

No. 3615

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

W. H. LAWRENCE,

Plaintiff in Error,

vs.

JUSTUS S. WARDELL, United States
Collector of Internal Revenue for the
First District of California,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR

FRANK M. SILVA,

United States Attorney.

E. M. LEONARD,

Assistant U. S. Attorney.

Attorneys for Defendant in Error.

CARL A. MAPES,

Solicitor of Internal Revenue,

FERDINAND TANNENBAUM,

JOHN M. STERNHAGEN,

Special Attorneys,

Bureau of Internal Revenue,

Of Counsel.

No. 3615

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

W. H. LAWRENCE,

Plaintiff in Error,

vs.

JUSTUS S. WARDELL, United States
Collector of Internal Revenue for the
First District of California,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR

I.

STATEMENT OF THE CASE.

The case arose on complaint of the plaintiff in error to recover \$2175.58 income taxes and interest alleged to have been erroneously collected by the defendant in error under the Revenue Act of 1918. Defendant in error filed a general demurrer which was sustained by the District Court on a memorandum opinion of Judge Rudkin handed down November 16, 1920. The plaintiff brings error.

II.

STATEMENT OF FACTS.

The plaintiff, a native born citizen of the United States, was during all of the year 1918 and until March 1919 a resident of the Philippine Islands. In January, 1919, before sailing from Manila he there paid income taxes amounting to \$281.43, representing the full amount of taxes on his 1918 income computed in accordance with the Revenue Act of 1916 as amended by the act of 1917. In March, 1919, he established his residence in San Francisco and was required by defendant in July to pay income taxes computed in accordance with the Revenue Act of 1918, credit being given for the amount of taxes already paid in Manila. The payment was made under protest, and claim for refund was duly filed and rejected.

III.

STATUTES INVOLVED.

Revenue Act of 1916, approved September 8, 1916, Title I., Part I.

“Sec. 1. (a) That there shall be levied, assessed, collected and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net

income received in the preceding calendar year from all sources within the United States by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

“Sec. 23. That the provisions of this title shall extend to Porto Rico and the Philippine Islands: Provided, That the administration of the law, and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of these governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general Governments thereof, respectively; Provided further, That the jurisdiction in this title conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands. * * * ”.

Revenue Act of 1917, approved October 3, 1917.

“Sec. 1. That in addition to the normal tax imposed by the subdivision (a) of section one of the Act entitled ‘An Act to increase the revenue, and for other purposes,’ approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter.

“Sec. 5. That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively.”

Revenue Act of 1918, approved February 24, 1919,
Title II, Part II.

“Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates: * * * .

“Sec. 211 (a). That, in lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 and by section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following * * * .

“Sec. 222. (a) That the tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income de-

rived from sources therein, or to any possession of the United States; and * * * .

“Sec. 260. That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.

“Sec. 261. That in Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended.

Returns shall be made and taxes shall be paid under Title I of such Act in Porto Rico or the Philippine Islands as the case may be by (1) every individual who is a citizen or resident of Porto Rico or the Philippine Islands, or derives income from sources therein * * * . An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands, but derives income from sources therein shall be taxed in Porto Rico or the Philippine Islands as a nonresident alien individual * * .

The Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in

force in Porto Rico or the Philippine Islands, respectively.

“Sec. 1400. * * * * (b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: Provided, That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917 * * *. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures.”

Regulation 45, United States Internal Revenue.

“Art. 1131. Income tax in Porto Rico and Philippine Islands. In Porto Rico and the Philippine Islands the Revenue Act of 1916, as amended, is in force and the Revenue Act of 1918 is not. See also section 1400 of the Statute. No credit against net income is allowed individuals and no deduction from gross income is allowed corporations with respect to dividends received from a foreign corporation (foreign with respect to the United States) taxed in Porto Rico or the Philippines, but having no income from sources within the United States.

“Art. 1132. Taxation of individuals between United States and Porto Rico and Philippine Islands. (a) A citizen of the United States who resides in Porto Rico, and a citizen of Porto Rico who resides in the United States, are taxed in both places, but the income tax in the United States is credited with the amount of any income, war profits and excess profits taxes paid in Porto Rico. See Section 222 of the statute and articles 381-384. (b) A resident of the United States, who is not a citizen of Porto Rico, is taxable in Porto Rico as a non-resident alien individual on any income derived from sources within Porto Rico, but the income tax in the United States is credited with the tax paid in Porto Rico. (c) A resident of Porto Rico, who is not a citizen of the United States, is taxable in the United States as a nonresident alien individual on any income derived from sources within the United States, and receives no

credit. See also section 260 and article 1121. The same principles apply in the case of the Philippine Islands.”

IV.

THE ISSUE.

IS THE INCOME OF THE PLAINTIFF, A CITIZEN OF THE UNITED STATES RESIDING IN THE PHILIPPINE ISLANDS DURING THE ENTIRE YEAR 1918, TAXABLE IN ACCORDANCE WITH THE REVENUE ACT OF 1918?

V.

THE ARGUMENT.

1. *The Act of 1916, as amended by the Act of 1917, was, insofar, as it affected the Philippine Islands, enacted by Congress in its capacity of local legislature for the Philippine Islands.*

The problems presented by this case arise primarily as a result of the peculiar relationship existing between the United States and the Philippine Islands. An understanding of them necessitates a clear comprehension of the attitude of the United States toward the territory acquired from Spain under the Treaty of 1898. The policy adopted by the Federal government with respect to such territory was one calculated to permit local autonomy, and to introduce our forms of government and judicial procedure as soon as, but not sooner than,

the habits of the people allowed. In this respect, the question of revenue legislation proved and still proves the most difficult and it was early recognized that if the power of the national government to acquire territory was to be effectually exercised, it was not to be subjected to the restriction of uniformity of taxation. *Downes v. Bidwell*, 182 U. S. 244.

The problem of providing revenue for the government of the Philippine Islands, and yet giving to the residents of those Islands that local autonomy and experience which is so necessary in developing a people who have been under the control of a foreign government and as a result thereof have had no experience in self government, proved especially difficult in connection with the levying of income taxes. The Revenue Act of 1916 provided for income taxes in the United States. The Philippine Islands, in great need of revenues for the purpose of building up educational facilities, establishing adequate roads and highways, providing for the public health, and administering law for the benefit and welfare of the people resident therein at the time of the passage of such Act, were greatly in need of moneys. Unless suitable provisions were made for extending the terms of this Act to the Philippine Islands it would have been necessary for Congress to make appropriations for the benefit of these Islands. To prevent this contingency, Congress provided that the Revenue Act of 1916 should extend in its entirety to those Islands but that the taxes imposed thereby should

be assessed and levied by the administrative officers of the Philippines and that all revenue collected under the Act should be paid into the Philippine treasury, to be subject to appropriations in the same manner as other funds in such treasury. This is seen from Section 23 of the Revenue Act of 1916, which in effect establishes a local income tax law for the Philippine Islands.

The action of Congress in enacting a law locally applicable to a possession is well recognized as a proper and valid exercise of its legislative power. When legislating for the territories or possessions of the United States, Congress is acting in the capacity of a local legislature for such territories or possessions. When a tax is imposed by a law of Congress, to be collected in a territory or possession from citizens or residents of such territory or possession and the amount thus collected is to be covered into the treasury of such territory or possession, the power of Congress is not exercised under the power delegated to it by Section 8 of Article 1 of the Constitution prescribing that duties, imposts and excises shall be uniform throughout the United States, nor is it exercised under Article XVI of the amendments of the Constitution, permitting the levying and collecting of taxes on incomes, but is exercised under paragraph 2 of Section 3 of Article IV of the Constitution, which vests in Congress the power to dispose of and make all needful rules and regulations respecting the territory or other prop-

erty belonging to the United States. This fact is well illustrated by the case of *Binns v. United States*, 194 U. S. 486. In that case Congress had imposed certain license taxes in the territory of Alaska. The plaintiff in error was convicted for not paying a tax levied in accordance with that Act and an appeal was taken therefrom. It was contended that the Act of Congress levying the tax was repugnant to the clause of the Constitution requiring uniformity throughout the United States because the taxes were imposed only in Alaska. The Supreme Court held that the legislation was constitutional because Congress in passing the same was merely exerting its authority as a local legislature for Alaska, and that it was acting in a similar capacity to the legislature of any state in providing for the raising of revenues from sources within its particular jurisdiction for public use within that jurisdiction. On pages 407 and 408 the court said:

“The power of Congress, legislating as a local legislature for the District, to levy taxes for District purposes only, in like manner as the legislature of any state may tax the people of any state for state purposes, was expressly admitted, and has never since been doubted. In the exercise of this power Congress like any state legislature unrestricted by constitutional provisions may in its discretion exempt certain classes of property from taxation, or may tax them at a lower rate than other property.”

