

JOHNSON v. UNITED STATES
57-2 USTC ¶ 9848; 52 AFTR 1484 (W.D. Wash. 1957).
***Aff'd* 257 F.2d 530; 58-2 USTC ¶ 9725;**
2 AFTR 2d 5376 (9th Cir. 1958).

[The opinion which follows is that of the U.S. District Court. The complete text of the Court of Appeals' opinion and the Editor's Summary of the case are at p. 800.]

Case Text

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BOLDT, District Judge: Be It Remembered, that this matter came on duly and regularly for hearing on January 24, 1957, before Honorable George H. Boldt, United States District Judge, sitting in the above Court, without a jury; and the plaintiffs appearing in person and being represented by Arthur E. Simon, of Wright, Innis, Simon & Todd, their counsel, and the defendant being represented by Charles P. Moriarty, United States Attorney for the Western District of Washington; and both sides having submitted their evidence and having rested; and the Court having heard the argument of counsel, and having taken the said matter under advisement, and having heretofore, on June 13, 1957, advised all counsel of the decision of the Court, and having directed the preparation of Findings and Judgment, and being in all things fully advised; Now THEREFORE, the Court does hereby make the following:

FINDINGS OF FACT

- I. That under Title 28, United States, § 1346(a)(1), and under Title 28, United States Code, § 1402(a), this Court has jurisdiction of the causes of action set forth in the complaint of the plaintiffs herein.
- II. That at all times referred to in the complaint, all of the plaintiffs were residents of the Western District of Washington.
- III. That after June, 1946, and at all times herein referred to, the plaintiffs Pete Johnson, F. Douglas Mavor and Nelson T. Bruce were partners doing business under the firm name and style of "Johnson & Mavor Logging Company." That the plaintiff Pete Johnson was at all times mentioned in the complaint an unmarried man, but that plaintiff Cleo Bruce was at all times mentioned in the complaint the wife of Nelson T. Bruce, and plaintiff Jane Kendle Mayor was at all times referred to in the complaint the wife of plaintiff F. Douglas Mayor. A copy of this agreement of limited partnership was received in evidence herein as Plaintiffs' Exhibit 1.
- IV. That said partnership filed a federal partnership return of income and Forest Industries Schedule, Form T, for the period from March 1, 1947, to February 29, 1948, reporting ordinary net income of \$11,163.26 and net long term capital gain of \$11,921.66. Individual separate and joint income tax returns were filed which included the partners' proportionate share of partnership income for each of the plaintiffs herein. The income taxes shown due on said returns were paid. A

copy of the said partnership return and of the accompanying Form T were received in evidence herein as Plaintiffs' Exhibits 2 and 3, respectively.

V. That the said Johnson & Mayor Logging Company was engaged in the business of logging. On or about July 23, 1946, a written "Agreement" was entered into between the said partnership and Puget Sound Pulp & Timber Co., a copy of which was received in evidence herein as Plaintiff's Exhibit 4.

VI. That during the period from March 1, 1947, to February 29, 1948, said Johnson & Mayor Logging Company cut approximately 5,093,640 board feet of timber from the property covered by the said agreement, reporting net long term capital gains in the amount of \$11,921.66 on the federal partnership return filed for the period. Said partners reported their respective shares of these gains and paid income taxes thereon at the applicable rates.

VII. That an Internal Revenue Agent made an examination of said returns, that the reports of the Revenue Agent asserted deficiencies of income tax for the calendar year 1948 in the total of \$3,477.27, which was based on the inclusion of \$23,843.31 derived from the contract with Puget Sound Pulp & Timber Co. as ordinary income instead of as long term capital gain under Section 117(k) of the Internal Revenue Code of 1939, as reported by plaintiffs.

VIII. That of June 5, 1952, the Commissioner of Internal Revenue, in accordance with the said reports, assessed deficiencies against the plaintiffs which were paid as follows:

	Paid	Tax	Interest	Total
Nelson T. Bruce	4/23/52	\$ 96.00	\$ 17.92	\$ 113.92
Cleo Bruce	4/23/52	96.00	17.92	113.92
F. Douglas and Jane Mavor	4/23/52	1,016.06	189.73	1,205.79
Pete Johnson	4/23/52	2,269.21	423.74	2,692.95

IX. Timely and proper claims for refund of these amounts were filed.

From the foregoing Findings of Fact the Court deduces the following:

CONCLUSIONS OF LAW

I. That the contract between plaintiffs and Puget Sound Pulp & Timber Co. gave plaintiffs the contract right to cut timber for sale, which right was held for more than six months and entitled plaintiffs to elect to treat the cutting thereunder as a sale or exchange under the provisions of Section 117(k) of the Internal Revenue Code of 1939.

II. That the plaintiffs properly exercised the right so to elect and they are entitled to recover herein in accordance with the prayer of the complaint.