In the

Supreme Court of the United States

UNITED STATES OF AMERICA, Petitioner,	)	
vs.	)	Docket No. 74-799
FOSTER LUMBER COMPANY, INC., Respondent.	)	

Washington, D. C.
November 12, 1975

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Petitioner,

v. No. 74-799

FOSTER LUMBER COMPANY, INC.,

Respondent.

Washington, D. C.

Wednesday, November 12, 1975

The above-entitled matter came on for argument at 10:05 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

STUART A. SMITH, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D. C. 20530, for the petitioner.

RUSSELL W. BAKER, ESQ., 15th Floor, 1006 Grand Avenue, Kansas City, Missouri 64106, for the respondent.

I N D E X

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 74-799, United States against Foster Lumber Company.

Mr. Smith, you may proceed whenever you are ready.

ORAL ARGUMENT OF STUART A. SMITH ON

BEHALF OF THE PETITIONER

MR. SMITH: Mr. Chief Justice, and may it please the Court: This is a Federal income tax case here on certiorari to the United States Court of Appeals for the Eighth Circuit. It involves an application of section 172 of the Internal Revenue Code of 1954 which permits carryback and carryover of net operating loss deductions.

The question presented in this case is whether the respondent can carry back a $42,000 net operating loss incurred in 1968 as an offset against its 1966 taxable income of $174,000 and after that offset use $35,000 of that loss a second time against its 1967 taxable income. From the mathematical and statutory standpoint we submit the answer to this question is plainly "No."

QUESTION: When you use the term "a second time," it has to be no, doesn't it?

MR. SMITH: Exactly.

QUESTION: Of course, your opposition will disagree with that.

MR. SMITH: I am confident they will, Mr. Justice Blackmun.

QUESTION: You have presented the issue in kind of a loaded way.

MR. SMITH: Yes, but we think it's a way which is supported by the statute.

QUESTION: Yes, I know you do.

QUESTION: The use the first time did not benefit the taxpayer at all, did it?

MR. SMITH: Did not benefit the taxpayer in the sense it did not --

QUESTION: It didn't give him any tax benefit whatever.

MR. SMITH: Did not reduce his tax liability.

QUESTION: So when you said it was used, you are saying it just disappeared.

MR. SMITH: It disappeared for operation of the statute, Mr. Justice Powell.

QUESTION: Right.

MR. SMITH: We submit that no part of the $42,000 loss remains for offset against 1967 income. The facts stipulated are relatively straightforward. In 1966 the taxpayer corporation had taxable income of $174,000. In 1968 it incurred a net operating loss of $42,000. In accordance with section 172 of the Code, the respondent carried back its $42,000 loss to

1966. Once that loss arrived back in 1966, the respondent had to recompute his tax liability for its earlier year, in 1966, as if that loss occurred in 1966.

Now, it had to recompute its tax liability pursuant to the Code under two different methods. One is the so-called regular method. Section 11 provides for taxation of corporate income in accordance with prescribed rates. Now, once having subtracted $42,000 from $174,000, it arrived at the recomputed taxable income of $132,000. The tax on that according to the regular method was $58,000. It then engaged in an alternative tax computation which was provided for corporations pursuant to section 1201(a) of the Code. That alternative computation is permitted for corporations which have net long-term capital gains. Now, its computation is set forth in our brief, the various computations, at page 4. The Court will see that under the alternative method the respondent subtracted its $42,000 loss from its $174,000 of taxable income and again had recomputed taxable income of approximately $132,000. It then had engaged in the two-step computation pursuant to the alternative tax. It subtracted its capital gain -- for short-hand purposes we call it its long-term capital gain -- its partial tax base was zero, or a negative amount, and then it added to that a flat 25 percent tax on its capital gains. The tax under that alternative method was $41,000.

Now, pursuant to the Code, the prescribed tax is the

lower amount that's applicable.

Now, this suit involves the year 1967. All the computations I described thus far were applicable to the year 1966. The respondent filed a refund claim for that year, and that is the year at suit, asserting that even though its $42,000 loss for 1968 had been subtracted from its taxable income of $174,000 to yield a recomputed taxable income figure of $132,000, it claimed that $35,000 of that loss was still available to offset its taxable income in 1967, which amounted to about $229,000.

