

The Burger Court Opinion Writing Database

Armco Inc. v. Hardesty

467 U.S. 638 (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

RECEIVED
SUPREME COURT,
JUSTICE MARSHA

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

'84 MAY 30 P4

Re: 83-297 - Armco, Inc. v. Hardesty

Dear Lewis:

I join.

Regards,



Justice Powell

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164

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 18, 1984

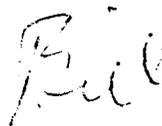
No. 83-297

ARMCO, Inc. v. Hardesty

Dear Lewis,

I agree.

Sincerely,



Justice Powell

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BY MAIL 1984



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

7102
1200

DE: 10 15 JAN 48

May 21, 1984

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: 83-297 - Armco, Inc. v. Hardesty

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

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cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 23, 1984

Re: No. 83-297-Armco v. Hardesty

Dear Lewis:

Please join me.

Sincerely,

T.M.
T.M.

Justice Powell

cc: The Conference

W

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL
Supreme Court of the United States
Washington, D. C. 20543

84 MAY 18 P2:08

May 18, 1984

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 83-297, Armco, Inc. v. Hardesty, State Tax Commissioner

Dear Lewis:

Please join me.

Sincerely,

HAB / by lws

Justice Powell

cc: The Conference

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05/16

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

From: Justice Powell

Circulated: MAY 17 1984

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1302-1000-102
[Signature]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-297

ARMCO INC., APPELLANT v. DAVID C. HARDESTY, JR., STATE TAX COMMISSIONER OF WEST VIRGINIA

Join

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[May —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

In this appeal an Ohio corporation claims that West Virginia's wholesale gross receipts tax, from which local manufacturers are exempt, unconstitutionally discriminates against interstate commerce. We agree and reverse the state court's judgment upholding the tax.

I

Appellant Armco Inc. is an Ohio corporation qualified to do business in West Virginia. Its primary business is manufacturing and selling steel products. From 1970 through 1975, the time at issue here, Armco conducted business in West Virginia through five divisions or subdivisions. Two of these had facilities and employees in the State, while the other three sold various products to customers in the State only through franchisees or nonresident traveling salesmen.¹

¹The company's Mining Division mined, cleaned, and sold coal in the State, and part of the Metal Products Division sold various construction and drainage products through an office in the State staffed by three employees. The Metal Products Division's metal buildings were sold in the State exclusively by two franchised dealers resident in the State. The Steel Group and the Union Wire Rope Group had no office in West Virginia but sold steel and wire rope through nonresident traveling salesmen who solicited sales from customers in the State.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1984

Dear Chief:

As I have an engagement in Richmond tomorrow (Tuesday), I would appreciate your announcing the Court's decision in 83-297, Armco Inc. v. Hardesty.

Sincerely,

Lewis

The Chief Justice

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1984

MEMORANDUM TO THE CONFERENCE

83-1196 American Trucking Assoc. v. New York State Tax
Comm'n

This was the only case held for 83-297 Armco Inc.
v. Hardesty.

In this appeal, a number of motor carriers challenge New York State's gross receipts tax on motor carriers. The taxable gross receipts are calculated by multiplying the total gross receipts of the carriers by a fraction representing the number of revenue miles traveled in New York divided by the total number of revenue miles traveled by the carrier. Appellants argue that the use of a formula to apportion income allows New York to tax receipts earned in transactions having no nexus with the State. They argue that the unitary business principle has been used to apportion only net income, not gross receipts.

The state trial court upheld the tax, noting that "[m]ileage apportionment of revenues has long been upheld as a permissible measure of taxation," citing Railway Express Agency, Inc. v. Virginia, 358 U.S. 434 (1959). The New York Court of Appeals affirmed for the reasons stated by the state trial court.

Our opinion in Armco v. Hardesty did not address the circumstances under which formulary apportionment may be used to measure taxable gross receipts. Rather, the case was decided on the other question presented, whether the tax unconstitutionally discriminated against interstate commerce because of its exemption for in-state manufacturers. That is not an issue here, so Armco does not affect this case.

Appellants attempt to distinguish Railway Express Agency on the ground that the taxpayer there had failed to provide information as to its Virginia gross receipts, and that this justified the State in using a formula. I do not think that fact adequately distinguishes Railway Express

P. 3

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JUSTICE MARSHALL

84 JUN -5 A9:42

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-297

**ARMCO INC. v. DAVID C. HARDESTY, JR., STATE
TAX COMMISSIONER OF WEST VIRGINIA**

**ON APPEAL FROM THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

[June —, 1984]

JUSTICE REHNQUIST, dissenting.

The Court today strikes down West Virginia's wholesale gross receipts tax, finding that the wholesale tax unconstitutionally discriminates against interstate commerce, because local manufacturers are granted an exemption from the wholesale tax if they pay a manufacturing tax on their gross manufacturing receipts. Appellant's arguments, however, effectively rest on the hypothetical burden it might face if another State levied a corresponding tax on its manufactures. Because appellants have not shown that the taxes paid by out-of-state wholesalers on the same goods are higher than the taxes paid by in-state manufacturer-wholesalers, I would affirm the decision below. It is plain that West Virginia's tax would be unconstitutionally discriminatory if it levied no tax on manufacturing or taxed manufacturing at a lower rate than wholesaling, for then the out-of-state wholesaler would be paying a higher tax than the in-state manufacturer-wholesaler. But that is not the case here. Instead, a manufacturer selling his products at wholesale in West Virginia pays a much higher overall tax rate than the out-of-state wholesaler. The Court dismisses that fact, asserting that because in-state manufacturers formally pay no wholesale tax, the taxing scheme is facially discriminatory. The Court also rejects the possibility that West Virginia's manufacturing tax incorporates the tax otherwise levied on wholesale sales.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 18 09:32

May 17, 1984

Re: 83-297 - Armco Inc. v. Hardesty

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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b

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 21 P355

May 21, 1984

No. 83-297 Armco, Inc. v. Hardesty

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

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