

least a portion of that which they would have received as his heirs in the absence of a will. Thus, as a result of the compromise, property did pass from the decedent to his heirs at law, and it was held that, as they were his heirs, they took by inheritance in contemplation of the Revenue Act. Here, nothing passed by virtue of the exercise of the power and no portion of the decedent's estate passed under the law of descent and distribution, or as property would have passed under that law from the decedent to the beneficiaries of the compromise.

We are at a loss to understand how the Board of Tax Appeals can be permitted to find that any taxable transfer occurred within the meaning of § 302 of the Revenue Act of 1926. Moreover, the compromise was motivated by considerations other than the invalidity of the power, for the claims of the decedent's children had a large influence in bringing it about. We cannot perceive how the Board can calculate the relative weight of these conflicting claims and thus assess as taxable an apportioned part of the total amount the decedent's collateral relatives received, and thus determine what part of the property passed under the power and what part did not.

MAGRUDER, COLLECTOR OF INTERNAL REVENUE, v. WASHINGTON, BALTIMORE & ANNAPOLIS REALTY CORP.

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

No. 601. Argued March 9, 10, 1942.—Decided April 13, 1942.

1. A corporation which was organized for the purpose of liquidating the properties of another corporation, and which, since its organization, has been carrying on negotiations for the sale of the properties, selling them from time to time as satisfactory offers are received, and renting unsold properties under short term leases in an attempt to earn the carrying charges pending ultimate sale, was "carrying on

or doing business" within the meaning of provisions of the Revenue Act of 1935, and subsequent Revenue Acts, imposing a tax on the capital stock of every domestic corporation "carrying on or doing business" during the tax year. P. 71.

2. The provision of the Treasury Regulations that "doing business" within the meaning of the capital stock tax provisions of the Revenue Act of 1935, and subsequent Revenue Acts, includes activities of a corporation engaged in "liquidation . . . of properties taken over from another corporation" is valid and applicable to the corporation here involved. P. 72.

120 F. 2d 441, reversed.

CERTIORARI, 314 U. S. 601, to review the affirmance of a judgment for the taxpayer, 35 F. Supp. 340, in a suit for refund of capital stock taxes.

Mr. Robert L. Stern, with whom *Solicitor General Fahy*, *Assistant Attorney General Clark*, and *Messrs. J. Louis Monarch* and *Hubert L. Will* were on the brief, for petitioner.

Messrs. Richard F. Cleveland and *Ambler H. Moss* for respondent.

MR. JUSTICE MURPHY delivered the opinion of the Court.

This is a suit for refund of capital stock taxes paid by respondent for the years ending June 30, 1936, through 1939. We are asked to determine whether respondent was "carrying on or doing business" within the meaning of § 105 (a) of the Revenue Act of 1935, c. 829, 49 Stat. 1017, and subsequent acts, which provide:

"For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1.40 for each \$1,000 of the adjusted declared value of its capital stock."¹

¹ This language has not been changed, except for the tax periods and the amount of the tax, in the subsequent acts covering the tax period

Respondent was organized in 1935 with broad corporate powers under the laws of Maryland by the protective committee for the bondholders of the defunct Washington, Baltimore & Annapolis Railway Company. It was formed for the purpose of liquidating certain properties, formerly belonging to the Railway Company, which the committee had acquired through foreclosure. Among the properties received by respondent from the committee were certain rights of way, easements, terminal properties, and other real estate located in Baltimore, Annapolis, and Washington, as well as at the other points along the line of the railroad, and the stock of a realty holding company which owned another realty company, both of which had been subsidiaries of the Railway Company for the purpose of holding legal title to real estate. The value of the properties received in 1935, as shown by respondent's balance sheet, was \$419,250.

Since its incorporation respondent has been carrying on negotiations for the sale of the properties acquired, selling them from time to time as satisfactory offers were received, and renting unsold properties under short term leases in an attempt to earn the carrying charges pending ultimate sale. Receipts from sales during the four year period here in question were approximately \$675,000, and rentals amounted to \$136,000. At the end of this period respondent's book still showed properties worth \$122,000. All net income, except small reserves for contingencies, was distributed as received to the stockholders, former bondholders of the Railway Company.

Respondent paid capital stock taxes for the four years in question, and then brought this suit for refund of the payments in the District Court. The court held that, because respondent was a liquidating corporation, it was

here in question. See § 401, Revenue Act of 1936, c. 690, 49 Stat. 1733; § 601, Revenue Act of 1938, c. 289, 52 Stat. 565. The provision is now incorporated in § 1200 (a) of the Internal Revenue Code.

not "carrying on or doing business" within the meaning of the capital stock tax and was therefore exempt. In so holding, the court refused to give effect to the Treasury regulation claimed to be applicable.² 35 F. Supp. 340. The Circuit Court of Appeals affirmed. 120 F. 2d 441. We granted certiorari because of the importance of the question in the administration of the revenue acts. 314 U. S. 601.