Now, the district court upheld the respondent's claim and the court of appeals affirmed. In so holding, however, the Eighth Circuit acknowledged that its decision was contrary to the applicable Treasury regulations which were adopted shortly after the 1954 codification.

QUESTION: Has the Government's position on this issue always been what it is today?

MR. SMITH: I think so, Mr. Justice Blackmun. It's my impression that the Government's position has uniformly been in accordance with the position we urge here, and I might add also that the commentaries shortly after the 1954 Code or in the late fifties and early sixties prior to the Tax Court's Chartier decision were uniformly in support of the Government's reading of the statute.

Now, at the time of the Eighth Circuit's decision in

this case, there were two circuits which had rejected our position. However, they were brief per curiam affirmances. In fact, the First Circuit in affirming and dismissing the Government's position just characterized the position as unimportant and seldom occurring. The Eighth Circuit here frankly acknowledged that it was influenced by the cumulative way of these two adverse circuit decisions.

QUESTION: Affirmances of the tax court?

MR. SMITH: One was an affirmance of the tax court in Chartier.

QUESTION: In the Chartier case.

MR. SMITH: And the other one is an affirmance of the district court in California the decision of the Olympic Foundry case.

QUESTION: Which came after the Chartier case?

MR. SMITH: Which came after the Chartier case.

QUESTION: And in which the United States district court relied upon --

MR. SMITH: In which the United States district court relied upon the tax court and was affirmed per curiam by the Ninth Circuit.

Now, shortly after, within about 3 months of this decision, the Fourth Circuit issued what we believe was a well-considered and comprehensive opinion in the Mutual Assurance Society of Virginia Corporation case in which the Government's

position was squarely upheld as conforming with the statutory definition of taxable income. Shortly after that the Sixth Circuit in the Axelrod case rejected an individual taxpayer's similar attempt to cumulate and pyramid the benefits of both the net operating loss carryback provisions and the alternative tax computations.

We submit a resolution of this issue depends upon a careful analysis of the applicable statute which is section 172 of the 1954 Code, specifically subsection (b)(2). The pertinent part of that statute is set forth in our brief on the top of page 18. It provides "The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior ...years to which such loss may be carried."

Now, the term "taxable income" in the statute is important. That is a technical term which is elsewhere defined in the Code, in section 63(a), and taxable income, in accordance with this definition, means gross income minus the deductions allowed by this chapter.

Now, here the taxpayer's 1966 taxable income was undisputably $174,000. Its 1968 loss was $42,000. Carrying back the $42,000 loss to the $174,000 of taxable income as the statute prescribes, in our view, demonstrates that there was no statutory excess of a loss over taxable income which the

taxpayer could then use for a succeeding year.

Now, the Eighth Circuit in this case in grappling with this admittedly technical problem said, "It is impossible to find any plain meaning in the statutory language that would dispose of this controversy." The court then engaged in what we think is an erroneous groping for policy considerations. We think the statutory language is absolutely plain and admits of no other rational interpretation. The statute prescribes that the loss be netted against taxable income. Here the taxable income was $174,000, the loss was $42,000. There is no excess to carry forward to the year 1967.

QUESTION: Mr. Smith, you're saying, as I understand it, that the majority of the tax court was irrational in interpreting language that at least to me seems ambiguous.

MR. SMITH: We don't think it's ambiguous, Mr. Justice Powell.

QUESTION: The tax court at least presumptively is rational on tax matters, however wrong it may be.

MR. SMITH: I think that's correct, and I have as much deference to the tax court as perhaps anyone, but I think in this instance they misconstrued what we think is plain statutory language which demonstrates that our interpretation is the correct interpretation.

QUESTION: Right.

QUESTION: You think the Eighth Circuit was wrong in

looking to the underlying purpose of the statute?

MR. SMITH: No, I don't think the Eighth Circuit was wrong, but I think in looking to the purpose of the statute in any statutory interpretation case, I think courts necessarily must look for policy, but I think they were wrong in their initial premise that the statutory language had no plain meaning and that it was necessary then to look to some external purpose. These are detailed statutes, Mr. Chief Justice, and I think that they have been amended constantly since 1921, and it's very difficult to discern any particular policy because at any given time technical amendments are introduced which author what one might perceive to be a basic policy.

