For the reasons given in the opinion in No. 788 the judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

WOOLFORD REALTY CO., INC. *v.* ROSE, COLLECTOR OF INTERNAL REVENUE.

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

No. 582. Argued April 19, 20, 1932.—Decided May 16, 1932.

1. The general principle underlying the income tax statutes ever since the adoption of the Sixteenth Amendment has been the computation of gains and losses on the basis of an annual accounting for the transactions of the year. P. 326.
2. A taxpayer who seeks an allowance for losses suffered in an earlier year, must be able to point to a specific provision of the statute permitting the deduction, and must bring himself within its terms. *Id.*
3. The popular or received import of words furnishes the general rule for the interpretation of public laws. P. 327.
4. A construction that would engender mischief should be avoided. P. 329.
5. Section 206 (b) of the Revenue Act of 1926, permitted any taxpayer who sustained a net loss in one year to deduct it in computing his net income for the next year and, if it exceeded that net income (computed without such deduction), to deduct the excess in computing the net income for the next succeeding ("third") year. By other provisions of the same Act, § 240 (a) and (b) affiliated corporations could make consolidated returns of net income upon the basis of which the tax was to be computed as a unit and then be assessed to the respective corporations in such proportions as they might agree upon or, if they did not agree, then on the basis of the net income properly assignable to each. *Held:*

   (1) Where one of two corporations which became affiliated in 1927 had no net income that year, its net losses for 1925 and 1926 were not deductible in their consolidated return of net income for 1927. P. 326.

   (2) Each of the corporations joined in a consolidated return is none the less a taxpayer. The deduction of net loss is not per-

mitted by § 206 (b) except from the net income of the corporation suffering the loss; and if there would be no net income for the current year though the earlier loss were to be excluded, there is nothing from which a deduction can be made. *Id.*

53 F. (2d) 821, affirmed.

CERTIORARI, 284 U. S. 615, to review the affirmance of a judgment, 44 F. (2d) 856, sustaining a demurrer to the petition in an action to recover money paid as income taxes.

Mr. Wm. A. Sutherland, with whom *Mr. Joseph B. Brennan* was on the brief, for petitioner.

Each separate corporation remains the "taxpayer." But the income of the affiliated corporations is consolidated and the tax is computed on this consolidated net income as though it were the income of a single corporation.

It is immaterial, so far as the practical result is concerned, whether the gross incomes are added together and all the deductions then added together and subtracted, or whether the net income of each separate corporation is computed by taking the gross income of each corporation and subtracting from it the deductions of that particular corporation and then combining the plus and minus figures thus obtained.

The only difficulty with the second view is that it requires the concept of "net income" as a minus quantity; but that difficulty is apparent only. "Net income" under the Act has the meaning defined by the Act, § 232. It is not "commercial net income."

Whichever of the two methods above suggested for the computation of consolidated net income is considered as required by Art. 635 of Regulations 69, the Treasury Department admits that none of the deductions under § 234 (a) is limited to the gross income of the particular corporation on whose account the deduction arose, but that each of them is deductible in full in computing the statutory "net income" of the consolidated group, regardless of whether they would be deductible in computing commercial income or not.

The deduction allowable under § 206 is allowable in computing consolidated net income upon exactly the same terms and to the same extent as the deductions under § 234 and is not limited by the amount of the income of the corporation previously sustaining the "net loss."

There is no provision in § 206 (b) to limit the deduction in the "third year"; and there is no provision for carrying the "net loss" forward farther against the net income of the particular corporation sustaining the "net loss"; and there is no possibility of any double deduction.

The Government's argument is unsound because it fails to take into consideration the limitations placed upon the carrying forward of net losses of an individual corporation by its consolidation with other corporations, which in effect are given the benefit of a loss in a consolidated return. Section 206 (b) does not as a matter of fact provide that only such portion of the "net loss" as shall be necessary to eliminate the net income computed without the benefit of the "net loss" shall be deducted in the second year. It provides that the "net loss" shall be deducted in computing net income for the second year, but it goes ahead and provides that where a full benefit is not received from the loss because of the smallness of the taxpayer's income in the second year it may be carried forward to the third year.

