The Burger Court Opinion
Writing Database

Badaracco v. Commissioner

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) - Deleet Merchandising Corp. v. Commissioner

Dear Harry:

I join.

Regards,

Justice Blackmun

Copies to the Conference
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
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
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
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.1 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.”2

1 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.”

2 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.”
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. 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."

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2 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."
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.
December 28, 1983

82-1435 Badaracco v. Commissioner

Dear Harry:

Please join me.

Sincerely,

[Signature]

Justice Blackmun

1fp/ss

cc: The Conference
December 30, 1983

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

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

cc: The Conference
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,

John

Justice Blackmun

Copies to the Conference
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.\(^1\) When the Commissioner initiates a de-

\(^1\)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).
January 3, 1984

Dear Harry,

Please join me.

Sincerely,

[Signature]

Justice Blackmun

Copies to the Conference