This Week in State Tax (TWIST)

August 3, 2026

Colorado: 10th Circuit finds that congestion fee on car rentals not preempted by federal law

The Tenth Circuit Court of Appeals recently affirmed a district court determination that a state-imposed daily fee on short-term car rentals does not violate the provisions of the federal Anti-Head Tax Act (AHTA). The AHTA, while generally prohibiting state taxation of air passengers and air commerce, also contains a specific preemption of state or local tax on any business located at a commercial airport that is not generally imposed on sales or services by the state. The district court determined that the rental fee applied to both airport and non-airport car rentals, and as such, it did not violate the AHTA. The Court of Appeals affirmed that the fee did not violate the AHTA, on the rationale that the fee is imposed on consumers, not airport businesses.

In 2024, Colorado enacted an inflation-adjusted daily fee on short term car rentals, with revenues collected to be used to finance various surface transportation and traffic congestion projects. At the district court level, the taxpayer, an association of car rental companies, argued that because the fee applies only to car rentals and not all sales and services, it violated the AHTA. The state argued that because the fee applies to both airport and non-airport car rentals, it complies with the “generally imposed” language of the AHTA. The district court sided with the state, finding that the fee was not preempted by the AHTA, and the taxpayer appealed.

The Court of Appeals affirmed the district court holding and acknowledged the fee was levied on all car rentals and not just those at airports. In reaching its conclusion, however, the appellate court focused on the language of the statute creating the fee. The taxpayer claimed that the fee was preempted by the AHTA as it was imposed on rental businesses at the airport, and the businesses would be liable for the fee and required to file related returns. The state argued that the statute imposed the fee on individuals who rented cars, and that the rental businesses merely collected the fee from consumers, in the same manner as a sales tax. The Court of Appeals determined that “fee payers” referenced in the statutory language refers to the consumers renting vehicles, not the rental businesses, as the consumers were the beneficiaries of the projects paid for by the fee.

For more information *on American Car Rental Association v. Humphreys, et al.*, contact Molly Leszko or Steve Metz.