It would be very fanciful to say that the deduction allowed by § 206 (b) to a "taxpayer" is personal to a particular corporation, but that the deductions allowed by § 234 (a) to a "corporation subject to the tax imposed by § 230" are not personal to the particular corporation. Under the clear general terms of §§ 232, 234, 206 and 240, and Art. 635 of Regulations 69, there is absolutely no basis for treating the deduction allowed by § 206 (b) differently from the deductions allowed by § 234 (a) in computing consolidated net income.

That the deduction here claimed is not inappropriate to the general scheme of the income tax act is conclusively shown by regulations under the Revenue Act of 1928.

Equitable considerations impose no greater restriction upon the deduction of "net losses" in consolidated returns than in the return of a single corporation into which another corporation has been merged.

Losses currently realized are not limited by the Commissioner in consolidated returns because in substance suffered in other years or prior to affiliation.

Results under the consolidated returns section and the regulations thereunder, as under other provisions of the revenue acts, are to be determined by language of the statute and regulations and not by considerations of "equity."

Petitioner does not contend that a "net loss" can be deducted in computing a "net loss." A "net loss" from a preceding year is not among the deductions provided in § 206. But this has no bearing upon the question as to whether it can be deducted in computing "net income" so as to give a minus figure to go into consolidated "net income." "Net income," when a minus quantity, is not in any sense under the statute synonymous with "net loss."

Of course if the proper method of computing "consolidated net income" is to take the aggregate of the gross income minus the aggregate of the deductions, a "net loss" is not used to produce a minus quantity for any purpose, and therefore no one would even suggest that a "net loss" is being used in the computation of a "net loss."

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

Normal mode of computation for income-tax purposes is on the basis of an annual accounting of the business transactions during the taxable year. *Burnet* v. *Sanford & Brooks Co.,* 282 U. S. 359.

The privilege granted by § 206 (b), being in the nature of an exemption from the regular scheme, should not be extended by implication. Deduction of net losses of earlier years is limited to elimination of " the net income of the taxpayer . . . computed without such deduction " ; and if " the taxpayer " has no net income computed without such deduction, these net losses may not be availed of in that taxable year, but must be carried forward to the next succeeding year.

Petitioner contends that the "net income " referred to in § 206 may be a minus quantity and that therefore the deduction may be taken even though " the taxpayer's " deductions under § 234 are in excess of the gross income. Congress could not have intended a meaning so repugnant to the common understanding of the word " income."

It is well settled that the affiliated group may not take a deduction in the consolidated return which is not available to the particular member corporations. *First Nat. Bank* v. *United States,* 283 U. S. 142; *Swift & Co.* v. *United States,* 38 F. (2d) 365; *Commissioner* v. *Ginsburg Co.,* 54 F. (2d) 238; Art. 635, Treas. Reg. 69. Corporations filing a consolidated return for a given taxable year may take advantage of net losses sustained by a member of the group before affiliation only to the extent that the member has net income for that year.

We find no inconsistency between this position and the fact, urged by petitioner, that all the deductions under § 234 may be taken upon the consolidated return regardless of whether the particular corporations had net income.

There is nothing to countenance the view that the affiliated group becomes "the taxpayer" within § 206. The effect of the filing of the consolidated return is merely to make the group a tax-computing unit. The group does not itself become the taxable unit. The tax is assessed "upon the respective affiliated corporations." It is well settled that the members of the group remain the "taxpayers."

A basic reason for the enactment of § 240 was to prevent tax evasion. Sen. Rep. No. 617, 65th Cong., 3d Sess., p. 9; *Handy & Harman* v. *Burnet,* 284 U. S. 136. The affiliation provisions were obviously not designed to permit tax evasion by the purchase and sale of tax losses.

The primary purpose of the consolidated return provision was to require taxes to be levied according to the true net income resulting from a single business enterprise, even though it was conducted by means of more than one corporation. *Handy & Harman* v. *Burnet,* 284 U. S. 136.

