether the entire operation is conducted by one taxpayer over a prolonged period or by a series of taxpayers for successive shorter period." My disagreement with the Court's opinion is simple: It is not our function to speculate on who deserves an allowance; our duty is to determine if the Service's interpretation is a reasonable one. Since in my view the construction of the statutory provisions and the attendant regulation is clearly acceptable, I dissent.

Congress has provided for a depletion allowance in recognition of the fact that mineral deposits are wasting assets in order "to compensate the owner for the part used up in production." *Helvering v. Bankline Oil Co.*, 303 U. S. 362, 366 (1938). The theoretical justification for the allowance is that it will permit an owner to recoup his capital investment in the minerals as the resources are being exhausted. *Commissioner v. Southwest Exploration Co.*, 350 U. S. 308, 312 (1956); *United States v. Cannelton Sewer Pipe Co.*, 364 U. S. 76, 81 (1960). The fact that the manner of calculating the depletion allowance has changed and is not that closely tied

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

P. 1 [stylistic]

To: The Chief Justice
Mr. [unclear]
Mr. [unclear]
Mr. [unclear]
Mr. [unclear]
Mr. [unclear]
Mr. [unclear]
Mr. [unclear]

From: Mr. [unclear] Whit

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES Circulated: 5-6-81

No. 79-1515

United States, Petitioner, }
v. } On Writ of Certiorari to the
Elwood Swank et al. } United States Court of Claims.

[May —, 1981]

JUSTICE WHITE, with whom JUSTICE STEWART joins, dissenting.

The Court today rejects the Internal Revenue Service's interpretation of §§ 611 and 613 and the applicable regulation because it has not "suggested any rational basis for linking the right to a depletion deduction to the period of time that the taxpayer operates a mine." The Court suggests that depletion tax policy should be the same "whether the entire operation is conducted by one taxpayer over a prolonged period or by a series of taxpayers for successive shorter periods." *Ante*, at 13-14. My disagreement with the Court's opinion is simple. It is not our function to speculate on who deserves an allowance; our duty is to determine if the Service's interpretation is a reasonable one. Since in my view the construction of the statutory provisions and the attendant regulation is clearly acceptable, I dissent.

Congress has provided for a depletion allowance in recognition of the fact that mineral deposits are wasting assets in order to compensate "the owner for the part used up in production." *Helvering v. Bankline Oil Co.*, 303 U. S. 362, 366 (1938). The theoretical justification for the allowance is that it will permit an owner to recoup his capital investment in the minerals as the resources are being exhausted. *Commissioner v. Southwest Exploration Co.*, 350 U. S. 308, 312 (1956); *United States v. Cannelton Sewer Pipe Co.*, 364 U. S. 76, 81 (1960). The fact that the manner of calculating the depletion allowance has changed and is not that closely tied

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

STYLING CHANGES THROUGHOUT.
SEE PAGES: 7

From: Mr. Justice White

Circulated: _____

Recirculated: 5-12-81

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1515

United States, Petitioner, }
v. } On Writ of Certiorari to the
Elwood Swank et al. } United States Court of Claims.

[May —, 1981]

JUSTICE WHITE, with whom JUSTICE STEWART joins, dissenting.

The Court today rejects the Internal Revenue Service's interpretation of §§ 611 and 613 and the applicable regulation because it has not "suggested any rational basis for linking the right to a depletion deduction to the period of time that the taxpayer operates a mine." The Court suggests that depletion tax policy should be the same "whether the entire operation is conducted by one taxpayer over a prolonged period or by a series of taxpayers for successive shorter periods." *Ante*, at 13-14. My disagreement with the Court's opinion is simple. It is not our function to speculate on who deserves an allowance; our duty is to determine if the Service's interpretation is a reasonable one. Since in my view the construction of the statutory provisions and the attendant regulation is clearly acceptable, I dissent.

