

The Burger Court Opinion Writing Database

Paulsen v. Commissioner

469 U.S. 131 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



AM

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

CHAMBERS OF
THE CHIEF JUSTICE

November 13, 1984

Re: 83-832 - Paulsen v. CIR

Dear Sandra:

Will you take on a dissent in due course?

Regards,



Justice O'Connor

CC - Justice Marshall

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

CHAMBERS OF
THE CHIEF JUSTICE

January 3, 1985

Re: No. 83-832 - Harold T. Paulsen v. Commissioner of
Internal Revenue

Dear Sandra,

I join your dissent.

Regards,

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

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 9, 1984

No. 83-832

Paulsen v. CIR

Dear Chief,

Confirming what I told you at
Conference, Bill Rehnquist has agreed to
try his hand at an opinion for the
Court.

Sincerely,



The Chief Justice

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 28, 1984

No. 83-832

Paulsen v. Commissioner
of Internal Revenue

Dear Bill,

I am in full accord with the analysis and result in your excellent opinion, and I am happy to join it. For purposes of our resolution, is it significant, for purposes of the timing of the taxable event, that the taxpayer does not have access to the savings account until a year after the merger?

Sincerely,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 29, 1984

No. 83-832

Paulsen v. Commissioner
of Internal Revenue

Dear Bill,

I agree.

Sincerely,

Bill

Justice Rehnquist

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NOV 30 1984

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 29, 1984

83-832 - Paulsen v. CIR

Dear Bill,

I join.

Sincerely yours,

Byron

Justice Rehnquist
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1984

Re: No. 83-832-Paulsen v. Commissioner of Internal
Revenue

Dear Bill:

I await the dissent.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 20, 1984

Re: No. 83-832 - Paulsen v. Commissioner of
Internal Revenue

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 10, 1984

Re: No. 83-832, Paulsen v. CIR

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

cc: The Conference

7/10

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 1, 1984

83-832 Paulsen v. Commissioner of Internal Revenue

Dear Chief:

As I said yesterday, our son-in-law Christopher Sumner is the president of an interstate mutual S&L.

Although he continues to say that his company is not interested in the outcome of this case, Christopher is on the advisory board of the principal federal regulatory agency and is known in the industry. Upon further reflection, I think it is best for me not to participate in the decision of this case.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 28, 1984

83-832 Paulsen v. Commissioner

Dear Bill:

Please add at the end of your opinion that I took no part in the decision of this case.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-832

**HAROLD T. PAULSEN, ET UX., PETITIONERS v.
COMMISSIONER OF INTERNAL REVENUE**

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

[November —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Commerce Savings and Loan Association of Tacoma, Washington, merged into Citizens Federal Savings and Loan Association of Seattle in July 1976. Petitioners Harold and Marie Paulsen sought to treat their exchange of stock in Commerce for an interest in Citizens as a tax-free reorganization under 26 U. S. C. §§ 354(a)(1) and 368(a)(1)(A). The Court of Appeals for the Ninth Circuit, disagreeing with other Courts of Appeals,* reversed a decision of the Tax Court in favor of petitioners. 716 F. 2d 563 (1983). We granted certiorari, — U. S. — (1984), to resolve these conflicting interpretations of an important provision of the I. R. C.

At the time of the merger, petitioner Harold T. Paulsen was president and a director of Commerce. He and his wife, petitioner Marie B. Paulsen, held as community property 17,459 shares of "guaranty stock" in Commerce. In exchange for this stock petitioners received passbook savings accounts and time certificates of deposit in Citizens. Relying on 26 U. S. C. §§ 354(a)(1) and 368(a)(1)(A), they did not

**Capital Savings and Loan Association v. United States*, 607 F. 2d 970 (Ct. Cl. 1979); *West Side Federal Savings and Loan Association v. United States*, 494 F. 2d 404 (CA6 1974); *Everett v. United States*, 448 F. 2d 357 (CA10 1971).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 29, 1984

Re: No. 83-832 Paulsen v. Commissioner of
Internal Revenue

Dear Bill,

Your letter suggests that the taxpayer's delayed access to some of the proceeds of the transaction may affect its timing for tax purposes. I don't doubt that you are right, but I had hoped to completely avoid mention of that question in our opinion.

In affirming the CA9's decision that petitioners may not treat their exchange as a tax-free reorganization, we do not in any way address the proper treatment of the exchange under other provisions of the Code. The timing question was not mentioned in either opinion below, nor was it briefed in this Court. For all we know, the parties agree on the answer.

I am reluctant to mention the question in a footnote for fear of creating confusion. For example, I do not know how the Code treats a delayed payment, whether the Commissioner would view the passbook accounts the same as one-year promissory notes, or what effect the power to immediately borrow the full balance has. I think the burden is on the taxpayer to raise any timing challenge by a renewed proceeding in the tax court, by an amended return, or by some other appropriate procedure.

If you still feel we need to mention the issue, however, I would be willing to do so.