By leave of Court, briefs of *amici curiae* were filed as follows: By *Messrs. Louis Titus* and *Henry M. Ward;* by *Messrs. Frederick L. Pearce* and *George M. Morris;* by *Messrs. Robert N. Miller* and *John G. Buchanan;* by *Messrs. Alfred S. Weill, Hugh Satterlee,* and *Albert S. Lisenby;* by *Mr. Rollin Browne;* and by *Messrs. Kingman Brewster, James S. Y. Ivins, Percy W. Phillips, O. R. Folsom-Jones,* and *Richard B. Barker.*

MR. JUSTICE CARDOZO delivered the opinion of the Court.

Petitioner and Piedmont Savings Company are separate corporations organized in Georgia. They became affiliated in 1927 when the petitioner became the owner of 96% of the Piedmont stock. In March, 1928, the two corporations filed a consolidated income tax return for 1927 under § 240 of the Revenue Act of 1926. Revenue Act of 1926, c. 27, 44 Stat. 9, 46. During 1927, the petitioner had a net taxable income of $36,587.62, and Piedmont had suffered during the same year a net loss of $453.80. Before its affiliation with the petitioner, it had suffered other and greater losses. Its net loss in 1925 was $43,478.25 and in 1926 $410.82, a total for the two years of $43,889.07. In the assessment of the tax for 1927, the commissioner deducted from the petitioner's net income for that year the loss of $453.80 suffered by its affiliated corporation in the course of the same year. The consolidated net taxable income as thus adjusted was $36,133.82, on which a tax of $5,026.22 was assessed and paid. On the other hand, the commissioner refused to deduct the Piedmont losses suffered in 1925 and 1926 before the year of affiliation. The deductions, if allowed, would have wiped out the tax. A refund having been refused, the petitioner brought this suit against the Collector to recover the moneys paid. The District Court sustained a demurrer to the petition, 44 F. (2d) 856, and the Court of Appeals affirmed. 53 F. (2d) 821. The case is here on certiorari.

Section 240 (a) of the Revenue Act of 1926 provides that "corporations which are affiliated within the meaning of this section may, for any taxable year, make separate returns or, under regulations prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income for the purpose of this title, in which case the taxes thereunder shall be computed and determined upon the basis of such return."

Section 240 (b) provides that "in any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or, in the absence of any such agreement, then on the basis of the net income properly assignable to each. . . ."

The general principle underlying the income tax statutes ever since the adoption of the Sixteenth Amendment has been the computation of gains and losses on the basis of an annual accounting for the transactions of the year. *Burnet* v. *Sanford & Brooks Co.*, 282 U. S. 359, 363. A taxpayer who seeks an allowance for losses suffered in an earlier year, must be able to point to a specific provision of the statute permitting the deduction, and must bring himself within its terms. Unless he can do this, the operations of the current year must be the measure of his burden.

The only section of the revenue act that made allowance in 1927 for the losses of earlier years was § 206 (b), upon which this controversy hinges. Its provisions are as follows:

"If, for any taxable year, it appears upon the production of evidence satisfactory to the commissioner that any taxpayer has sustained a net loss, the amount thereof shall be allowed as a deduction in computing the net income of the taxpayer for the succeeding taxable year (hereinafter in this section called 'second year'), and if such net loss is in excess of such net income (computed without such deduction), the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding taxable year (hereinafter in this section called 'third year'); the deduction in all cases to be made under regulations prescribed by the commissioner with the approval of the Secretary."

Under that section of the statute, the losses suffered by the Piedmont Company in 1925 might have been deducted from its net income in 1926, and might thereafter, if not extinguished, have been deducted to the extent of the excess from its net income in 1927, the year in which its shares were acquired by the petitioner. But the Piedmont Company did not have any net income in 1927. Its operations for that year resulted in a loss. There was therefore nothing from which earlier losses could be deducted, for the net income without any such deductions was still a minus quantity. The tax for the year was nothing, and the losses of other years could not serve to make it less. The petitioner would have us hold that the minus quantities for all the years should be added together, and the total turned over by the company suffering the loss as an allowance to be made to the company realizing the gain. In that view of the statute, a net loss for a taxable year becomes for the purpose of determining the burdens of affiliated corporations, though not for any other, the equivalent of a net income, and deductions which the statute has said shall be made only from net income, may, none the less, by some process of legerdemain, be subtracted from the loss.