Congress has provided for a depletion allowance in recognition of the fact that mineral deposits are wasting assets in order to compensate "the owner for the part used up in production." *Helvering v. Bankline Oil Co.*, 303 U. S. 362, 366 (1938). The theoretical justification for the allowance is that it will permit an owner to recoup his capital investment in the minerals as the resources are being exhausted. *Commissioner v. Southwest Exploration Co.*, 350 U. S. 308, 312 (1956); *United States v. Cannelton Sewer Pipe Co.*, 364 U. S. 76, 81 (1960). The fact that the manner of calculating the depletion allowance has changed and is not that closely tied

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 10, 1980

Re: No. 79-1517 - Federated Department Stores,
Inc. v. Moitie and Brown

Dear Bill:

Please note in your opinion that I dissent and
would give the case plenary review.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 1, 1981

Re: No. 79-1515 - United States v. Swank

Dear John:

Please join me.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 30, 1981

Re: No. 79-1515 - United States v. Swank

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1981

79-1515 U.S. v. Swank

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

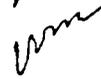
March 30, 1981

Re: No. 79-1515 United States v. Swank

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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: 100 26 '81

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1515

UNITED STATES, PETITIONER, *v.* ELWOOD SWANK

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF CLAIMS

[March —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The owner of an economic interest in a mineral deposit is allowed a special deduction from taxable income measured by a percentage of his gross income derived from exhaustion of the mineral. This deduction, codified in §§611 and 613 of the Internal Revenue Code, is designed to compensate such owners for the exhaustion of their interest in a wasting asset, the mineral in place.¹ This case presents the question

¹SEC. 611. Allowance of deduction for depletion:

“(a) *General Rule*—In the case of mines, oil and gas wells, other natural deposits and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary.

“SEC. 613. Percentage depletion:

“(a) *General Rule*—In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under §611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50% of the taxpayer's taxable income from the property (computed without allowance for depletion).
* * * In no case shall the allowance for depletion under §611 be less than it would be if computed without reference to this section.”

“(b) *Percentage depletion rates*—The mines, wells, and other natural de-

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: _____

2nd DRAFT Recirculated: APP 3 '81

SUPREME COURT OF THE UNITED STATES

No. 79-1515

United States, Petitioner, }
 v. } On Writ of Certiorari to the
Elwood Swank et al. } United States Court of Claims,

[April —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The owner of an economic interest in a mineral deposit is allowed a special deduction from taxable income measured by a percentage of his gross income derived from exhaustion of the mineral. This deduction, codified in §§ 611 and 613 of the Internal Revenue Code, is designed to compensate such owners for the exhaustion of their interest in a wasting asset, the mineral in place.¹ This case presents the question

¹SEC. 611. Allowance of deduction for depletion

“(a) *General Rule*—In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. . . .

SEC. 613. Percentage depletion

“(a) *General Rule*—In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). . . . In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

7. 9-10

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: _____

Recirculated: MAY 11 '81

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1515

United States, Petitioner, }
 v. } On Writ of Certiorari to the
 Elwood Swank et al. } United States Court of Claims.

[April —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The owner of an economic interest in a mineral deposit is allowed a special deduction from taxable income measured by a percentage of his gross income derived from exhaustion of the mineral. This deduction, codified in §§ 611 and 613 of the Internal Revenue Code, is designed to compensate such owners for the exhaustion of their interest in a wasting asset, the mineral in place.¹ This case presents the question

¹“SEC. 611. Allowance of deduction for depletion

“(a) *General Rule*—In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. . . .

“SEC. 613. Percentage depletion

“(a) *General Rule*—In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer’s taxable income from the property (computed without allowance for depletion). . . . In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

Brennan

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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: _____

Recirculated: _____ MAY 14 1981

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1515

United States, Petitioner, }
 v. } On Writ of Certiorari to the
Elwood Swank et al. } United States Court of Claims.

[April —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The owner of an economic interest in a mineral deposit is allowed a special deduction from taxable income measured by a percentage of his gross income derived from exhaustion of the mineral. This deduction, codified in §§ 611 and 613 of the Internal Revenue Code, is designed to compensate such owners for the exhaustion of their interest in a wasting asset, the mineral in place.¹ This case presents the question

¹“SEC. 611. Allowance of deduction for depletion

“(a) *General Rule*—In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. . . .

“SEC. 613. Percentage depletion

“(a) *General Rule*—In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). . . . In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS