

MyStateTaxOffice

State and local tax services

U.S. Supreme Court holds Alabama's sales and use tax may be challenged under the Federal Railroad Revitalization and Regulatory Reform Act

February 25, 2011

By [Kathryn Thurber](#)

- www.pwc.com/salt

- Follow us on Twitter at www.twitter.com/pwc_mysto

The U.S. Supreme Court held in a 7-2 decision that a rail carrier may challenge Alabama's sales and use taxes that apply to rail carriers but not to other transportation providers as discriminatory under the federal Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"). The 4-R Act restricts the ability of state and local governments to levy discriminatory taxes on rail carriers. [[*CSX Transportation, Inc. v. Alabama Department of Revenue*, 562 U.S. \(2011\)](#)]

Background

CSX Transportation, Inc. ("CSX") is an interstate rail carrier that operates in Alabama. Alabama requires rail carriers to pay sales and use taxes on the purchase or consumption of diesel fuel, but exempts rail carriers' main competitors, interstate motor and water carriers, from paying such taxes on their fuel (although fuel for motor carriers is subject to a special excise tax). Alleging that the state's tax scheme violates Section 11501(b)(4) of the 4-R Act, CSX filed suit against the Alabama Department of Revenue ("Department") in federal district court. Section 11501(b)(4) provides that states or their subdivisions may not "impose another tax that discriminates against a rail carrier."

The district court dismissed CSX's claim and the Eleventh Circuit affirmed. CSX appealed to the U.S. Supreme Court. On review, the Court held for CSX, reversing the decision of the Eleventh Circuit and remanding the case for a decision on the merits.

Standing to challenge

Section 11501(b) of the 4-R Act restricts the ability of state and local governments to levy

discriminatory taxes on rail carriers. More specifically, Sections 11501(b)(1)-(3) address property taxes and prohibit a state from imposing higher property tax rates or assessment ratios on "rail transportation property" than on "other commercial and industrial property." Subsection (b)(4) addresses other discriminatory taxes. In support of its position, the Department cited another U.S. Supreme Court case, Dept. of Revenue of Ore. v. ACF Industries, Inc., 510 U.S. 332 (1994). In *ACF Industries*, the Court concluded that the statutory definition of "other commercial and industrial property" did not include property that was exempt from taxation and that subsections (b)(1)-(3) permitted states to impose property taxes on railroads while exempting other entities. Consequently, in its earlier decision, the Court held that a discriminatory property tax suit based on property tax exemptions could not be brought under the "another tax" catch-all provision contained in subsection (b)(4) as such exemptions are permitted under subsections (b)(1)-(3). *Id.*

Finding that its decision in *ACF Industries* is not controlling in CSX's case, the Court concluded that, under Section 11501(b)(4), a taxpayer may challenge an excise or other non-property tax as discriminatory on the basis of the tax scheme's exemptions. In this case, "another tax" encompasses any form of tax a state might impose, including sales and use taxes. For a determination as to the discriminatory nature of Alabama's sales and use tax scheme, the Court remanded the case back to the lower court.

Dissent

While agreeing with the majority that sales and use taxes are "another tax" under subsection (b)(4), the minority found that discriminatory taxes must "target" or single out taxpayers by comparison to those similarly situated. In this case, CSX did not allege that Alabama's tax scheme was so targeted. As such, the minority held that CSX's case was properly dismissed by the lower courts.

For more information, please do not hesitate to contact:

Bryan Mayster	(202) 414-4498	bryan.mayster@us.pwc.com
Ferdinand Hogroian	(202) 414-1798	ferdinand.hogroian@us.pwc.com
Jennifer Jensen	(202) 414-1741	jennifer.jensen@us.pwc.com
Kathryn Thurber	(202) 346-5122	kathryn.thurber@us.pwc.com

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2011 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.