There are two fundamental objections to this method of computation. In the first place, an interpretation of net income by which it is also a net loss involves the reading of the words of the statute in a strained and unnatural sense. The metamorphosis is too great to be viewed without a shock. Certainly the average man suffering a net loss from the operations of his business would learn with surprise that within the meaning of the Congress the amount of his net loss was also the amount of his net income. "The popular or received import of words furnishes the general rule for the interpretation of public laws." *Maillard* v. *Lawrence,* 16 How. 251, 261; *Old Colony R. Co.* v. *Commissioner,* 284 U. S. 552, 560. In the second place, the statute has given notice to the taxpayer that the aggregate of minus quantities is not to be turned over as a credit to an affiliated company, but is to be used in another way. If the loss for the first year is more than the income for the second, the excess is to be carried over to a third year, and deducted from the net income, if any, returnable for that year, at which time the process of carrying over is to end. Cf. report of Senate Committee in charge of the revenue act of 1924, Senate Report No. 398, 68th Congress, 1st Session, p. 20. Obviously, the direction to apply the excess against the income of a later year is inconsistent with a purpose to allow it to an affiliated company as an immediate deduction from income of the current year. Adherence to the one practice excludes adherence to the other. Cf. Treasury Regulations 69 promulgated under the act of 1926, Arts. 634, 635, 1622. The fact is not to be ignored that each of two or more corporations joining (under § 240) in a consolidated return is none the less a taxpayer. *Commissioner* v. *Ginsburg Co.*, 54 F. (2d) 238, 239. By the express terms of the statute (§ 240 b) the tax when computed is to be assessed, in the absence of agreement to the contrary, upon the respective affiliated corporations " on the basis of the net income properly assignable to each." " The term ' taxpayer ' means any person subject to a tax imposed by this Act." Revenue Act of 1922, § 2a (9). A corporation does not cease to be such a person by affiliating with another.

The petitioner insists that a construction of § 206 (b), excluding the allowance of past losses except as a set-off against the income of the company sustaining them, is inconsistent with the accepted construction of § 234 of the same act whereby the deductions there enumerated are made from the net income exhibited by the consolidated return without reference to their origin in the business of one company or another. Section 234 provides that in computing the net income of corporations subject to a tax there shall be allowed as deductions "(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . . (2) All interest paid or accrued within the taxable year on its indebtedness . . . ; (3) Taxes paid or accrued within the taxable year . . . .; (4) Losses sustained during the taxable year and not compensated for by insurance or otherwise. . . . ; (5) Debts ascertained to be worthless and charged off within the taxable year." The points of difference between the allowances under § 206 (b) upon the one hand and those under § 234 upon the other are important and obvious. The deductions allowable under § 234 represent expenses paid or accrued or losses suffered during the same taxable year covered by the return. They are thus included in the net income according to the fundamental concept of such income reflected in the statute, instead of falling within an exception which, irrespective of its precise extension, is a departure from the general scheme. Even more decisive is the consideration that there is nothing in § 234 prohibiting the allowance by one unit of its current losses and expenses as a deduction for the benefit of the affiliated group, nor any statement that the use to be made of them shall follow other lines. On the other hand, § 206 (b) provides, as we have seen, that the excess of loss remaining over the current net income of the taxpayer who has suffered it shall be carried over into the next year and if need be into a third, and thereafter disregarded. Subtle arguments have been addressed to us in support of the contention that the loss of one affiliated company suffered in earlier years may be allocated to the other without infraction of the rule that the loss shall be carried forward. They are not lacking in plausibility, but we cannot hold that they comport with the directions of the statute "if we take words in their plain popular meaning as they should be taken here." *United States* v. *Kirby Lumber Co.*, 284 U. S. 1, 3.