Therefore, it is evident that Section 23 of the Revenue Act of 1916 when it provides that the administration of the Act and the collection of taxes imposed in the Philippine Islands shall be by the appropriate officials in such Islands, and when it specifies that all revenues collected in such Islands shall accrue to the general government thereof and that judicial jurisdiction under the Act shall be placed in the courts of the first instance of such Islands, prescribes for the Philippines a system of domestic taxation. In other words, Congress extended to the Philippine Islands the provisions of the Revenue Act of 1916, not on the theory that the Philippine Islands were properly included within the general legislation, but rather on the theory that it was acting as a local legislature for the Philippine Islands in passing an income tax law peculiarly applicable to those Islands.

In the Revenue Act of October 3, 1917, which prescribed increased rates of taxation it was provided by Section 5 that the income tax provisions thereof should not extend to the Philippine Islands. An express provision was made therein enabling the legislature of the Philippines to amend, alter, modify or repeal the provisions of the 1916 Act. It is evident from Section 5 of the Revenue Act of 1917, that Congress regarded the Revenue Act of 1916, so far as the Philippine Islands were concerned, as an Act for the Philippine Islands rather than general revenue legislation which applied to the Philippine

Islands in the same manner as it applied to the United States.

If it had not been expressly provided by Section 23 of the Revenue Act of 1916, and Section 5 of the Revenue Act of 1917 that the provisions of those Acts imposing income taxes upon every individual, a citizen or resident of the United States, should extend to the Philippine Islands, citizens of the United States, resident in the Islands, would have been subject to taxation under such Acts because the Islands are a part of the United States. *DeLime v. Bidwell*, 182 U. S. 244. However, in order to provide sufficient revenues for the Philippines and to enable local administrative officials to collect and appropriate the same, citizens of the United States who were resident in the Philippine Islands were placed in the same category for the purposes of taxation as were citizens or residents of those Islands who were not citizens of the United States. Congress expressly made citizens of the United States who were residents of the Philippine Islands, subject to the jurisdiction of these Islands in tax matters.

2. *The Revenue Act of 1918 imposes a tax equally upon all citizens of the United States regardless of their residence.*

The Revenue Act of 1918 presents a different situation. By that Act, no distinction was made with regard to the liability of the citizens of the United

States, no matter where they reside. Sections 210 and 211 of the Revenue Act of 1918 include within their scope every individual who is a citizen of the United States, regardless of his residence. The tax imposed upon such citizens are "in lieu of the taxes imposed by" the Revenue Acts of 1916 and 1917. But if a citizen of the United States had not been taxable under the Revenue Acts of 1916 or 1917 he would nevertheless be subject to taxation under the Revenue Act of 1918 even although the taxes imposed by such later Act were in lieu of those imposed by the former Acts. It could not with reason be contended that Congress, by using the words "in lieu of", limited itself to taxing only those individuals who were subject to taxation under prior Acts. If this contention were sound, an individual who was exempted by the prior Acts would not be subject to taxation under the 1918 Act even though the 1918 Act removed such exemption. Therefore, the argument of the plaintiff in error in this case to the effect that the Revenue Act of 1918 only taxes those individuals who were taxable under the Revenue Acts of 1916 and 1917 because Congress used the words "in lieu of" is untenable. Even although citizens of the United States who were residents of the Philippine Islands were taxable under the Revenue Act of 1916 by virtue of the fact that such Act was applied to the Philippines as a statute of local character, and although such citizens were exempted from the increased rates prescribed by the

Revenue Act of 1917, nevertheless, no basis exists for the contention that such citizens were not made taxable by the Revenue Act of 1918 because Congress said that the taxes thereby imposed were "in lieu of" those imposed by the prior Acts.

