

quires constant and unusual use of the highways, and property not so employed, is plain enough. Here the tax laid was exclusive of all other taxation, and the funds arising therefrom were assigned to the maintenance of roads, essential to petitioner's operations.

Certainly, petitioner is in no position to complain of an arbitrary exactment. The prescribed method of assessment was permissible, and the mere fact that he was required to pay a higher rate upon property devoted to his peculiar business than was demanded of property not so employed is unimportant.

Nor do we think petitioner's property was entitled to exemption from state taxation because used in connection with the transportation of the mails. There was no tax upon the contract for such carriage; the burden laid upon the property employed affected operations of the Federal Government only remotely. *Railroad Co. v. Peniston*, 18 Wall. 5, 30; *Metcalf & Eddy v. Mitchell*, 269 U. S. 514. The facts in *Panhandle Oil Co. v. Mississippi*, 277 U. S. 218, and *New Jersey Bell Tel. Co. v. State Board*, 280 U. S. 338, were held to establish direct interference with or burden upon the exercise of a Federal right. The principles there applied are not controlling here.

The judgment of the court below must be

Affirmed.

DENMAN, ADMINISTRATOR OF THE ESTATE OF
CHARLES H. NAUTS, COLLECTOR OF INTER-
NAL REVENUE, *v.* SLAYTON.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

No. 60. Argued January 20, 1931.—Decided February 24, 1931.

By Revenue Act of 1921, Title II, § 213 (b) (4), in computing gross income, interest on obligations of a State or any political subdivision thereof is excluded, and by § 214 (a) (2) all interest paid

or accrued on indebtedness owed by the taxpayer is deductible from gross income, except interest on indebtedness incurred or continued to purchase or carry obligations (other than certain specified obligations of the United States) the interest upon which is wholly exempt from taxation under the Title. *Held* that the purpose of the exception was to prevent the escape from taxation of income properly subject thereto by the purchase of exempt securities with borrowed money, and that it is not unconstitutional either (a) as discriminating against owners of non-taxable securities and nullifying their immunity from taxation; or (b) as discriminating against dealers in municipal bonds who, in the course of their business, pay interest on money borrowed to buy or carry such securities but can not deduct it in their tax returns, although those engaged in other kinds of business are allowed to deduct interest as an operating expense; or (c) as arbitrarily discriminating in favor of those who are able to purchase and carry securities without borrowing. *National Life Ins. Co. v. United States*, 277 U. S. 508, distinguished. P. 519.

36 F. (2d) 145, reversed.

CERTIORARI, 281 U. S. 712, to review a judgment which affirmed a recovery from the Collector in a suit in the District Court for money collected as an additional income tax.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher* and *Messrs. Claude R. Branch, J. Louis Monarch* and *Morton Poe Fisher*, Special Assistants to the Attorney General, *Clarence M. Charest*, General Counsel, Bureau of Internal Revenue, and *T. H. Lewis Jr.*, Special Attorney, were on the brief, for petitioner.

The statute applies to a dealer in municipal bonds as well as to a private investor.

A deduction for interest paid can not be taken as a business expense under § 214 (a) (1) of the Revenue Act of 1921. In the Revenue Acts the two classes of deduction have always been distinguished and have been separately provided for. The very provision as to the exception here

involved shows an intent to allow them as distinct items of deduction.

The statute does not operate to impose a direct tax on income from municipal bonds or to impose an appreciable burden upon the borrowing power of the State. The case differs from *National Life Ins. Co. v. United States*, 277 U. S. 508, in that, there, the exclusion from income of tax-free interest was exactly offset by a corresponding diminution of another item of deduction, while here there is no exact or necessary relation between the exclusion of tax-free interest from income and the denial of a deduction of interest paid to buy or carry tax-free bonds. The limitation does not affect one who receives tax-free interest differently from one who does not.

The limitation is not a burden upon the borrowing power of the States, for it has no relation to the exercise of that power, and has not in fact affected it.

The classification is just and reasonable. Taxpayers have no inherent right to deductions. Congress may classify incomes for purposes of taxation and may limit deductions of interest. Other similar classifications have been made.

If any portion of the interest paid was chargeable to purposes other than buying and carrying tax-free bonds, the amount of it does not appear. In any event, taxing statutes can not be applied with mathematical exactness. That the statute may work an occasional hardship does not condemn it.

Every presumption is in favor of the constitutionality of the Act.

Mr. Thomas O. Marlar, with whom *Mr. E. J. Marshall* was on the brief, for respondent.

This case is controlled by *National Life Ins. Co. v. United States*, 277 U. S. 508.

The actual figures show that it was a distinct disadvantage under the proposed operation of § 214 (a) (2) for the respondent to carry non-taxable securities.

By the operation of that section, the respondent has not only been denied his constitutional rights respecting his non-taxable securities, but has been subjected to greater tax burdens by reason of such ownership.

The principles announced in *National Life Ins. Co. v. United States*, *supra*, were affirmed and applied in *Missouri ex rel. Missouri Ins. Co. v. Gehner*; 281 U. S. 313.