Doubt, if there can be any, is not likely to survive a consideration of the mischiefs certain to be engendered by any other ruling. A different ruling would mean that a prosperous corporation could buy the shares of one that had suffered heavy losses and wipe out thereby its own liability for taxes. The mind rebels against the notion that Congress in permitting a consolidated return was willing to foster an opportunity for juggling so facile and so obvious. Submission to such mischiefs would be necessary if the statute were so plain in permitting the deduction as to leave no room for choice between that construction and another. Expediency may tip the scales when arguments are nicely balanced. True, of course, it is that in a system of taxation so intricate and vast as ours there are many other loopholes unsuspected by the framers of the statute, many other devices whereby burdens can be lowered. This is no reason, however, for augmenting them needlessly by the addition of another. The petitioner was prosperous in 1927, and so far as the record shows for many years before. Piedmont was unfortunate in 1927, and unfortunate in the years preceding. The petitioner, affiliating in 1927, has been allowed the loss suffered by Piedmont through the business of that year as a permissible deduction from the consolidated balance. What it claims is a right to deduct the losses that were suffered in earlier years when the companies were separate. To such an attempt the reaction of an impartial mind is little short of instinctive that the deduction is unreasonable and cannot have been intended by the framers of the statute. Analysis of the sections shows that there is no gap between what they wrote and what in reason they must have meant.

The petitioner refers us to the Revenue Act of 1928 (45 Stat. 791, 835) and to Treasury Regulations adopted thereunder as supporting its position. These provisions were adopted after the liability for the tax of 1927 had accrued, and they can have little bearing upon the meaning to be given to statutes then in force. The Revenue Act of 1928 (§ 141b) protects against unfair evasions in the making of consolidated returns by increasing the discretionary power of the Commissioner in prescribing regulations. "The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of an affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability." Under the authority so conferred the Commissioner has adopted the following regulation (Treasury Regulations 75, art. 41), applicable only to the taxable year 1929, and to taxable years thereafter:

"A net loss sustained by a corporation prior to the date upon which its income is included in the consolidated return of an affiliated group (including any net loss sustained prior to the taxable year 1929) shall be allowed as a deduction in computing the consolidated net income of such group in the same manner, to the same extent, and upon the same conditions as if the consolidated income were the income of such corporation; but in no case in which the affiliated status is created after January 1, 1929, will any such net loss be allowed as a deduction in excess of the cost or the aggregate basis of the stock of such corporation owned by the members of the group."

The provision in this regulation limiting the deductions to the cost or value of the stock will make it profitless hereafter to purchase stock for the purpose of gaining the benefit of deductions in excess of what is paid.

In holding that the Piedmont losses of 1925 and 1926 were properly excluded from the consolidated return, we are in accord with the preponderance of authority in the other federal courts. *Swift & Co.* v. *United States*, 38 F. (2d) 365; *Sweets Co.* v. *Commissioner*, 40 F. (2d) 436;

Commissioner v. *Ginsburg Co.*, 54 F. (2d) 238. Only one decision has been cited to us as favoring a different view. *National Slag Co.* v. *Commissioner*, 47 F. (2d) 846.

The judgment is

Affirmed.

PLANTERS COTTON OIL CO., INC., ET AL. *v.* HOPKINS, COLLECTOR OF INTERNAL REVENUE.

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

No. 672. Argued April 20, 1932.—Decided May 16, 1932.

The owner of substantially all of the stock of two joint stock associations caused their assets to be transferred to three corporations which he formed for carrying on the business and of which he owned substantially all the shares. *Held* that in a consolidated income tax return of all the companies net losses suffered by the joint stock associations during the year preceding the affiliation were not deductible. *Woolford Realty Co.* v. *Rose, ante,* p. 319. P. 333.

53 F. (2d) 825, affirmed.

CERTIORARI, 285 U. S. 533, to review the affirmance of a judgment, 47 F. (2d) 659, dismissing the petition in an action to recover an alleged overpayment of income taxes.

Messrs. J. M. Burford and *Wm. A. Sutherland,* with whom *Messrs. Joe A. Worsham* and *J. L. Gammon* were on the brief, for petitioners.

Mr. Whitney North Seymour, with whom *Solicitor General Thacher, Assistant Attorney General Youngquist,* and *Messrs. Sewall Key, Norman D. Keller,* and *Wm. H. Riley, Jr.,* were on the brief, for respondent.

Messrs. Frederick H. Wood, Hoyt A. Moore, and *A. James Slater,* by leave of Court, filed a brief as *amici curiae.*