Section 260 of the Revenue Act of 1918 is in itself sufficient to rebut the argument that citizens of the United States who are residents of the Philippine Islands are not subject to taxes under such Act. This section provides "that any individual who is a citizen of any possession of the United States (*but not otherwise a citizen of the United States*), and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same maner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources". (Italics ours.) This Section lays down the rule that individuals who are citizens of a possession of the United States and are not citizens of the United States by virtue of such fact, and persons who are not residents of the United States, shall be subject to taxation on income derived from sources within the United States. In other words, this Section shows that, not only are citizens of the United States taxable under the provisions of the Revenue Act of 1918, but also that citizens of possessions of the United States who are not citizens

of the United States are also taxable under such Act, but only with regard to income derived from sources within the United States. The intention of Congress therefore clearly is to subject every individual who is under its jurisdiction to the taxes imposed by the 1918 Act, except such individuals as are citizens of a possession of the United States and who do not derive income from sources within the United States. Every individual subject to the jurisdiction of Congress, no matter whether he resides in continental United States or in any territory or possession of the United States, must have been subject to taxation under Sections 210 and 211 of the Revenue Act of 1918 or it would not have been necessary for Congress to incorporate Section 260 in such Act in order to exempt the income of individuals who are citizens of a possession and not citizens of the United States and who do not derive income from sources within the United States.

The fact that the Revenue Act of 1918 included within its terms all individuals, citizens or residents of the United States except citizens of possessions who are not citizens of the United States and who derive no income from sources within the United States, and that Section 261 of such Act specifically provided that in the Philippine Islands the income tax shall be levied, assessed, collected and paid in accordance with the provisions of the Revenue Act of 1916, as amended, that every individual who is a citizen or resident of the Philippine Islands or de-

rives income from sources therein shall make returns and pay taxes under the Revenue Act of 1916 and that the Philippine Legislature shall have power by due enactment to amend, alter, modify or repeal the income tax laws in force in such Islands illustrates the conclusion hereinbefore reached that the Revenue Act of 1916 so far as it applied to the Philippine Islands was an act of local character which was passed with reference to the Philippine Islands in the same manner as though Congress were acting in the capacity of a local legislature for such Islands. The Revenue Act of 1916 is in force in the Philippine Islands until the Philippine legislature by due enactment alters, amends or repeals the same, but it is in force therein as a local statute and not as a general law of the United States. It was continued in force by the Revenue Act of 1918 because it serves to provide a basis for local revenues from incomes in such Islands. It is repealed as a general statute of the United States. As far as the Philippine Islands are concerned, the Revenue Act of 1916 serves the same purpose therein, in view of Section 261 of the Revenue Act of 1918, as the income tax law of New York serves for that State. To contend that a citizen of the United States is not taxable under the Revenue Act of 1918 because he resides in the Philippine Islands and there is an income tax law in force in such Islands, is to argue that a citizen of the United States who resides in New York should be exempt

from taxation under the Revenue Act of 1918 because he is subject to income taxes imposed by the State of New York.

Any other conclusion than that reached herein would violate the well known principle that taxes shall be applied as nearly as practicable so as to treat all citizens similarly. It is axiomatic that unless it is clearly shown to the contrary, Congress will be presumed to have intended equality of treatment in tax matters. Plaintiff alleges that he is a native born citizen of the United States and then seeks to secure the benefit of lower taxation than that of his fellow citizens residing in the United States, by reason of the fact that he resided in the Philippines. The Government contends that as such a citizen, regardless of his place of residence, he is subject alike with all other citizens to the Revenue Act of 1918. If the general principle of similarity of treatment of all citizens is kept in mind as the underlying spirit of the statute, it will be found that all of the provisions of the statute here involved are in harmony with this principle and that to construe them in accordance with the plaintiff's contention would be to violate their intendment.

Simply stated, there are in the Philippines three classes of individuals dealt with by the 1918 Act. First, citizens of the United States; second, citizens of the Philippine Islands, and third, residents of the Philippine Islands. By the principle of mutual

exclusion, the third class can only include persons who are not citizens of the United States. In other words, the plaintiff in error cannot, by reason of his residence in the Philippines, throw off his obligations as a citizen of the United States to bear the burdens equally with all other citizens in time of war. Thus it will be seen that the court below was entirely correct when it said in its memorandum opinion that:

“The tax is imposed on citizens of the United States regardless of their place of residence, on residents of the United States regardless of their citizenship, and upon the income of non-resident aliens from sources within the United States. Nothing is found in any other provision of the Act in conflict with this view. Thus section 260 of the Act of 1918 refers to individuals who are citizens of any possession of the United States, but not otherwise citizens of the United States, and the following section provides that returns shall be made by individuals who are citizens or residents of Porto Rico and the Philippine Islands or derive income from sources herein, but makes no reference to citizens of the United States residing in the Islands.” (R. page 11.)