To the extent that there is a statutory historical evidence of how this decision should come out, it seems to us that section 122(d) of the 1939 Code is instructive in the sense that I think it's beyond doubt, as we point out in our reply brief, that the taxpayer's position is impossible under the 1939 Code because the phrase upon which they relied, the final phrase of the statute,"to which such loss may be carried" didn't exist in the 1939 Code. When Congress amended the net operating loss carryback and carryover provisions in 1954 there is no indication that 172(b)(2) was meant to do anything different than it had done under the 1939 Code. There were a number of changes and the committee reports discuss them at

great length. The span of years was enlarged, and a variety of things were accomplished. But this basic proposition that in determining how much of a loss is "available" after it proceeds back was always to be a netting of loss against taxable income, which in this case includes all income, both "ordinary income" and capital gains. And in this case that amounted to $174,000 and a $42,000 loss simply does not survive past that computation.

QUESTION: Is the loss available to the taxpayer in '66 at all?

MR. SMITH: Is the loss available to the taxpayer in '66?

QUESTION: I know you apply it to his income and the income is more so the loss is all used. But how about in figuring his alternative tax?

MR. SMITH: In figuring his alternative tax, as the --

QUESTION: Do you still use the same amount of capital gain as he does?

MR. SMITH: Of course. I think if you look at the computation at page 4, $42,000 is offset against the $174,000 of taxable income. That yields a taxable income, pursuant to section 63(a), of approximately $132,000.

Now, I think the quarrel between the parties is to the effect that it contends that --

QUESTION: I understand what the quarrel is. I just want a note from you just for my own information whether

or not the alternative tax is figured on the full amount of the capital gain.

MR. SMITH: The alternative tax is figured on the --

QUESTION: $166,000.

MR. SMITH: $166,000, and 25 percent of that yields the tax figure for that year.

QUESTION: But $166,000 of the $173,000 is capital gain.

MR. SMITH: That's right.

QUESTION: And you applied the $42,000 to reduce the total taxable income to $131,000.

MR. SMITH: That's right.

QUESTION: Now, I suppose it would be possible to say that the $34,000 ought to reduce the amount of capital gain.

MR. SMITH: It would be possible to say that as an abstract matter, but it has been settled that that is not to be the case.

QUESTION: Well, then it certainly is true that the taxpayer gets no benefit whatsoever from the --

MR. SMITH: He gets no reduction in his tax liability.

QUESTION: Although if it reduced the amount of capital gain, he would get some benefit.

MR. SMITH: Yes, but the Weil case has disposed of

that proposition and the correctness of the Weil issue is not at issue in this case. In fact, the very tax --

QUESTION: You may say it isn't at issue, but it's an important matter in the law.

MR. SMITH: I don't think it is even strictly at issue, Mr. Justice White, because for purposes of -- if the Court were to agree with our computation --

QUESTION: I know, but you are saying we must decide the case on the assumption that the taxpayer gets no benefit whatsoever from $34,000 of his loss.

MR. SMITH: Gets no reduction in tax liability, that's right.

QUESTION: That's all I wanted to know.

QUESTION: But he would, even following your theory, he would if the figures were different.

MR. SMITH: He might if the figures were different.

QUESTION: Another taxpayer might.

MR. SMITH: Another taxpayer --

QUESTION: It's not inevitable that the taxpayer never would, that's my point.

MR. SMITH: Exactly.

QUESTION: Well, this one didn't.

MR. SMITH: This one didn't simply because, if you look at 1967, the table at page 3 of our brief, you will see that there is a large amount of ordinary income and a large

amount of capital gains. So there wouldn't be any benefit even under a contra-Weil approach, although we do submit, strictly speaking, that since the year 1967 is at issue here for this taxpayer, the correctness of Weil is not really at issue in this case, although we submit that it is correct.

QUESTION: I agree with you. I just wanted to know whether he does or doesn't get any benefit from this $34,000. You say he gets no tax benefit, period.

