



This Week in State Tax (TWIST)

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South Dakota: U.S. Supreme Court Denies Review of Use Tax Case

The U.S. Supreme Court recently declined to review a South Dakota case involving the imposition of use tax on construction equipment brought into the state for use in various projects. Recall, in *Ellingson Drainage*, South Dakota assessed use tax on the depreciated value of equipment that Ellingson, a Minnesota-based company, had brought into the state for its work on about 30 different projects; no tax had been paid at the time of purchase in Minnesota. Ellingson contested the assessment on the basis that it was disproportionate to the activity in the state and violated the Due Process and Commerce Clause as nearly 90 percent of the use of the equipment occurred in states other than South Dakota. The state supreme court upheld the assessment noting that no tax had been paid elsewhere, the company was free to continue to use the equipment in South Dakota, and it received the full benefits of doing business in the state.

On appeal to the High Court, the taxpayer argued the matter represented a case of first impression as being an unapportioned use tax on movable property and violated the Due Process and Commerce Clause. The Supreme Court denial was issued without comment. For further information on *Ellingson Drainage*, contact [Nicole Kirk](#).

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