

The Burger Court Opinion Writing Database

United States v. Hughes Properties, Inc.
476 U.S. 593 (1986)

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

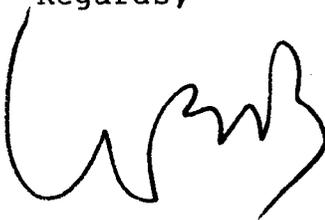
May 6, 1986

RE: 85-554 - United States v. Hughes Properties

Dear Thurgood:

Will you be interested in taking on the dissent in this case?

Regards,



Justice Marshall
Justice Stevens

CS
As of now I will be
handing it over to Stevens

cc Stevens



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

CHAMBERS OF
THE CHIEF JUSTICE

May 28, 1986

85-554 - U.S. v. Hughes Properties

Dear John:

I join.

Regards,

A handwritten signature in black ink, appearing to be "W. Stevens", with a long horizontal flourish extending to the right.

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1986

Dear Chief,

Instead of taking on the opinion for the Court myself in No. 85-554, United States v. Hughes Properties, I have asked Harry to do so. He has agreed that he would.

Sincerely,
Bill

The Chief Justice
Copies to the Conference

58-21-1-1001
1985-1986

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 20, 1986

No. 85-554

United States
v. Hughes Properties, Inc.

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

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

From: **Justice White**

Circulated: _____ 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* HUGHES PROPERTIES, INC.

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

No. 85-554. Decided November —, 1985

JUSTICE WHITE, dissenting.

Respondent Hughes Properties, Inc., owns Harolds Club, a gambling casino in Reno, Nevada. During 1973-1977, the tax years at issue in this case, respondent operated "progressive slot machines" in its casino. These slot machines pay certain fixed amounts when certain combinations of symbols appear; they also have an ever-increasing or "progressive" jackpot that may be won (less frequently) only when someone gambles a certain amount of money and the machine displays the winning combination of symbols. The amount of the progressive jackpot at any given time is displayed on the face of the slot machine; theoretically, this amount continues to increase until the jackpot is won or until a maximum set by the casino is reached. The casino sets the original amount and the rate at which the progressive jackpot increases.

In 1972, the Nevada Gaming Commission promulgated a rule regulating progressive slot machines. Nev. Gaming Reg. § 5.110. This rule requires licensed casinos to maintain daily records of the progressive jackpot amounts. It also provides that the progressive jackpot amounts may not be reduced unless the jackpot is either won by a customer or a change is made necessary by a machine malfunction. In the latter case, a report explaining the reasons for the change must be filed. The rule is strictly enforced.

In accordance with the requirements of § 5.110, respondent recorded the amounts of the progressive jackpots on its slot machines for the taxable years in question. At the end of each year, respondent, an accrual-basis taxpayer, deducted the net accrued but as yet unpaid liability on these machines.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1986

85-554 -

United States v. Hughes Properties, Inc.

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 7, 1986

Re: No. 85-554-U.S. v. Hughes Properties

Dear Chief:

As of now I will try my hand at a dissent in this case.

Sincerely,

JM.

T.M.

The Chief Justice

cc: Justice Stevens

*I have custody removed from's opinion
in this case, am now convinced to dissent
Plan to go ahead*

JM

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1986

Re: No. 85-554-U.S. v. Hughes Properties

Dear Chief:

I have carefully reviewed Harry's opinion in this case, am now convinced he is correct and plan to join him.

Sincerely,

JM

T.M.

The Chief Justice

cc: Justice Stevens

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1986

Re: No. 85-554-United States v. Hughes Properties

Dear Harry:

Please join me.

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 26, 1985

Re: No. 85-554, United States v. Hughes Properties, Inc.

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

cc: The Conference

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

From: **Justice Blackmun**

Circulated: MAY 19 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 85-554

UNITED STATES, PETITIONER *v.* HUGHES PROPERTIES, INC.

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

[May —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the deductibility for federal income tax purposes, by a casino operator utilizing the accrual method of accounting, of amounts guaranteed for payment on "progressive" slot machines but not yet won by playing patrons.

I

A

There is no dispute as to the relevant facts; many of them are stipulated. Respondent Hughes Properties, Inc., is a Nevada corporation. It owns Harolds Club, a gambling casino, in Reno, Nev. It keeps its books and files its federal income tax returns on the accrual method of accounting. During the tax years in question (the fiscal years that ended June 30 in 1973 to 1977, inclusive), respondent owned and operated slot machines at its casino. Among these were a number of what are called "progressive" machines. A progressive machine, like a regular one, pays fixed amounts when certain symbol combinations appear on its reels. But a progressive machine has an additional "progressive" jackpot, which is won only when a different specified combination appears. The casino sets this jackpot initially at a minimal amount. The figure increases, according to a ratio determined by the casino, as money is gambled on the machine.

STYLISTIC CHANGES

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

From: **Justice Blackmun**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-554

UNITED STATES, PETITIONER *v.* HUGHES PROPERTIES, INC.

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

[May —, 1986]

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NAL

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1986

MEMORANDUM TO THE CONFERENCE:

Re: Hold for No. 85-554, United States v. Hughes Properties

There is one case being held for Hughes Properties:

No. 85-1385, United States v. General Dynamics Corp. Respondents are a corporation and its subsidiaries who self-insure their employee health benefit plans. The case concerns the deductibility under § 162 of the Internal Revenue Code of amounts placed in reserve to cover both claims that have not yet been presented for payment and claims that have been presented but have yet to be approved.