The regulation, Article 43 (a) (5), provides:

"ART. 43. *Illustrations.*—(a) *General.*—In general 'doing business' includes any activities of a corporation whether it engages in—

"(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property;"

If the regulation is both applicable and valid, respondent manifestly cannot prevail.

On the question of applicability there can be no doubt, for the language of the regulation precisely describes respondent's activities. We find without substance respondent's assertions that Article 43 (b) (2)³ is inconsistent with Article 43 (a) (5) and that it more exactly fits the facts

² Article 43 (a) (5) of Treasury Regulations 64 (1936 Edition).

³ "*Exceptions.*—Ordinarily the exceptions to 'doing business' are restricted to limited activities of a corporation, such as—

"(2) the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property."

of this case. During the period in question, respondent did not fall into that state of quietude, covered by the specific language of Article 43 (b) (2), in which it was merely owning and holding specific property and distributing the resulting proceeds. See *Zonne v. Minneapolis Syndicate*, 220 U. S. 187; cf. *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 516-17. On the contrary, respondent was actively engaged in fulfilling the purpose of its creation, the liquidation of its holdings for the best obtainable price.

Article 43 (a) (5) is both a contemporary and a long standing administrative interpretation, having been in effect in substantially the same form since 1918, except for the period from 1926 to 1933 when the tax was not imposed.⁴ We are of opinion that it is valid, as well as applicable. The crucial words of the statute, "carrying on or doing business," are not so easy of application to varying facts that they leave no room for administrative interpretation or elucidation. To be sure, in many, if not in most, instances the factual situation will be so extreme as to leave no doubt whether a corporation is doing business or not. But the nuances of facts between the two ex-

⁴ Article 5 of Treasury Regulations 38 (1918 ed.), issued under the Revenue Act of 1916, c. 463, 39 Stat. 756, provided:

" . . . A corporation formed to take over miscellaneous stocks, bonds, and other property, to negotiate the sale of the various items from time to time as opportunity and judgment dictate, and to distribute the proceeds from time to time as liquidation is effected, is organized for profit and while engaged in such liquidation is carrying on business."

This provision, with minor changes in wording, was continued in Treasury Regulations 50 (1919 ed.), Art. 18; (1920 ed.), Art. 11; Treasury Regulations 64 (1922 ed.), Art. 12; (1924 ed.), Art. 12; (1933 ed.), Art. 22; (1934 ed.), Art. 33. In 1936 Treasury Regulations 64 were reorganized and the substance of the provision quoted above was continued as Art. 43 (a) (5) of the 1936 edition. No change was made in the 1938 edition.

tremes have produced a nebulous field of confusion which has been recognized by courts striving to fit close cases into one category or the other.⁵ Interpretative regulations, such as Article 43 (a) (5), are appropriate aids toward eliminating that confusion and uncertainty. Cf. *Helvering v. Wilshire Oil Co.*, 308 U. S. 90, 102; *Textile Mills Securities Corp. v. Commissioner*, 314 U. S. 326.

Reversed.

GREGG CARTAGE & STORAGE CO. ET AL. v.
UNITED STATES ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO.

No. 535. Argued March 4, 1942.—Decided April 13, 1942.

1. The provision of § 206 (a) of the Motor Carrier Act, 1935, granting "grandfather" rights to common carriers "in bona fide operation on June 1, 1935, and since that time," requires that the service shall have been continuous (except for interruptions over which the carrier "had no control") from June 1, 1935, until the time of the hearing by the Commission on the application. P. 78.
2. The Commission was warranted in holding as a matter of law that an interruption of service caused by the carrier's bankruptcy was not one over which the carrier "had no control" within the meaning of the Act; and it was not required to go behind the adjudication and examine into the particular causes of the bankruptcy. P. 79.

⁵ See *Eaton v. Phoenix Securities Co.*, 22 F. 2d 497, 498; *United States v. Hotchkiss Redwood Co.*, 25 F. 2d 958; *Harmar Coal Co. v. Heiner*, 34 F. 2d 725, 727; *Argonaut Consolidated Mining Co. v. Anderson*, 52 F. 2d 55, 56; *American Investment Securities Co. v. United States*, 112 F. 2d 231, 232.

The decisions of this Court illustrate the difficult problems of classification encountered. See *Cedar Street Co. v. Park Realty Co.*, 220 U. S. 107, 170; *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503; *Edwards v. Chile Copper Co.*, 270 U. S. 452; *Phillips v. International Salt Co.*, 274 U. S. 718—with which compare *Zonne v. Minneapolis Syndicate*, 220 U. S. 187; *McCoach v. Minehill Railway Co.*, 228 U. S. 295; *United States v. Emery, Bird, Thayer Co.*, 237 U. S. 28.