The plaintiff in error, being a United States citizen, claims exemption from the taxes imposed by the 1918 Act. He must show beyond doubt that he is entitled to such exemption. In *Bank of Commerce v. Tennessee*, 161 U. S. 134, the United States Supreme Court said (page 146):

“These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power.”

In *J. W. Perry Company v. Norfolk*, 220 U. S. 472, the Supreme Court said more recently (page 480):

“Where one relies upon an exemption from taxation * * * the contract of exemption must be clear. Any doubt or ambiguity must be resolved in favor of the public.” See, also, *Vicksburg v. Dennis*, 116 U. S. 665, 668.

The plaintiff in error contends that subdivision (1) of Section 222 (a) of the Revenue Act of 1918, which provides that a citizen of the United States shall be credited with “the amount of any income, war profits, and excess profits taxes paid during the taxable year * * * to any possession of the United States”, shows that citizens of the United

States who are residents of the Philippine Islands are not subject to taxation under the Revenue Act of 1918 because the return in the possession referred to in this section is not a return under the Act of 1916 inasmuch as it only applies to taxes imposed by local authority. Such a construction is unwarranted. As has been shown above, the taxes imposed by the Revenue Act of 1916 in the Philippine Islands were not paid to the United States but were paid to the Philippine Islands on the theory that the 1916 Act so far as it applied to the Philippines was a local Act passed by Congress acting in the capacity of the Philippine legislature. Section 222 permits individuals who are subject to taxes under the Revenue Act of 1918 and who reside in the Philippine Islands and are consequently taxable therein, whether such taxes are imposed by Congress acting in the capacity of the legislature of the Philippine Islands or by the local legislature thereof, to take a credit for taxes imposed therein. It contemplates two returns by such an individual, one under the Revenue Act of 1916 and one under the Revenue Act of 1918. The return under the Revenue Act of 1916, which Act is repealed as to the United States generally, is a return to the Philippine Islands while the return under the Revenue Act of 1918 is the one prescribed for every citizen of the United States. There is no conflict between the Acts. Section 222 (a) in itself shows that the Revenue Act of 1918 is applicable to the plaintiff in error.

While it is submitted that the position of the Government is amply sustained by the plain language and spirit of the statutes themselves as above interpreted further support is found in the administrative regulations of the Department of the Government charged with the duty of applying the statute. The construction of the statute by such Governmental Department is entitled to great weight.. *United States v. Graham*, 110 U. S. 219; *United States v. Falk*, 204 U. S. 143; *United States v. Hermanos y Compania*, 209 U. S. 337; *Komada & Company v. United States*, 215 U. S. 392.

By Regulations 45, Articles 1131 and 1132, the view which has been set forth is clearly expressed in the following language: "a citizen of the United States who resides in" the Philippine Islands is "taxed in both places but the income tax in the United States is credited with the amount of any income, war profits, and excess profits taxes paid in" the Philippine Islands. The taxes here sought to be recovered were collected in accordance with this Regulation and full credit was admittedly given to plaintiff for the amount of taxes which he had already paid in the Philippine Islands. This Article also makes it clear that citizens of the United States are treated differently in the Philippines from citizens of the Philippine Islands. For by provision (b) of the Article a citizen of the United States residing in the United States deriving income from sources within the Philippines is taxable in the

Philippines as a nonresident alien individual. Further, by provision (c) a resident of the Philippines who is not a citizen of the United States is taxable in the United States as a nonresident alien individual. By implication, a resident of the Philippines who is a citizen of the United States is provided for elsewhere. This confirms the view that Section 261 has no application whatever to citizens of the United States.

VI.

CONCLUSION.

The Revenue Act of 1918 is applicable to the plaintiff in error as a citizen of the United States, and judgment for the defendant in error should therefore be affirmed.

Respectfully submitted,

FRANK M. SILVA,

United States Attorney.

E. M. LEONARD,

Assistant U. S. Attorney.

Attorneys for Defendant in Error.

CARL A. MAPES,

Solicitor of Internal Revenue,

FERDINAND TANNENBAUM,

JOHN M. STERNHAGEN,

Special Attorneys,

Bureau of Internal Revenue,

Of Counsel.