QUESTION: Mr. Smith, approaching Mr. Justice White's point from a different angle, if you view this result in terms of economic realities, the way it works out with me here is that this taxpayer's net economic gain over the 3-year period was $361,000. What the Government is proposing to do is to tax $396,000.

MR. SMITH: I don't think that's true, Mr. Justice Powell.

QUESTION: Well, that's the reverse of the coin you have just conceded, and that is that you are not giving the taxpayer credit for $35,000 of loss. In effect, you are taxing him.

MR. SMITH: The reason we are not giving him credit, so to speak, that's simply by operation of the alternative tax computation.

QUESTION: Right.

MR. SMITH: Exactly. Now, for the taxpayer to

prevail, we submit, you would have to in effect merge these two statutes, 1201(a) and 172, and we submit they are simply not to be merged.

QUESTION: The statutes that you are talking about involve two basic tax approaches. Capital gains are quite different from ordinary income. Capital gains are often or usually the product of accretion over periods of years, and if capital formation in this country is to be encouraged, that is the purpose of the 25 percent alternative tax, it seems to me that the position you are arguing is counterproductive to the basic theory of a capital gains tax.

MR. SMITH: That may be true as a legislative matter.

QUESTION: Yes.

MR. SMITH: But we submit that when Congress used the term "taxable income" in section 172(b)(2) it very specifically rejected the notion of segmentation of taxable income into its component parts, which the alternative tax computation takes into account. When this $42,000 loss is carried back, what the taxpayer essentially is doing is introducing the mechanics of the alternative tax computation with its segmented approach, that is its partial tax base, plus the alternative tax plus the 25 percent flat tax computation into the interstices of section 172(b)(2). And we think that without some indication from Congress, because the statute is replete with modifications to the basic concept of taxable

income, and there is no modification which would admit the segmented computation that the taxpayer seeks to introduce. There are only two statutorily prescribed computations, one, the regular tax computation and, two, the alternative tax computation. What the taxpayer is trying to do is to take its $42,000 loss and net it against a segmented part of the 1966 taxable income,and without any statutory warrant for that position, we submit that it's simply not acceptable without some indication by Congress that this was to be the result.

Now, we think that the statute does pose an insurmountable obstacle to the taxpayer's position and as a result it has to construe the statute in accordance with what we believe is a forced and unnatural reading. Now, looking back at page 18, again, of our brief, it argues that the phrase "to which such loss may be carried" modifies the phrase "taxable income" as well. That was essentially the gist of the tax court's holding in Chartier Real Estate Company, and we submit there is no statutory basis for saying that the loss of $42,000 is carried back against only the $7,000 which represents the partial tax base under section 1201(a). There is no support in the legislative history for that approach and, moreover, the term "carry" contrary to the taxpayer's argument and the tax court's position has a temporal connotation and not insofar as a loss is carried back from one year to another, from 1968 to 1966. And there is no basis for saying that the

loss is carried back to a particular type of income in 1966. It's carried back to the --

QUESTION: Then if the taxpayer had had $15,000 worth of capital gains in '66 and the same loss to be carried back, I suppose the loss carryback to reduce taxable income would have eaten up all of the loss, it would have eaten up all of the income. There would have been no alternative tax computation.

MR. SMITH: There would be no alternative tax and the loss would have eaten up all of the income.

We submit essentially that the alternative tax is a separate statutory system designed by Congress to benefit the taxation of capital gain, and its mechanics cannot be absorbed into this --

QUESTION: So in my example the taxpayer could not have just carried forward the part of the loss carryback that wasn't eaten up by ordinary income.

MR. SMITH: In your example, with no capital gains, the regular computation would have been used and then it would have been $42,000 less $15,000, and there would have been a remaining loss available.

QUESTION: Yes.

MR. SMITH: But essentially --

QUESTION: But if there had been ordinary income of $5,000 and a capital gain of $15,000, the carryback would have

been reduced by $20,000.

MR. SMITH: Exactly.

QUESTION: And not just by $5,000.

MR. SMITH: Exactly.

QUESTION: Which is the claim in this case.

MR. SMITH: Exactly.

If there are no further questions, I would like to reserve the remainder of my time for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Baker.

