plicable regulation. As the petitioner points out, Congress has, in the Revenue Acts of 1936 and 1938, retained § 22 (a) of the 1928 Act *in haec verba.* From this it is argued that Congress has approved the amended regulation. It may be that by the passage of the Revenue Act of 1936 the Treasury was authorized thereafter to apply the regulation in its amended form. But we have no occasion to decide this question since we are of opinion that the reënactment of the section, without more, does not amount to sanction of retroactive enforcement of the amendment, in the teeth of the former regulation which received Congressional approval, by the passage of successive Revenue Acts including that of 1928.

The judgment is

Affirmed.

FIRST CHROLD CORPORATION *v.* COMMISSIONER OF INTERNAL REVENUE.

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

No. 385. Argued January 6, 1939.—Decided January 30, 1939.

Decided on the authority of *Helvering* v. *R. J. Reynolds Tobacco Co., ante,* p. 110.
97 F. 2d 22, reversed.

CERTIORARI, 305 U. S. 589, to review the affirmance of a decision of the Board of Tax Appeals sustaining a determination of deficiency in income tax.

Mr. John E. McClure, with whom *Mr. Robert N. Miller* was on the brief, for petitioner.

Solicitor General Jackson, Assistant Attorney General Morris, and *Messrs. Sewall Key, Paul A. Freund,* and *Morton K. Rothschild* submitted for respondent.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

This case presents the same question as that involved in No. 328, *Helvering* v. *R. J. Reynolds Tobacco Co.*, *ante*, p. 110. Certiorari was granted because of a conflict in the decisions below. The statutory provision under which this case arises is § 22 (a) of the Revenue Act of 1932, which is the same as the corresponding section of the Revenue Act of 1928. The regulations, original and amended, have the same relation to this controversy as to that in No. 328. The Board of Tax Appeals sustained a determination of a deficiency in the petitioner's tax for the calendar year 1933 and the Circuit Court of Appeals affirmed the Board's ruling.[1]

For the reasons given in No. 328 the judgment must be

Reversed.

TENNESSEE ELECTRIC POWER CO. ET AL. *v.* TENNESSEE VALLEY AUTHORITY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

No. 27. Argued November 14, 15, 1938.—Decided January 30, 1939.

1. The principle permitting suit against an agent of the Government to restrain execution of an unconstitutional statute protects only legal rights. P. 137.
2. Franchises to be a corporation and to function as a public utility and non-exclusive franchises to occupy and use public property and places for service of the public, do not grant freedom from competition. P. 138.
3. The validity of a statutory grant of power can not be challenged merely because its exercise results in harmful competition. The damage is *damnum absque injuria*. P. 139.

---

[1] 97 F. 2d 22.