

The Burger Court Opinion Writing Database

Commissioner v. Engle

464 U.S. 206 (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

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

December 10, 1983 83 DEC 12 A9:33

Re: (82-599 - Commissioner v. Engle
(
(82-774 - Farmar v. United States)

Dear Sandra:

I join.

Regards,



Justice O'Connor
Copies to the Conference

7/11

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 17, 1983

No. 82-599

Commissioner of Internal
Revenue v. Engle

No. 82-774

Farmar v. United States

Dear Byron, Thurgood and Harry,

We four are in dissent in the
above. Thank you, Harry, for agreeing
to take on the dissent.

Sincerely,



Justice White

Justice Marshall

Justice Blackmun

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 14, 1983

No. 82-599

CIR v. Engle, et ux.

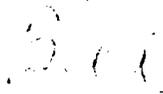
No. 82-774

Farmar, et al.
v. United States

Dear Sandra,

I shall await the dissent in the
above.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

RECEIVED
SUPREME COURT U.S.
JUSTICE W. J. BRENNAN, JR.

December 21, 1983

'83 DEC 21 A11:24

No. 82-599

CIR v. Engle, et ux.

No. 82-774

Farmar, et al. v. United States

Dear Harry,

Please join me in your dissent.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

RECEIVED
SUPREME COURT U.S.
JUSTICE BYRON R. WHITE

November 14, 1983

'83 NOV 14 P1:25

Re: 82-599 and 82-774 -

CIR v. Engle

Farmar v. United States

Dear Sandra,

I shall await the dissent in these cases.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 20, 1983

Re: 82-599 - CIR v. Engle
82-774 - Farmar v. United States

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 14, 1983

Re: No. 82-599 - CIR v. Engle
No. 82-774 - Farmar v. United States

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 20, 1983

Re: Nos. 82-599 and 774-Commissioner of Internal
Revenue v. Engle and Farmer v. United States

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 14, 1983

Re: No. 82-599) - CIR v. Engle
No. 82-774) - Farmer v. United States

Dear Sandra:

I shall undertake a dissent in this case in due course.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice O'Connor

cc: The Conference

Handwritten initials "HAK" in the top left corner.

Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: DEC 20 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-599 AND 82-774

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

82-599

v.

FRED L. ENGLE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PHILIP D. FARMAR, ET AL., PETITIONERS

82-774

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[December —, 1983]

JUSTICE BLACKMUN, dissenting.

The Court's decision today is a troubling one, perhaps less for where the Court has ended up than for how it arrived there. Under the principles that traditionally have governed this Court's approach to statutory interpretation in the field of federal tax law, the Commissioner's administrative interpretation is entitled to prevail so long as it is not "unreasonable and plainly inconsistent with the revenue statutes." *Bingler v. Johnson*, 394 U. S. 741, 749-750 (1969), quoting *Commissioner v. South Texas Lumber Co.*, 333 U. S. 496, 501 (1948); accord, *Thor Power Tool Co. v. Commissioner*, 439 U. S. 522, 533, n. 11 (1979); *Fulman v. United States*, 434 U. S. 528, 533 (1978). While the Court professes to adhere to this rule today, *ante*, at 17, a review of the Court's reasoning suggests that the Court has chosen to honor the rule in the breach. Because I regard the Commissioner's interpretation as consistent with the language of the control-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 22, 1983

MEMORANDUM TO THE CONFERENCE

Re: No. 82-599 - Commissioner v. Engle
No. 82-774 - Farmer v. United States

In view of the changes Sandra has now made on page 20 of her opinion, in the fourth draft circulated today, footnote 7 of my dissent becomes unnecessary. I shall delete it.

H.A.B.

STYLISTIC CHANGES

P.1

RECEIVED
 SUPREME COURT, U.S.
 JUSTICE

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

From: **Justice Blackmun**

'83 DEC 22 A10:26

Circulated: _____

Recirculated: DEC 22 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-599 AND 82-774

COMMISSIONER OF INTERNAL REVENUE,
 PETITIONER

82-599

v.

FRED L. ENGLE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

PHILIP D. FARMAR, ET AL., PETITIONERS

82-774

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FEDERAL CIRCUIT

[January —, 1984]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL join, dissenting.

The Court's decision today is a troubling one, perhaps less for where the Court has ended up than for how it arrived there. Under the principles that traditionally have governed this Court's approach to statutory interpretation in the field of federal tax law, the Commissioner's administrative interpretation is entitled to prevail so long as it is not "unreasonable and plainly inconsistent with the revenue statutes." *Bingler v. Johnson*, 394 U. S. 741, 749-750 (1969), quoting *Commissioner v. South Texas Lumber Co.*, 333 U. S. 496, 501 (1948); accord, *Thor Power Tool Co. v. Commissioner*, 439 U. S. 522, 533, n. 11 (1979); *Fulman v. United States*, 434 U. S. 528, 533 (1978). While the Court professes to adhere to this rule today, *ante*, at 17, a review of the Court's reasoning suggests that the Court has chosen to honor the rule in the breach. Because I regard the Commissioner's in-

November 14, 1983

82-599 and 82-774 - Engle and Farmer

Dear Sandra:

Your opinion is extremely well written, and I will join it.

I do have a question. In the final paragraph (p. 20) you state:

"[O]ur decision holds only that §§611-613A of the Code entitle taxpayers to an allowance for percentage depletion on lease bonus or advanced royalty income at some time during the productive life of the lease."

This appears to be a limiting sentence, and consistent with the first sentence in the paragraph that "what we do not decide is as important as what we do decide." But on the preceding page (19), at least as I read it, you express the belief that the Commissioner could resolve the problems at issue in a number of "reasonable ways", for example:

"[B]y requiring lessors to defer depletion deductions to years of actual production or by requiring lessors to adjust deductions taken with amended returns filed in later tax years."