ORAL ARGUMENT OF RUSSELL W. BAKER ON BEHALF OF THE RESPONDENT

MR. BAKER: Mr. Chief Justice, and may it please the Court: The Court by its questions has indicated that it understands the Government's real position in terms of the consequences of its position. And that is, to repeat, that under the special circumstances of this case the net operating loss of the taxpayer is to be wasted. Put in numbers, this means that that part of the capital gain we received in 1966 which absorbed loss is really taxed at a 73 percent rate in this manner, 25 percent for an alternative tax, 48 percent by reason of the failure to allow us to carry it against ordinary income of another year, disregarding surtax exemptions. And today with the alternative tax rate on corporations at 30 percent instead of the 25 percent which existed in the late

sixties, that total effective rate would be 78.

QUESTION: What I gather Mr. Smith was saying is that from the statute it is clear that you are bound to have some situations that are going to cut both ways, sometimes the statute will be good for the taxpayer and sometimes it will work the other way, and yet if the statute in its language is clear, we are obliged to ignore the policy and the objective.

MR. BAKER: I believe that would be correct, your Honor, if the language is clear you are obliged.

QUESTION: Where do you think the language is not clear?

MR. BAKER: First of all, and primarily, we rely upon the same analysis used by the tax court, and that is that the sentence in question is capable of being read that "to which the loss may be carried" modifies taxable income. Here is where the Eighth Circuit below agreed with the tax court. It said either reading of this sentence is plausible, to use its exact words, "This phrase could modify taxable income or it could modify the earlier taxable years." And if there were no doubt about this, then we would have to fall back on alternative arguments. If the Court found that the modifying phrase did not modify taxable income at all, we would have had alternative arguments, but we chose to place our argument on the ground used by the tax court, that there was an ambiguity.

The tax court --

QUESTION: The tax court has been consistent through the years on this, has it not?

MR. BAKER: Yes, Mr. Justice Blackmun. The tax court first ruled in 1969. Since then it has had a couple more cases involving the same question, and as late as last year it said, "We remain convinced of the soundness of the Chartier decision." That decision did take on, unlike almost any other case we have, did take on both prongs of this problem. The taxpayer first asked to carry back his loss and take it against the capital gains, thus raising the problem which was raised by Mr. Justice White. Could he take it against the capital gain? The tax court examined the alternative tax provisions very clearly and said, it's unmistakable, you can't do it. Congress has just said so.

So, no, the answer is no, you cannot take it there. The taxpayer's alternative was, "I should like to carry the loss over to the next year since I could not use it in the capital gain year."

The tax court here turned to the loss provision of the Code and found under the sentence that we were discussing that he could carry the loss on to the next year. So the tax court had both things before it. It upheld its Weil doctrine that it can't reduce the capital gain, but it allowed the carryover to the next year and did not therefore require the taxpayer to waste his net operating loss.

Now, the unusual feature of the Government's position in this case is that the Government will readily concede to this Court that a capital gain in some of the eight possible carry years will not affect the matter at all. In a few cases like ours where the capital gain comes early in the carry period, then we are required under the Government's position to waste our loss. But if the capital gain is delayed far enough in this total 8-year period so that ordinary income can accumulate to absorb the loss, then the taxpayer gets both the use of his loss and the favorable capital gains rate.

So it's a matter of timing within the carry period. This matter -- and when I say a matter of timing, I'm talking about timing within the 8 possible carry years. The discrimination between taxpayers within that period under the Government's position is based on no policy whatever. It's wholly fortuitous, the order in which --

QUESTION: It's nothing new about the proposition that the Internal Revenue Code has all sorts of classifications that result in any individual case in fortuitous impact. The very fact that you are limited, for example, in your carry years, 3 years back and 5 years forward, leads to fortuitous results for taxpayers who have, again, if their timing is wrong.

MR. BAKER: I agree with your comment.

QUESTION: If the carry years don't cover their loss, for example.

MR. BAKER: I agree with your comment.

QUESTION: It's purely fortuitous, just as the arbitrary 3 year back and 5 year forward results sometimes in fortuitous impacts.

MR. BAKER: Certainly. I do not claim that it is the job of this Court to straighten out all of the angles in the Internal Revenue Code. As you say, we can't carry a loss back more than 3 years or we can't carry it over more than 5 years.

QUESTION: Right.

