Unfair railroad fuel taxation? U.S. Supreme Court agrees to hear CSX Transportation case

DAVID KALL | TAX AND BENEFITS CHALLENGES | JUL 26, 2014

The U.S. Supreme Court granted certiorari in *Alabama Dept. of Revenue v. CSX Transportation, Inc.*, --- S. Ct. ---- (2014), on July 1, 2014. While the Court generally addresses the questions presented in the writ of certiorari if it decides to hear the case, the Court added a question of its own for the parties to argue and brief in its grant:

> *Whether, in resolving a claim of unlawful tax discrimination under 49 U.S.C. § 11501(b)(4), a court should consider other aspects of the State's tax scheme rather than focusing solely on the challenged tax provision.*

The question presented in the writ of certiorari was:

> *Whether a State "discriminates against a rail carrier" in violation of 49 U.S.C. § 11501(b)(4) when the State generally requires commercial and industrial businesses, including rail carriers, to pay a sales-and-use tax but grants exemptions from the tax to the railroads' competitors.*

Background

This case arrives for a second time at the Court after a history which includes numerous decisions. Both parties have "won" their case at various points in this history. The key points of the underlying dispute are as follows.

CSX Transportation, Inc. (CSX), a railroad company, brought suit against the Alabama Department of Revenue, claiming that Alabama's tax laws discriminated against railroads, thus violating the Railroad Revitalization and Regulatory Reform Act, 49 U.S.C. § 11501(b) (4–R Act). This discrimination existed, CSX alleged, due to the state's exemption for interstate motor and water carriers from sales and use taxes on the purchase and consumption of fuel.

The 11th Circuit, in its decision, stated that the 4-R Act "target[s] state and local taxation schemes that discriminate against rail carriers[]" and was enacted to "restore the financial stability of the railways system of the United States." *CSX Transp., Inc. v. Ala. Dep't of Revenue*, 720 F.3d 863, 866 (2013) quoting *CSX Transp., Inc. v. Ala. Dep't of Revenue* (CSX II), 131 S.Ct. 1101, 1105 (2011). More specifically, the 11th Circuit pointed out that the 4-R Act provides that a state may not "[i]mpose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part." 49 U.S.C. § 11501(b)(4).

While water carriers, rail carriers, and motor carriers all compete in the shipment of freight market, each pays a different fuel tax under Alabama state law. Water carriers pay no tax whatsoever on their diesel fuel purchases; motor carriers pay an excise tax of 19 cents per gallon; and rail carriers pay the state's four percent sales tax.

Remarks

As one can surmise, this Court's answers to the questions presented may have major implications for state tax jurisprudence. This also appears to be a very close case, as lower courts have found in favor of both parties in this case's history.

As we have remarked before in the *Multistate Tax Update*, many of the upcoming decisions of the Court will have a ripple effect on state taxation throughout the country. How big those ripples will be has yet to be seen. What is certain is that companies should take note of these cases and plan accordingly.

The Court has had an influx of state tax-related petitions lately. The Court **denied certiorari** to a case concerning New York's affiliate nexus law, a case many thought the Court would hear. However, the Court recently **granted certiorari** to *Comptroller v. Wynne*, a case which will address matters of importance to taxpayers who are subject to the taxation in multiple states. Additionally, the Court **granted certiorari** to *Direct Marketing Association v. Brohl*, a case which will address the constitutionality of a state imposing use tax reporting requirements on out-of-state businesses (as opposed to imposing the obligation to collect and remit sales taxes).

The *Multistate Tax Update* will continue following developments of significance to state taxation in the U.S. Supreme Court.

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