

01-1209 BOEING CO. v. UNITED STATES

Ruling below: CA 9, 258 F.3d 958.

QUESTION PRESENTED

Whether the Ninth Circuit, in direct conflict with the Eighth Circuit, correctly concluded that Treas. Reg. § 1.861-8(e)(3), which governs the allocation of research and development costs between foreign and domestic income, may be applied to the computation of taxable income for export subsidiaries entitled to special tax treatment under the Internal Revenue Code.

01-1382 UNITED STATES v. BOEING SALES CORP.

QUESTION PRESENTED

Boeing Sales Corporation (cross-respondent) is a "foreign sales corporation" within the meaning of the provisions of the Internal Revenue Code that formerly pertained to the taxation of such entities, 26 U.S.C. 921-927 (1988). Cross-respondent joined with its parent, The Boeing Corporation, and the latter's consolidated subsidiaries (petitioners in No.01-1209), in bringing this tax refund suit. This suit challenges the validity of the Treasury regulation (26 C.F.R. 1.861- 8(e)(3) (1979)) that governs the application of research and development expenses in the computation of the "combined taxable income" of cross-respondent and its parent (and affiliates) under the foreign sales corporation provisions of the Code. After the district court ruled that research and development expenditures need not be taken into account in the manner specified by that regulation, the parties agreed that the court's ruling, if valid, would (as a computational matter) result in an increase in cross-respondent's tax liabilities for the period in issue as well as a decrease in the tax liabilities of Boeing and its consolidated subsidiaries. Subject to the retained right to appeal, the parties therefore stipulated to entry of a judgment against the former and in favor of the latter. On cross-appeals, the court of appeals concluded that the regulation properly governed the treatment of research and development expenses and therefore reversed the district court judgment in favor of petitioners in No.01-1209 and against Boeing Sales Corp. Petitioners in No.01-1209 seek certiorari on that issue.

The question presented by this conditional cross-petition is whether, if certiorari is granted and the judgment is reversed in No.01-1209, the judgment of the court of appeals in favor of cross-respondent should then also be reversed.

CERT. GRANTED: 5/28/02

Consolidated for one hour oral argument.