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SCOTUS Denial of Petition in Railroad Fuel Tax Lawsuit Could Have Major Impact

By Al Teel June 2019

On June 24, 2019, the Supreme Court of the United States denied the Alabama Department of Revenue's petition to review the Eleventh Circuit's 2018 decision to finally put a decade old dispute "to the shed." This saga started back in 2008, when CSX, among other railroads, brought suit to challenge state and local tax authorities from collecting taxes that violated the Railroad Revitalization and Regulatory Reform Act (4-R Act). The railroad asserts that it is taxed differently than competitors, including trucks and water carriers, in violation of the 4-R Act. Thus, CSX sought to enjoin the Alabama Department of Revenue ("the State") from collecting sales and use tax on the railroad's purchase of or consumption of diesel fuel in Alabama.

Alabama imposes a 4 percent tax on the purchase or use of property that applies to rail carriers' purchases or use of diesel fuel. However, Alabama exempts diesel fuel purchases made by trucking companies and water carriers from this tax. Instead, motor carriers pay a 19-cent-per-gallon fuel excise tax on diesel, and water carriers pay no alternative tax.

The long procedural history of this case gives rise to many a railroad-related pun, as highlighted by the Eleventh Circuit's April 25, 2018 decision. Overall, this case made three stops at the district court level, five stops at the Eleventh Circuit, and two trips to the Supreme Court with *CSX I* and *CSX II*, before now pulling into the depot. On May 21, 2019, the U.S. Solicitor General weighed in at the Court's invitation, and suggested that further review by the Supreme Court was not warranted. Despite a sharp response to the Solicitor General's amicus brief from the State, the Supreme Court agreed that review was not necessary.

The Eleventh Circuit has stated that it will take no further action. So where does that leave us?

The Eleventh Circuit's last decision was a mixed-bag for railroads, holding: (1) Alabama's sales and use tax on dyed diesel did *not* discriminate against rail carriers vis-à-vis motor carriers but (2) the State is in violation the 4-R Act by taxing rail-carrier diesel while exempting diesel used by interstate water carriers. But, ultimately, railroads are entitled to some relief.

Therefore, the State now faces a mandate to remedy the discriminatory tax treatment imposed on railroads by either:

(a) repealing the exemption for water carriers; or

(b) retaining the water carrier exemption but also exempting rail carriers when they buy or use diesel fuel for interstate hauls.

In addition to the CSX case, several other similar cases are pending in Alabama and Georgia against cities, counties, and other taxing entities for recovery of taxes paid, involving up to around $100 million in potential tax refunds for railroads. In several of the suits, the railroads have been allowed to escrow the disputed taxes during the CSX appeal. Now, it could finally be time to collect.

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