

PETITION FOR  
WRIT OF  
CERTIORARI

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**Supreme Court of the United States**

OCTOBER TERM, 1932.

No. **33**

THOMAS H. WELCH,

*Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT AND BRIEF  
IN SUPPORT THEREOF.

THOMAS D. O'BRIEN,  
ALEXANDER E. HORN,  
EDWARD S. STRINGER,

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St. Paul, Minn.

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THOMAS H. WELCH,

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COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

### PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petition of Thomas H. Welch respectfully shows:

A.

#### SUMMARY STATEMENT OF MATTER INVOLVED.

Petitioner was a stockholder and managing officer of E. L. Welch Company. This corporation was adjudged a bankrupt in 1922, and in due course discharged. The business of the corporation had been handling grain on commission. In 1924,

petitioner entered the same line of business on his own account, dealing with the customers of the old corporation. In order to re-establish his credit, which had been damaged by the failure of the corporation, and to build up his business, petitioner, in each of the taxable years 1924 to 1928, inclusive, made payments to creditors of E. L. Welch Company of all or a part of their claims. By so doing, he was able to do a substantial business during these years, upon which the Government has been paid a tax. Each year petitioner claimed as a deduction for income tax purposes as one of his "ordinary and necessary expenses" in carrying on his business, the amounts paid during such year to the creditors of the old corporation.

The Commission disallowed the deductions, the Board of Tax Appeals sustained him, and the Circuit Court of Appeals for the Eighth Circuit sustained the Board of Tax Appeals.

The sole question involved is one of law, i. e., whether such payments to creditors of E. L. Welch Company, under such circumstances, were proper deductions for income tax purposes as "ordinary and necessary expenses" of petitioner's business.

## B.

# REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

## I.

Because the decision of the Circuit Court of Appeals is in direct conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit on the same matter in *Harris vs. Lucas*, 48 Fed. (2nd), 187.

## II.

Because the Circuit Court of Appeals decided an important question of Federal law which has never been specifically settled by this Court.

## III.

Because the Circuit Court of Appeals decided said question erroneously and in a way in conflict with the apparent view of this Court in *Kornhauser vs. United States*, 276 U. S. 145.

## C.

# PRAYER FOR WRIT.

WHEREFORE, petitioner prays that a writ of certiorari be issued by this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that Court to certify to this Court, for its review, a transcript of the record in case numbered and entitled on its docket No. 9585, *Thomas H. Welch*, Petitioner, vs. *Commissioner of Internal Revenue*, Respondent, and that said judgment of the Circuit Court of Appeals be reversed, and that petitioner have such other relief as may be proper.

Respectfully submitted,

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St. Paul, Minn.