After oral argument, but prior to the decision in Hughes Properties, respondent submitted a supplemental memorandum, arguing that nothing in either the Government's papers or the oral argument showed any similarity between this case and Hughes Properties. Since the announcement, the Government has submitted its supplemental memorandum. It too argues that this case differs significantly from Hughes Properties, in that the amount respondents seek to deduct is an estimate of their liability to employees for costs the employees already have incurred. But because the employees have either not yet submitted claims or had those claims approved, essential preconditions for the actual creation of liability have not yet occurred and the "all events" test has not been satisfied.

I am inclined to agree with the Government that Hughes Properties does not answer the question posed by this case. Indeed, I think this case is governed by the principle established in Brown v. Helvering, 291 U.S. 193 (1934), and Lucas v. American Code Co., 280 U.S. 445 (1930), that the establishment by an accrual-basis taxpayer of a reserve to cover anticipated liabilities is not allowable as a deduction when the event that fixes liability has not occurred in the taxable year. The fact that Congress felt it necessary to enact special provisions to permit insurance companies to deduct specified additions to reserves, see, e.g., I.R.C. § 832, suggests that the companies would not have been able to deduct such amounts as business expenses under § 162. I am troubled by the fact that neither the Claims Court nor the Federal Circuit discussed the applicability of either Brown or American Code. While its decision in Hughes Properties



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 19, 1986

85-554 United States v. Hughes Properties

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

2

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 20, 1986

Re: No. 85-554 United States v. Hughes Properties

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

May 21, 1986

Re: 84-554 - United States v. Hughes
Properties, Inc.

Dear Harry:

Unlike Thurgood, I remain unpersuaded and therefore will prepare a dissenting opinion unless someone else plans to write.

Respectfully,



Justice Blackmun

Copies to the Conference

MAY 24 1986

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

From: **Justice Stevens**

Circulated: MAY 23 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-554

UNITED STATES, PETITIONER *v.* HUGHES PROPERTIES, INC.

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

[May —, 1986]

JUSTICE STEVENS, dissenting.

Unlike the Court, see *ante*, at 12, I believe that the distinction between the nonpayment of an existing obligation and the nonexistence of an obligation is of controlling importance in this case.

It is common ground that the taxpayer can accrue as a deduction the jackpots in its progressive slot machines only if "all the events have . . . occurred which fix the liability." Treas. Reg. § 1.1461-1(a)(2). See, *e. g.*, *Security Flour Mills Co. v. Commissioner*, 321 U. S. 281, 284, 287 (1944); *Dixie Pine Co. v. Commissioner*, 320 U. S. 516, 519 (1944); *Brown v. Helvering*, 291 U. S. 193, 200-201 (1934). See generally *United States v. Consolidated Edison Co.*, 366 U. S. 380, 385-386 (1961). The question is whether an "obligation" created by the rules of a state gaming commission and defeasible at the election of the taxpayer is "fixed" within the meaning of the Treasury Regulation. To me, the answer is clearly "no."

"Under Nevada law," if the taxpayer in this case "were to surrender its gaming license, it would no longer be subject to the gaming laws and regulations and could thus avoid the payment of the liability." App. 23. Thus, "the bankruptcy of the [taxpayer], or the surrender of its gaming license could relieve it of its obligation." *Id.*, at 44.

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

STRICTLY CONFIDENTIAL THROUGHOUT.
 SEE PAGES.

From: Justice Stevens

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MAY 27 1986

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-554

UNITED STATES, PETITIONER *v.* HUGHES
 PROPERTIES, INC.

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

[May —, 1986]

JUSTICE STEVENS, dissenting.

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

From: **Justice Stevens**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-554

UNITED STATES, PETITIONER *v.* HUGHES
 PROPERTIES, INC.

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

[June —, 1986]

JUSTICE STEVENS, with whom THE CHIEF JUSTICE joins,
 dissenting.

Unlike the Court, see *ante*, at 12, I believe that the distinction between the nonpayment of an existing obligation and the nonexistence of an obligation is of controlling importance in this case.

It is common ground that the taxpayer can accrue as a deduction the jackpots in its progressive slot machines only if "all the events have . . . occurred which fix the liability." Treas. Reg. § 1.461-1(a)(2), 26 CFR § 1.461-1(a)(2) (1985). See, e. g., *Security Flour Mills Co. v. Commissioner*, 321 U. S. 281, 284, 287 (1944); *Dixie Pine Products Co. v. Commissioner*, 320 U. S. 516, 519 (1944); *Brown v. Helvering*, 291 U. S. 193, 200-201 (1934). See generally *United States v. Consolidated Edison Co. of New York, Inc.*, 366 U. S. 380, 385-386 (1961). The question is whether an "obligation" created by the rules of a state gaming commission and defeasible at the election of the taxpayer is "fixed" within the meaning of the Treasury Regulation. To me, the answer is clearly "no."

"Under Nevada law," if the taxpayer in this case "were to surrender its gaming license, it would no longer be subject to the gaming laws and regulations and could thus avoid the payment of the liability." App. 23. Thus, "the bankruptcy

(3)

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 19, 1986

No. 85-554 United States v. Hughes Properties

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference