

# The Burger Court Opinion Writing Database

## *Badaracco v. Commissioner*

464 U.S. 386 (1984)

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

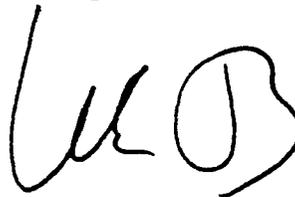
January 2, 1984

RE: 82-1453) - Badaracco v. Commissioner  
82-1509) - Delet Merchandising Corp. v. Commissioner

Dear Harry:

I join.

Regards,

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

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 28, 1983

Nos. 82-1453 & 82-1509

Badaracco, et al.  
v. Commissioner, etc

---

Dear Harry,  
I agree.

Sincerely,



Justice Blackmun  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 28, 1983

Re: 82-1453 - Badaracco v. Comm. of Internal  
Revenue

and

82-1509 - Deleet v. United States

-----

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

sps

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

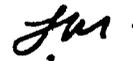
January 3, 1984

Re: Nos. 82-1453 and 82-1509-Badaracco v. Commissioner of Internal Revenue and Deleet Merchandising Corp. v. United States

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Blackmun**

Circulated: DEC 27 1983

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

*2/A/E*  
*Handwritten notes and scribbles*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-1453 AND 82-1509

ERNEST BADARACCO, SR., ET AL., PETITIONERS  
82-1453  
v.  
COMMISSIONER OF INTERNAL REVENUE

DELEET MERCHANDISING CORP., PETITIONER  
82-1509  
v.  
UNITED STATES

*Handwritten initials*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

These cases focus upon § 6501 of the Internal Revenue Code of 1954, 26 U. S. C. § 6501. Subsection (a) of that statute establishes a general three-year period of limitations "after the return was filed" for the assessment of income and certain other federal taxes.<sup>1</sup> Subsection (c)(1) of § 6501, however, provides an exception to the three-year period when there is "a false or fraudulent return with the intent to evade tax." The tax then may be assessed "at any time."<sup>2</sup>

<sup>1</sup>Section 6501(a) reads in full:

"Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period."

<sup>2</sup>Section 6501(c)(1) reads:

"In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time."

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

STYLISTIC CHANGES

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

RECEIVED  
SUPREME COURT U.S.  
JAN 13 1984

From: Justice Blackmun

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

'84 JAN 13 A9:53

Recirculated: JAN 13 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-1453 AND 82-1509

ERNEST BADARACCO, SR., ET AL., PETITIONERS  
82-1453  
v.  
COMMISSIONER OF INTERNAL REVENUE

DELEET MERCHANDISING CORP., PETITIONER  
82-1509  
v.  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

These cases focus upon §6501 of the Internal Revenue Code of 1954, 26 U. S. C. §6501. Subsection (a) of that statute establishes a general three-year period of limitations "after the return was filed" for the assessment of income and certain other federal taxes.<sup>1</sup> Subsection (c)(1) of §6501, however, provides an exception to the three-year period when there is "a false or fraudulent return with the intent to evade tax." The tax then may be assessed "at any time."<sup>2</sup>

<sup>1</sup> Section 6501(a) reads in full:

"Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period."

<sup>2</sup> Section 6501(c)(1) reads:

"In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time."

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

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 17, 1894

MEMORANDUM TO THE CONFERENCE

Re: No. 82-1453, Badaracco v. Commissioner of Internal Revenue  
No. 82-1509, Deleet Merchandising Corp. v. United States

There are two holds for these cases. In one, the decision below is out of line with our result, but in the other case the decision below is in line. Each case was cited on page 3 of the Court's opinion as entering into the conflict among the Courts of Appeals.

1. No. 82-1873, Commissioner v. Dowell. This is the Tenth Circuit case which created the conflict. It would be an automatic GVR in the light of Badaracco except for the fact that the respondents claim that the appeal to the CA10 from the Tax Court was untimely and that the underlying Tax Court decision was final and nonreviewable by the Court of Appeals. I personally have no interest in passing on this collateral issue here, although I am inclined to think that the SG's position, see p. 5, n. 3 of his petition and in his reply brief, is correct.

The issue, however, is by no means frivolous. I suggest, if it is possible to do so, that we GVR for reconsideration in the light of Badaracco, but without prejudice to the respondents to raise the issue of the CA10's jurisdiction before that court.

2. No. 82-2008, Nesmith v. Commissioner. This is a Fifth Circuit case. The Court of Appeals reversed the Tax Court. It seems to me that the appellate ruling is entirely in accord with our decision in Badaracco. I therefore shall vote to deny.

*Harry*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 28, 1983

<sup>13</sup>  
82-1435 Badaracco v. Commissioner

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 30, 1983

Re: Nos. 82-1453) Badaracco v. CIR  
82-1509) Delet Merchandising Corp. v.  
United States

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 30, 1983

Re: 82-1453 - Badaracco v. CIR  
82-1509 - Deleet Merchandising Corp. v.  
United States

Dear Harry:

Although your opinion is a strong one, I remain unpersuaded and will be writing a short dissent as soon as I can get to it.

Respectfully,



Justice Blackmun

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: JAN 11 '84

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 82-1453 AND 82-1509

ERNEST BADARACCO, SR., ET AL., PETITIONERS  
82-1453  
*v.*  
COMMISSIONER OF INTERNAL REVENUE

DELEET MERCHANDISING CORP., PETITIONER  
82-1509  
*v.*  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE STEVENS, dissenting.

The plain language of § 6501(c)(1) of the Internal Revenue Code conveys a different message to me than it does to the Court. That language is clear enough: "In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time." 26 U. S. C. § 6501(c)(1). What is not clear to me is why this is a case of "a false or fraudulent return."

In both cases before the Court, the Commissioner assessed deficiencies based on concededly nonfraudulent returns. The taxpayers' alleged prior fraud was not the basis for the Commissioner's action. Indeed, whether or not the Commissioner was obligated to accept petitioners' amended returns, he in fact elected to do so and to use them as the basis for his assessment.<sup>1</sup> When the Commissioner initiates a de-

<sup>1</sup> Applicable regulations indicate that the amended returns filed by petitioners must be the basis for his assessment. See Treas. Reg. § 301.6211-1(a), 26 C. F. R. § 301.6211-1(a) (1983).

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 3, 1984

No. 82-1453 Badaracco v. CIR  
No. 82-1509 Deleet Merchandising Corp. v.  
United States

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference