

The Burger Court Opinion Writing Database

Commissioner v. Portland Cement Co. of Utah

450 U.S. 156 (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

February 26, 1981

RE: 79-1907 - Commissioner of Internal Revenue
v. Portland Cement Co. of Utah

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'L. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 19, 1981

RE: No. 79-1907 C.I.R. v. Portland Cement Co. of Utah

Dear Lewis:

I agree.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 19, 1981

Re: 79-1907 - Commissioner v. Portland Cement
Co.

Dear Lewis:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 19, 1981

Re: 79-1907 - Commissioner of Internal
Revenue v. Portland Cement Company of Utah

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1981

Re: No. 79-1907 - CIR v. Portland Cement Co.

Dear Lewis:

Please join me.

Sincerely,

J.P.
T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 20, 1981

Re: No. 79-1907 - Commissioner
v. Portland Cement Co. of Utah

Dear Lewis:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Powell

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

2-18-81

From: Mr. Justice Powell

Circulated: FEB 18 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1907

Commissioner of Internal Revenue, Petitioner,
v.
Portland Cement Company of Utah. } On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[February —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

This case concerns the depletion deduction taken under § 611 of the Internal Revenue Code of 1954, 26 U. S. C. § 611, by a company that mines and manufactures Portland cement. The question presented is whether the company's "first marketable product," for the purpose of determining gross income from mining by the proportionate profits method, is cement, whether sold in bulk or in bags, or only cement sold in bulk.

I

Respondent, Portland Cement Company of Utah, is an integrated miner-manufacturer. It mines argillaceous limestone rock, known in the trade as cement rock, and it manufactures the rock into Portland cement.¹ As a miner, re-

¹As suggested by the term "integrated miner-manufacturer," respondent's operation has two phases: mining and manufacturing. The mining phase begins with the blasting of cement rock from the face of respondent's quarry. After crushing the rock into pieces about one cubic inch in size, respondent transports the rock to its processing plant, which is about 12 miles from its quarry in Utah. Respondent then grinds the rock finely and adds water, producing a mud known as "slurry." Respondent feeds the slurry from tanks into fired kilns that heat it into a

pg 16

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

2-23-81

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT

Recirculated: FEB 24 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1907

Commissioner of Internal Revenue, Petitioner, v. Portland Cement Company of Utah.	}	On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.
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[February —, 1981]

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 4, 1981

MEMORANDUM TO THE CONFERENCE

Case held for No. 79-1907, Commissioner v. Portland Cement Co. of Utah

No. 80-1211: General Portland Cement Co. v. United States

Petitioner in this case, like respondent in Portland Cement Co. of Utah, No. 79-1907, is a miner-manufacturer of Portland cement. For the purpose of computing a constructive gross income from mining by the proportionate profits method, petitioner took the position for the tax years in question that its "first marketable product" was cement sold in bulk rather than all cement sold, whether in bulk or in bags. Petitioner also excluded from its computation by the method the costs of bags, bagging, loading, and distribution. The Court of Appeals for the Fifth Circuit affirmed a decision of the district court sustaining the Commissioner's position (i) that petitioner's "first marketable product" is all cement sold, whether in bulk or in bags, and (ii) that petitioner should have included in the method the costs of bags, bagging, loading, and distribution.

We sustained the Commissioner's position under substantially identical facts in Portland Cement Co of Utah, No. 79-1907. In doing so, we cited approvingly the Fifth Circuit's opinion in this case. Accordingly, I shall vote to deny the petition for certiorari.

L. F. P.

L.F.P., Jr.

SS

79-1907

Supreme Court of the United States
Memorandum

Warren 23 Feb 1981

I am copying out in
the Port of New Orleans case,
you will be interested to know.
I simply cannot get a
handle on a useful
document which would have
no effect on the law
was

WHR

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 23, 1981

Re: No. 79-1907 CIR v. Portland Cement Co.

Dear Lewis:

Although I voted the other way at Conference, I shall conceal my reservations from the public and hereby join your opinion.

Sincerely,

Powell

Mr. Justice ~~Brennan~~

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 19, 1981

Re: 79-1907 - CIR v. Portland Cement Co.

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference