

HANDY & HARMAN *v.* BURNET, COMMISSIONER
OF INTERNAL REVENUE.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 14. Argued October 19, 1931.—Decided November 23, 1931.

Section 240 of the Revenue Act of 1918 provides that "affiliated" corporations shall make a consolidated return of net income and invested capital; and domestic corporations shall be deemed affiliated if substantially all their stock "is owned or controlled by the same interests." *Held:*

1. That the purpose was to require taxes to be levied according to the true net income and invested capital resulting from and employed in a single business enterprise, even though it were conducted by means of more than one corporation, and to secure substantial equality as between shareholders who ultimately bear the burden. P. 140.

2. Such returns will not make against inequality or evasion unless the same interests are the beneficial owners in like proportions of substantially all of the stock of each of such corporations; an indefinite and uncertain control of stock, without title, beneficial ownership or legal means to enforce it, but resting solely on acquiescence, the exigencies of business or other considerations having no binding force, is not sufficient. P. 141.

47 F. (2d) 184, affirmed.

CERTIORARI, 283 U. S. 813, to review a judgment affirming a decision of the Board of Tax Appeals. 17 B. T. A. 980.

Mr. William C. Breed for petitioner.

Where two or more corporations are operating as a business and economic unit, actual control of the stock of the minority is sufficient whether or not based upon legally enforceable means. *Kile & Morgan Co. v. Commissioner*, 41 F. (2d) 925; *J. Rogers Flannery & Co. v. Commissioner*, 42 F. (2d) 11; *Pelican Ice Co. v. Commissioner*, 37 F. (2d) 285; *Great Lakes Hotel Co. v. Com-*

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missioner, 30 F. (2d) 1; *Burnet, Commissioner, v. Wilshire Oil Co.*, 46 F. (2d) 975, C. C. A.-9; *Commissioner v. Richfield Oil Co.*, 42 F. (2d) 360; *Mahoning Coal R. Co. v. United States*, 41 F. (2d) 533; *Eby Shoe Co. v. United States*, 44 F. (2d) 273; *Ullman Mfg. Co. v. United States*, 67 Ct. Cls. 104; *Appeal of Hagerstown Shoe Co.*, 1 B. T. A. 666; *Appeal of Isse Koch & Co.*, 1 B. T. A. 624.

The word "controlled" as it appears in the statute is unqualified. The court below, in restricting that word to a control based upon legally enforceable means, refused to give to it its accepted meaning and made it practically synonymous with the word "owned." Statutory words are presumed to be used in their ordinary sense. The legislature is presumed to have used no superfluous words, and every word in a statute must be accorded a meaning. In construing taxing statutes, it is most important that they be given their literal meaning. *United States v. Merriam*, 263 U. S. 179, 187; *Lynch v. Alworth-Stephen Co.*, 267 U. S. 364, 370.

The legislative history of the Act furnishes abundant evidence that Congress used these words in their broad and natural sense.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher* and *Messrs. Whitney North Seymour, Sewall Key, and John H. McEvers* were on the brief, for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Petitioner claims that it and Hamilton & DeLoss, Inc., were affiliated corporations as defined by § 240 of the Revenue Act of 1918 and that it is entitled to have its net income and invested capital for 1918 and the first month of 1919 determined on the basis of consolidated returns. The Commissioner of Internal Revenue held

them not affiliated, rejected petitioner's claim for abatement for 1918 and asserted a deficiency for 1919. The Board of Tax Appeals approved the Commissioner's determination (17 B. T. A. 980) and upon petition for review the Circuit Court of Appeals affirmed. 47 F. (2d) 184. That decision being in conflict with decisions of other Circuit Courts of Appeals,¹ this Court granted certiorari. 283 U. S. 813.

The pertinent provisions of the section follow (40 Stat. 1081):

"§ 240 (a). That corporations which are affiliated within the meaning of this section shall, under regulations to be prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income and invested capital for the purposes of this title [Title II] and Title III, and the taxes thereunder shall be computed and determined upon the basis of such return: . . .

"(b). For the purpose of this section two or more domestic corporations shall be deemed to be affiliated . . . (2) if substantially all the stock of two or more corporations is owned or controlled by the same interests."

Petitioner carried on the business of dealing in gold and silver bullion and specie and furnishing to silversmiths silver rolled into sheets or coils. In 1916 its officers caused Hamilton & DeLoss, Inc., to be organized, to erect a factory and to take over the work of its stamping depart-

¹ *Ice Service Co. v. Commissioner*, 30 F. (2d) 230, and *Commissioner v. Adolph Hirsch & Co.* 30 F. (2d) 645. (C. C. A.-2.) *United States v. Cleveland, P. & E. R. Co.*, 42 F. (2d) 413. (C. C. A.-6.) *American Auto Trimming Co. v. Lucas*, 37 F. (2d) 801. (App. D. C.)

J. Rogers Flannery & Co. v. Commissioner, 42 F. (2d) 11. (C. C. A.-3.) *Pelican Ice Co. v. Commissioner*, 37 F. (2d) 285. (C. C. A.-5.) *Great Lakes Hotel Co. v. Commissioner*, 30 F. (2d) 1. (C. C. A.-7.) *Burnet v. Wilshire Oil Co.*, 46 F. (2d) 975. (C. C. A.-9.)

ment. During the taxable periods six men owned 93.71 per cent. of the stock of petitioner. The same men owned over 75 per cent. of the stock of Hamilton & DeLoss, Inc. Hamilton did not own or control any of the stock of petitioner. Twenty per cent. of the stock of the new company was issued to him and he became its president. He gave to a bank his notes endorsed by DeLoss to obtain money to pay for the stock. Before the beginning of 1918 he executed an irrevocable stock power to one Higgins, and the latter, by like instrument, assigned the stock to DeLoss, who deposited it with the bank as collateral security for the payment of Hamilton's notes. Hamilton failed to pay and, February 1, 1919, after the expiration of the tax periods, DeLoss paid the notes and took over the stock.

Prior to that time Hamilton attended all the stockholders' meetings but never voted in opposition to the owners of the majority stock of both corporations. Hamilton & DeLoss, Inc., paid him a salary at the rate of \$10,000 per year, but the other officers of that corporation, being officers, directors or employees of the petitioner, received their compensation from the latter, although a large part of their time was devoted to the business of the former. During the taxable periods the corporations were operated as a business unit, and Hamilton & DeLoss, Inc., sustained a net loss.

It may be assumed that the pledge as collateral was also to protect DeLoss as endorser. But it does not appear that, as between him and Hamilton, he was entitled to control voting power, or to have the stock transferred to him of record, or to have any use or benefit therefrom unless and until required to pay the notes. It was not held by or for him. The losses sustained by Hamilton & DeLoss, Inc., did not, in respect of that stock, directly or indirectly result to his disadvantage. The section requires control of substantially all of the stock; control of

the corporations is not enough.² The carrying on of a business unit by two or more corporations does not in itself constitute affiliation. The shares of Hamilton & DeLoss, Inc., owned by the six shareholders did not constitute substantially all of its stock.³ We assume in favor of petitioner that they, through their power over Hamilton's official position and salary, their ability to dominate both corporations or by other means, were in position effectually to influence him in respect of the voting, use or disposition of the stock issued to him, and thus as a practical matter to exert a kind of control called by counsel "actual" to distinguish it from a legally enforceable control.

The purpose of § 240 was, by means of consolidated returns, to require taxes to be levied according to the true net income and invested capital resulting from and employed in a single business enterprise, even though it was conducted by means of more than one corporation. Subsection (b) clearly reflects the intention, by means of such returns, to secure substantial equality as between shareholders who ultimately bear the burden. That intention is shown by the legislative history and was given effect by the regulations contemporaneously promulgated.⁴ It re-

² It was so held in *Ice Service Co. v. Commissioner*, 30 F. (2d) 230, 231; *Commissioner v. Adolph Hirsch & Co.*, 30 F. (2d) 645, 646; *American Auto Trimming Co. v. Lucas*, 37 F. (2d) 801, 803; *United States v. Cleveland, P. & E. R. Co.*, 42 F. (2d) 413, 419; *Commissioner v. Gong Bell Mfg. Co.*, 48 F. (2d) 205, 206; *Onondaga Co. v. Commissioner*, 50 F. (2d) 397, 399.

³ *United States v. Cleveland, P. & E. R. Co.*, 42 F. (2d) 413, 419. *Burnet v. Bank of Italy*, 46 F. (2d) 629, 630. *Jos. Denunzio Fruit Co. v. Commissioner*, 49 F. (2d) 41. *Wadhams & Co. v. United States*, 67 Ct. Cl. 235.

⁴ Treasury Regulations 41, Art. 77; § 1331 (a), Revenue Act of 1921, 42 Stat. 319. § 336, House Bill 12863; § 240 (b), same Bill; Senate Report No. 617 (Senate Documents, Vol. 4, Document 310, 65th Congress, 3d Session); H. R. Conference Report No. 1037, p. 15, same session. Regulations 45 (1920 ed.) Arts. 631, 633.

quires no discussion to show that such returns will not make against inequality or evasion unless the same interests are the beneficial owners in like proportions of substantially all of the stock of each of such corporations. *Alameda Investment Co. v. McLaughlin*, 28 F. (2d) 81. *Montana Mercantile Co. v. Rasmusson*, 28 F. (2d) 916. *Commissioner v. Adolph Hirsch & Co.*, 30 F. (2d) 645, 646. *Commissioner of Internal Revenue v. City Button Works*, 49 F. (2d) 705. Affiliation on any other basis would not make against inequality or evasion. It would require very plain language to show that Congress intended to permit consolidated returns to depend on a basis so indefinite and uncertain as control of stock without title, beneficial ownership or legal means to enforce it. Control resting solely on acquiescence, the exigencies of business or other considerations having no binding force is not sufficient to satisfy the statute.

Judgment affirmed.

UNITED STATES *v.* MURDOCK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 38. Argued October 23, 26, 1931.—Decided November 23, 1931.

1. A judgment of the District Court sustaining, on demurrer, a plea to an indictment, and the effect of which, if not reversed, will be to bar further prosecution for the offense charged, is within the jurisdiction of this Court under the Criminal Appeals Act, without regard to the particular designation or form of the plea, or its propriety. P. 147.
2. The offense of wilfully failing to supply information for the purposes of computing and assessing taxes, under the Revenue Acts of 1926, § 114 (a) and of 1928, § 146 (a), is complete when the information, lawfully demanded, is refused; and prosecution may thereupon be had without first determining, in proceedings to compel