Municipalities can only market their bonds through dealers. The Court will take notice of the general practice. If a special burden or disadvantage is to be imposed on borrowing to buy and carry municipal bonds, the statute clearly and unconstitutionally taxes and burdens municipalities. The effect of the statute is not only to discriminate against and burden municipal bonds in the hands of dealers like respondent, but to burden the municipalities themselves and put them to a disadvantage in marketing their obligations.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

During the year 1922, while respondent Slayton engaged in the business of buying, carrying and selling tax-exempt municipal bonds, he collected \$65,720.06 as interest on securities of that character which he owned. He paid out \$78,153.84 for interest on money borrowed by himself in due course for the purpose of purchasing and carrying exempt securities. In his return showing income received during that year he excluded the interest so collected; and he claimed deduction for the interest paid out on the borrowed money. The Commissioner disallowed the deduction and made a corresponding addi-

tional assessment. Respondent paid the sum demanded thereunder and, after proper preliminary action, sued to recover it.

Determination of the question involved must turn upon the validity, construction and effect of Sections 213 and 214, Revenue Act of 1921, 42 Stat. 227, 237, 238, 239. Their pertinent provisions follow.

"Sec. 213. That for the purposes of this title . . . the term 'gross income'— . . .

"(b) Does not include the following items, which shall be exempt from taxation under this title:

"(4) Interest upon (a) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia;

"Sec. 214 (a) That in computing net income there shall be allowed as deductions:

"(2) All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title; . . ."

By original petition in the District Court, Northern District of Ohio, Slayton asserted that the exception found in paragraph (2), § 214 (a), conflicts with the Federal Constitution in that by necessary operation it causes discrimination against the owners of non-taxable securities and nullifies their immunity from taxation. Also that the act is discriminatory and unconstitutional in that necessary expenses incident to all other kinds of business, including interest paid for purchasing and carrying merchandise and inventories, are allowed as part of the operating cost, whereas deduction of interest paid by plaintiff upon funds borrowed to carry non-taxable securities (an ordinary operating expense) is prohibited. Also

that the act is arbitrary and unconstitutional because it discriminates against plaintiff, whose resources do not permit him to purchase tax-free securities for cash, and in favor of those whose resources permit them to purchase and carry such securities without borrowing.

The Collector unsuccessfully demurred to the petition upon the ground that it states no cause of action. Judgment went for the plaintiff and was affirmed by the Circuit Court of Appeals. Both courts were of opinion that, under the doctrine announced in *National Life Ins. Co. v. United States*, 277 U. S. 508, enforcement of paragraph (2), § 214 (a), would deprive respondent of rights guaranteed by the Federal Constitution.

The challenged judgment must be reversed. The case will be remanded to the District Court with instructions to enter judgment for the Collector.

The circumstances disclosed in *National Life Ins. Co. v. United States* were radically different from those now presented, and the doctrine upon which that case turned does not control the present one. The respondent here was not in effect required to pay more upon his taxable receipts than was demanded of others who enjoyed like incomes solely because he was the recipient of interest from tax-free securities—a result which we found would have followed enforcement of the literal provisions of § 245 (a), Revenue Act 1921, 42 Stat. 227, 261. While guaranteed exemptions must be strictly observed, this obligation is not inconsistent with reasonable classification designed to subject all to the payment of their just share of a burden fairly imposed.

The manifest purpose of the exception in paragraph 2, § 214 (a), was to prevent the escape from taxation of income properly subject thereto by the purchase of exempt securities with borrowed money.

Under the theory of the respondent, "A," with an income of \$10,000 arising from non-exempt securities, by

the simple expedient of purchasing exempt ones with borrowed funds and paying \$10,000 interest thereon, would escape all taxation upon receipts from both sources. It was proper to make provision to prevent such a possibility. The classification complained of is not arbitrary, makes no improper discrimination, does not result in defeating any guaranteed exemption, and was within the power of Congress. The fact that respondent engaged in the business of buying and selling is not important. See *Willcuts v. Bunn*, ante, p. 216.

Reversed.

FULLERTON LUMBER COMPANY *v.* CHICAGO,
MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

No. 47. Argued January 9, 1931.—Decided February 24, 1931.

Where a carrier accepts a check for the amount of freight charges, and a loss is suffered as a result of its unjustifiable delay in presenting it, the bank in the meantime having failed, the question whether the shipper is relieved of liability depends upon the general law applicable to payment by check and not upon any provision of the Interstate Commerce Act. P. 521.

36 F. (2d) 180, reversed

CERTIORARI, 281 U. S. 709, to review a judgment of the Circuit Court of Appeals which affirmed a judgment of the District Court in favor of the railroad company in an action to recover freight charges.

Mr. Stanley S. Gillam for petitioner.

Mr. A. C. Erdall, with whom *Messrs. F. W. Root, O. W. Dynes*, and *C. O. Newcomb* were on the brief, for respondent.