

Opinion of the Court.

311 U.S.

CRANE-JOHNSON COMPANY *v.* HELVERING,
COMMISSIONER OF INTERNAL REVENUE.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

No. 8. Argued October 23, 1940.—Decided November 12, 1940.

Decided on the authority of *Helvering v. Northwest Steel Rolling Mills*, *ante*, p. 46.

105 F. 2d 740, affirmed.

CERTIORARI, 309 U. S. 692, to review the affirmance of a decision of the Board of Tax Appeals, 38 B. T. A. 1355, which sustained the Commissioner's determination of a tax deficiency.

Mr. John E. Hughes for petitioner.

Mr. Richard H. Demuth, with whom *Solicitor General Biddle*, *Assistant Attorney General Clark*, and *Mr. Sewall Key* and *Miss Helen R. Carloss* were on the brief, for respondent.

By leave of Court, *Mr. Thomas H. Remington* filed a brief on behalf of *Bastian Brothers Company*, as *amicus curiae*, in support of petitioner.

MR. JUSTICE BLACK delivered the opinion of the Court.

Because of a previously existing deficit, petitioner corporation was prohibited by state law¹ from distributing as dividends its profits earned in 1936. Notwithstanding this state prohibition, the Commissioner held respondent liable under the 1936 Revenue Act² for surtax on undistributed profits. The Board of Tax Appeals sustained

¹ "The directors of corporations must not make dividends except from the surplus profits arising from the business thereof . . ." N. D. Comp. Laws (Supp. 1925) § 4543.

² 49 Stat. 1648, 1655.

the Commissioner,³ and the Circuit Court of Appeals affirmed.⁴ On a similar state of facts the Court of Appeals for the Ninth Circuit held undistributed profits exempt from surtax.⁵ We granted certiorari in both cases to resolve this conflict.⁶ The legal questions here presented are in all respects the same as those presented in *Helvering v. Northwest Steel Rolling Mills*, ante, p. 46, and on the authority of that case the decision below is

Affirmed.

J. E. RILEY INVESTMENT CO. v. COMMISSIONER
OF INTERNAL REVENUE.

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

No. 50. Argued October 25, 1940.—Decided November 12, 1940.

1. In the computation of net income in the case of mines, § 114 (b) (4) of the Revenue Act of 1934 permits deductions for depletion on a percentage basis provided that the taxpayer in making his "first return" under the Act elects to avail of that basis. *Held* that an amended return, filed after the expiration of the statutory period for filing the original return, including such extension of the period as the Commissioner was empowered to grant, was not a "first return" within the meaning of the section. P. 57.
 2. That in the circumstances of this case the construction thus given the statute works a hardship on the taxpayer, may be the basis of an appeal to Congress for relief but not to the courts. P. 59.
 3. The judgment of the Circuit Court of Appeals affirming the decision of the Board of Tax Appeals in this case was correct and must be sustained whether or not the court gave a wrong reason for its action. P. 59.
- 110 F. 2d 655, affirmed.

³ 38 B. T. A. 1355.

⁴ 105 F. 2d 740.

⁵ *Northwest Steel Rolling Mills v. Commissioner*, 110 F. 2d 286.

⁶ 309 U. S. 692; *post*, p. 629.