

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED DOMINION INDUSTRIES, INC. v. UNITED STATES**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

No. 00–157. Argued March 26, 2001– Decided June 4, 2001

Under the Internal Revenue Code of 1954, a “net operating loss” (NOL) results from deductions in excess of gross income for a given year. 26 U. S. C. §172(c). A taxpayer may carry its NOL either backward or forward to other tax years in order to set off its lean years against its lush years. §172(b)(1)(A). The carryback period for “product liability loss[es]” is 10 years. §172(b)(1)(I). Because a product liability loss (PLL) is the total of a taxpayer’s product liability expenses (PLEs) up to the amount of its NOL, §172(j)(1), a taxpayer with a positive annual income, and thus no NOL, may have PLEs but can have no PLL. An affiliated group of corporations may file a single consolidated return. §1501. Treasury Regulations provide that such a group’s “consolidated taxable income” (CTI), or, alternatively, its “consolidated net operating loss” (CNOL), is determined by taking into account several items, the first of which is the “separate taxable income” (STI) of each group member. In calculating STI, the member must disregard items such as capital gains and losses, which are considered, and factored into CTI or CNOL, on a consolidated basis. Petitioner’s predecessor in interest, AMCA International Corporation, was the parent of an affiliated group filing consolidated returns for the years 1983 through 1986. In each year, AMCA reported CNOL exceeding the aggregate of its 26 individual members’ PLEs. Five group members with PLEs reported positive STIs. Nonetheless, AMCA included those PLEs in determining its PLL for 10-year carryback under a “single-entity” approach in which it compared the group’s CNOL and total PLEs to determine the group’s total PLL. In contrast, the Government’s “separate-member” approach compares each affiliate’s STI and PLEs in order to determine whether each af-

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affiliate suffers a PLL, and only then combines any PLLs of the individual affiliates to determine a consolidated PLL. Under this approach, PLEs incurred by an affiliate with positive STI cannot contribute to a PLL. In 1986 and 1987, AMCA petitioned the Internal Revenue Service for refunds based on its PLL calculations. The IRS ruled in AMCA's favor, but was reversed by a joint congressional committee that controls refunds exceeding a certain threshold. AMCA then filed this refund action. The District Court applied AMCA's single-entity approach, concluding that so long as the affiliated group's consolidated return reflects CNOL in excess of the group's aggregate PLEs, the total of those expenses is a PLL that may be carried back. In reversing, the Fourth Circuit applied the separate-member approach.

Held: An affiliated group's PLL must be figured on a consolidated, single-entity basis, not by aggregating PLLs separately determined company by company. Pp. 5–15.

(a) The single-entity approach to calculating an affiliated group's PLL is straightforward. The first step in applying §172(j)'s definition of PLL requires a taxpayer filing a consolidated return to calculate an NOL. The Code and regulations governing affiliated groups of corporations filing consolidated returns provide only one definition of NOL: "consolidated" NOL. The absence of a separate NOL for a group member in this context is underscored by the fact that the regulations provide a measure of separate NOL in a different context, for any year in which an affiliated corporation files a separate return. The exclusive definition of NOL as CNOL at the consolidated level is important. Neither the Code nor the regulations indicate that the essential relationship between NOL and PLL for a consolidated group differs from their relationship for a conventional corporate taxpayer. Comparable treatment of PLL for the group and the conventional taxpayer can be achieved only if PLEs are compared with the loss amount at the consolidated level after CNOL has been determined, for CNOL is the only NOL measure for the group. An approach based on comparable treatment is also (relatively) easy to understand and to apply. Pp. 5–7.

(b) The case for the separate-member approach is not so easily made. Because there is no NOL below the consolidated level, there is nothing for comparison with PLEs to produce a PLL at any stage before the CNOL calculation. Thus, a separate-member proponent must identify some figure in the consolidated return scheme with a plausible analogy to NOL at the affiliated corporations level. An individual member's STI is not analogous, for it excludes several items that an individual taxpayer would normally count in computing income or loss, but which an affiliated group may tally only at the con-

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solidated level. The “separate net operating loss,” Treas. Reg. §1.1502–79(a)(3), used by the Fourth Circuit fares no better. Although that figure accounts for some gains or losses that STI does not, §1.1502–79(a)(3)’s purpose is to allocate CNOL to an affiliate member seeking to carry back a loss to a year in which the member was not part of the consolidated group. Such returns are not at issue here. Pp. 8–11.

(c) Several objections to the single-entity approach— that it allows affiliated groups a double deduction, that the omission of PLEs from the series of items that Treas. Reg. §1.1502–12 requires to be tallied at the consolidation level indicates that PLEs were not meant to be tallied at that level, and that the single-entity approach would permit significant tax avoidance abuses— are rejected. Pp. 11–15.

208 F. 3d 452, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, SCALIA, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a concurring opinion. STEVENS, J., filed a dissenting opinion.