MR. BAKER: The reason we have stressed this, as the courts below did, is if the court finds there is an ambiguity in this language and it's not quite clear what Congress was doing, then it's in order for the Court to look to the consequences in order to select between competing interptetations.

Foster, to continue this line of thought for one moment more, must in this ambiguous area waste its net operating loss, but if it has a competitor across the street identical in every respect to it except one, and that is that its capital loss came one year later, two years before the net operating loss, that competitor gets the capital gain rate, gets to use his net operating loss, but under the Government's position we do not.

Again, Mr. Justice Stewart, if this is commanded by

Congress, we have to live with it.

We have tried to assist the Court on this very point by including in our brief, at page 25, a table which shows the consequences of the Government's position. Now, this isn't a table with assumed specific dollars in it, it's just a plain statement of what happens to a net operating loss when it encounters a capital gain in each of the 8 carry years. And it states what happens under the Government's position and what happens under our position, and therefore we hope effectively points up the point we are trying to make in this regard.

We should say something, because this is our opportunity, to reply to the Government's reply brief. Mr. Justice Powell mentioned a moment ago that the amount the Government proposes to tax us on in the period is $396,000 instead of the $361,000. The Government strenuously contests this point in its reply brief. At page 8 they say, and I read from the Government's reply brief at page 8, "The respondent, and the amicus, further argue that the Government's position would tax respondent on a total of $396,000 for the 3-year period '66-68, although respondent's aggregate income for the period was $361,000. A careful analysis of the figures demonstrates that this statement is simply inaccurate."

Our response is: Our statement is accurate. The Government's error is plain in this regard and is pointed up

by the statement on the next page, page 9, where the statement is made, "Computing the tax," and it's underlined, "on the same $132,000 of taxable income but by the alternative method provided in section 1201 produced the lower tax of $41,000."

As in the exchange with Mr. Justice White, I think it was brought out clearly to the Court that the alternative tax was on the total $167,000 capital gain.

The Government in its point 1 in its reply brief says the statute is clear. Of course, if the statute is clear and the Congress commands us to do as the Government indicates, we lose. We have felt that there are ambiguities in the statute, as demonstrated by the opinions of the lower court, and that the consequences we pointed out are important and should be considered by this Court.

The fact is that the Government is asking for such an unusual out-of-the-ordinary result here that it has seemed to us that they should be able to point to some indication by Congress that it knew it was enacting the result which they ask for. The fact is that over the years neither Congress has indicated that, nor, more importantly, has the Internal Revenue Service indicated to Congress that it was taking an administrative position that would yield such a result as they ask for today. And this problem has been with us for a long enough time for some kind of administrative position to have been communicated to Congress on this point.

Yet I think there is none.

The Government in its reply brief and also this morning states, "The taxpayer's result would have been impossible under the '39 Code." We do not agree. We think our result could have been possible under the '39 Code for a couple of reasons, if not more. Certainly, the same policy factors were acting under the '39 Code as are acting today. The Morrill case cited by the North River amicus brief is a clear indication that the courts could have easily reached our result under the '39 Code.

The second thing I would like to point out is the existence of the Treasury regulation under the '39 Code which says, "Net operating loss is available except to the extent absorbed by the taxable income of earlier years." Now, the word "absorbed" surely has some overtone of usefully applied. Congress would have been looking at that regulation, we may assume, when it enacted the 1954 Internal Revenue Code at which time, as the Government's counsel has pointed out, this whole section was rewritten, lots more was done to it than merely add the phrase "to which the loss may be carried," which is so emphasized. It would be entirely within the realm of possibility for that phrase to have been added as a matter of clarification. Congress could have well felt, or whatever draftsman was acting for Congress could have well felt, that he was simply continuing a computational rule

which had theretofore existed.

Mr. Chief Justice, the respondent would ask this Court to affirm the judgment below and in effect the views of the tax court for the reasons presented in our brief and here this morning.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Baker.

Mr. Smith, do you have anything further?

MR. SMITH: If the Court has no further questions, we submit none.

MR. CHIEF JUSTICE BURGER: Very well, gentlemen. The case is submitted.

[Whereupon, at 10:44 a.m., the arguments in the above-entitled matter were concluded.]