This is a view recommended, as you observe, by some commentators. I do not disagree with it, but would we not be approving a regulation to this effect?

Sincerely,

Justice O'Connor
LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 15, 1983

82-599 CIR v. Engle
82-774 Farmer v. United States

Dear Sandra:

Please join me."

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 14, 1983

Re: Nos. 82-599 & 82-774 CIR v. Engle

Dear Sandra:

Please join me.

Sincerely,

W.H.R.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 14, 1983

Re: 82-599 - CIR v. Engle; 82-774 - Farmar
v. United States

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 14, 1983

No. 82-599 Commissioner of Internal Revenue v. Engle
No. 82-774 Farmar v. United States

Dear Chief,

I am prepared to join an opinion which holds that gross income earned on mineral deposits in the form of lease bonuses or advance royalties is subject to the allowance for percentage depletion. However, at oral argument, counsel for both taxpayers, in response to my questions, conceded that under the language of statutes in question the Commissioner could reasonably require taxpayers to defer the deduction of percentage depletion to the years of actual production. The Commissioner did not take this position in the courts below and thus we need not reach the question here. But I do not think I would join an opinion that precludes the Commissioner from taking this position in the future against other taxpayers. With this qualification in mind, I vote to affirm Commissioner of Internal Revenue v. Engle, No. 82-599 and to reverse in Farmar v. United States, No. 82-774.

Sincerely,



The Chief Justice

Copies to the Conference

pp. 4, 12, 17, 18, 19, 20

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-599 AND 82-774

COMMISSIONER OF INTERNAL REVENUE,
 PETITIONER

v.

82-599 FRED L. ENGLE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

PHILIP D. FARMAR, ET AL., PETITIONERS

v.

82-774 UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FEDERAL CIRCUIT

[November —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court:

These consolidated cases present the question whether §§611-613A of the Internal Revenue Code (Code), 26 U. S. C. §§611-613A, entitle taxpayers to an allowance for percentage depletion on lease bonus or advance royalty income received from lessees of their oil and gas mineral interests.

I

A

Ever since enacting the earliest income tax laws, Congress has subsidized the development of our nation's natural resources. Toward this end, Congress has allowed holders of economic interests in mineral deposits, including oil and gas wells, to deduct from their taxable incomes the larger of two

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

*Join
Note*

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 14, 1983

No. 82-599 CIR v. Engle
No. 82-774 Farmar v. United States

Dear Lewis,

Thank you for your prompt letter.

Your observation about the opinion is basically correct. I believe we would be indicating that a Revenue Service regulation or interpretation of the legislation requiring lessors to defer depletion deductions to years of actual production would be one to which we would defer as being consistent with the legislative scheme.

It is my belief that such an approach probably comes closer to matching the actual language of the statute and the legislative purpose than the taxpayers' approach. At Conference, I expressed my belief that any opinion we issued should allow the Commissioner the discretion to implement the statute in either of the two ways suggested at page 19 to be "reasonable" in their own right.

OTC

Sincerely,

Sandra

Justice Powell

PP. 4, 10, 12, 16, 17, 18, 19, 20

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

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SUPREME COURT U.S.
JUL 1

'83 NOV 14 12:37

From: Justice O'Connor

Circulated: _____

Recirculated: NOV 14 _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-599 AND 82-774

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

v.

82-599 FRED L. ENGLE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PHILIP D. FARMAR, ET AL., PETITIONERS

v.

82-774 UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[November —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court:

These consolidated cases present the question whether §§611-613A of the Internal Revenue Code (Code), 26 U. S. C. §§611-613A, entitle taxpayers to an allowance for percentage depletion on lease bonus or advance royalty income received from lessees of their oil and gas mineral interests.

I

A

Ever since enacting the earliest income tax laws, Congress has subsidized the development of our nation's natural resources. Toward this end, Congress has allowed holders of economic interests in mineral deposits, including oil and gas wells, to deduct from their taxable incomes the larger of two

PP. 9, 14, 20

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: NOV 15

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-599 AND 82-774

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

v.

82-599

FRED L. ENGLE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PHILIP D. FARMAR, ET AL., PETITIONERS

v.

82-774

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[November —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court:

These consolidated cases present the question whether §§611-613A of the Internal Revenue Code (Code), 26 U. S. C. §§611-613A, entitle taxpayers to an allowance for percentage depletion on lease bonus or advance royalty income received from lessees of their oil and gas mineral interests.

I

A

Ever since enacting the earliest income tax laws, Congress has subsidized the development of our nation's natural resources. Toward this end, Congress has allowed holders of economic interests in mineral deposits, including oil and gas wells, to deduct from their taxable incomes the larger of two

P.20

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

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SUPREME COURT U.S.
JUSTICE

'83 FEB 22 AM 10 54

From: Justice O'Connor

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-599 AND 82-774

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

v.

82-599 FRED L. ENGLE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PHILIP D. FARMAR, ET AL., PETITIONERS

v.

82-774 UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[January —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court:

These consolidated cases present the question whether §§611-613A of the Internal Revenue Code (Code), 26 U. S. C. §§611-613A, entitle taxpayers to an allowance for percentage depletion on lease bonus or advance royalty income received from lessees of their oil and gas mineral interests.

I

A

Ever since enacting the earliest income tax laws, Congress has subsidized the development of our nation's natural resources. Toward this end, Congress has allowed holders of economic interests in mineral deposits, including oil and gas wells, to deduct from their taxable incomes the larger of two