Sincerely,



Justice Brennan

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

From: **Justice Rehnquist**

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STUDENT SERVICES THROUGHOUT

W. J. ...

~~1st~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-832

**HAROLD T. PAULSEN ET UX., PETITIONERS v.
COMMISSIONER OF INTERNAL REVENUE**

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

[December —, 1984]

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At the time of the merger, petitioner Harold T. Paulsen was president and a director of Commerce. He and his wife, petitioner Marie B. Paulsen, held as community property 17,459 shares of "guaranty stock" in Commerce. In exchange for this stock petitioners received passbook savings accounts and time certificates of deposit in Citizens. Relying on 26 U. S. C. §§ 354(a)(1) and 368(a)(1)(A), they did not

**Capital Savings and Loan Assn. v. United States*, 221 Ct. Cl. 557, 607 F. 2d 970 (1979); *West Side Federal Savings and Loan Assn. v. United States*, 494 F. 2d 404 (CA6 1974); *Everett v. United States*, 448 F. 2d 357 (CA10 1971).

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

From: **Justice Rehnquist**

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Recirculated: JAN 3 1985

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-832

**HAROLD T. PAULSEN ET UX., PETITIONERS v.
COMMISSIONER OF INTERNAL REVENUE**

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

[January —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Commerce Savings and Loan Association of Tacoma, Wash., merged into Citizens Federal Savings and Loan Association of Seattle in July 1976. Petitioners Harold and Marie Paulsen sought to treat their exchange of stock in Commerce for an interest in Citizens as a tax-free reorganization under 26 U. S. C. §§ 354(a)(1) and 368(a)(1)(A). The Court of Appeals for the Ninth Circuit, disagreeing with the Court of Claims and other Courts of Appeals,* reversed a decision of the Tax Court in favor of petitioners. 716 F. 2d 563 (1983). We granted certiorari, 465 U. S. — (1984), to resolve these conflicting interpretations of an important provision of the Internal Revenue Code.

At the time of the merger, petitioner Harold T. Paulsen was president and a director of Commerce. He and his wife, petitioner Marie B. Paulsen, held as community property 17,459 shares of "guaranty stock" in Commerce. In exchange for this stock petitioners received passbook savings accounts and time certificates of deposit in Citizens. Relying on 26 U. S. C. §§ 354(a)(1) and 368(a)(1)(A), they did not

**Capital Savings and Loan Assn. v. United States*, 221 Ct. Cl. 557, 607 F. 2d 970 (1979); *West Side Federal Savings and Loan Assn. v. United States*, 494 F. 2d 404 (CA6 1974); *Everett v. United States*, 448 F. 2d 357 (CA10 1971).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 29, 1984

Re: 83-832 - Paulsen v. CIR

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 14, 1984

No. 83-832 Paulsen v. CIR

Dear Chief,

I will be happy to try writing a dissent
in this case.

Sincerely,

The Chief Justice

cc: Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 28, 1984

No. 83-832 Paulsen v. CIR

Dear Bill,

I will circulate a dissent in this case
as soon as I can get around to it.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: DEC 19 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-832

HAROLD T. PAULSEN ET UX., PETITIONERS *v.*
COMMISSIONER OF INTERNAL REVENUE

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

[December —, 1984]

JUSTICE O'CONNOR, dissenting.

Today the Court holds that the merger of a stock savings and loan association into a mutual savings and loan association does not qualify as a tax-deferred reorganization under § 368(a)(1)(A) of the Internal Revenue Code. Although the merger meets all the statutory requirements, and although all courts that considered similar transactions before this case found they qualified as tax-deferred reorganizations, see *ante*, at 1, the Court nevertheless concludes that such a merger fails to qualify under a refined interpretation of the judicially imposed "continuity-of-interest" doctrine. This holding introduces an unfortunate and unnecessary element of uncertainty into an area of our income tax laws where clear and consistent precedent is particularly helpful to both taxpayers and tax collectors. Because I find the Court's holding unwise as a matter of policy and unwarranted as a matter of law, I respectfully dissent.

The Court concedes that the merger of Commerce Savings and Loan Association of Tacoma, Wash. (Commerce), into Citizens Federal Savings and Loan Association of Seattle (Citizens) met the literal terms of the Internal Revenue Code to qualify the merger for treatment as a tax-deferred reorganization. *Ante*, at 4. Indeed, the merger between Commerce and Citizens satisfies the statutory definition of a reorganization in § 368(a)(1)(A) and the Citizens mutual share

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

From: Justice O'Connor

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-832

**HAROLD T. PAULSEN ET UX., PETITIONERS v.
COMMISSIONER OF INTERNAL REVENUE**

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

[January 8, 1985]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE joins,
dissenting.

Today the Court holds that the merger of a stock savings and loan association into a mutual savings and loan association does not qualify as a tax-deferred reorganization under § 368(a)(1)(A) of the Internal Revenue Code. Although the merger meets all the statutory requirements, and although all courts that considered similar transactions before this case found they qualified as tax-deferred reorganizations, see *ante*, at 1, the Court nevertheless concludes that such a merger fails to qualify under a refined interpretation of the judicially imposed "continuity-of-interest" doctrine. This holding introduces an unfortunate and unnecessary element of uncertainty into an area of our income tax laws where clear and consistent precedent is particularly helpful to both taxpayers and tax collectors. Because I find the Court's holding unwise as a matter of policy and unwarranted as a matter of law, I respectfully dissent.

The Court concedes that the merger of Commerce Savings and Loan Association of Tacoma, Wash. (Commerce), into Citizens Federal Savings and Loan Association of Seattle (Citizens) met the literal terms of the Internal Revenue Code to qualify the merger for treatment as a tax-deferred reorganization. *Ante*, at 4. Indeed, the merger between Commerce and Citizens satisfies the statutory definition of a re-

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