KPMG

This Week in State Tax (TWIST)

August 10, 2026

Alabama: Is it over? Court of Appeals says state tax on diesel fuel used by railroads violates the 4R Act

In the latest episode in a longstanding controversy, the 11th Circuit Court of Appeals recently held that Alabama's imposition of a state tax on diesel fuel used by interstate railroads, but not on interstate water carriers, violated the Railroad Revitalization and Regulatory Reform Act (4R Act). Enacted in 1976, the 4R Act prohibits discrimination against interstate railroads with respect state and local property taxes, as well as "any other tax".

Alabama law imposes a 4 percent state tax on diesel fuel used by interstate rail carriers; interstate motor carriers and water carriers are exempt from the levy. In 2008, CSX Transportation challenged this regime as violating the "any other tax" provision of the 4R Act. The litigation has involved two full decisions by the U.S. Supreme Court and three judgments by the 11th Circuit Court of Appeals. The merits of the matter as involving CSX Transportation were finalized in 2018 in *CSX III* when the 11th Circuit Court of Appeals held that "as long as the state retains the sales and use tax exemption for diesel fuel used by [interstate] water carriers, the 4R Act forbids it from imposing the sales and use tax on fuel used by [interstate] rail carriers." The Supreme Court denied *certiorari* in June 2019 (Docket 18-612).

As the *CSX* litigation progressed, six other railroads filed similar claims in Alabama. With the finalization of *CSX III,* the railroads moved for judgment against the state. In defending the claims, the state had not contested that the railroads were engaged in interstate commerce and were subject to the diesel fuel tax which still exempted water carriers, but denied that water carriers were the principal competitors to these railroads (a point it had stipulated throughout the CSX litigation). The district court consolidated the cases and held for the railroads, holding that the state was judicially estopped from denying the water carriers were principal competitors to the railroads based on its stipulation in *CSX*. The lower court further emphasized the holding in *CSX III* that the tax on diesel fuel cannot be applied to interstate railroads if interstate water carriers are not subject to it. The state appealed to the 11th Circuit.

In its decision, the Court of Appeals focused on the judicial estoppel question. The court described judicial estoppel as an equitable doctrine "intended to prevent the perversion of the judicial process and protect its integrity by prohibiting parties from deliberately changing positions according to the exigencies of the moment." The application of judicial estoppel in this matter involved two tests or elements in determining whether the doctrine should be applied: (a) whether the party resisting the estoppel (*i.e.*, Alabama) took an inconsistent position under oath in a separate proceeding, and (b) whether these inconsistent position were calculated to make a mockery of the judicial system.

As to the first element, the Court of Appeals held that the district court "correctly concluded" that the state had taken inconsistent positions under oath when it stipulated clearly and unambiguously in the *CSX* litigation that "[t]he principal competitors to rail carriers … in interstate commerce in … Alabama are motor carriers … and carriers of property in interstate commerce by ships, barges and other vessels…." The state argued that its *CSX* stipulation should be considered a "qualified" or "case specific" stipulation applicable only to CSX and not all interstate railroads. The appellate court, based on the lack of qualifying terminology or ambiguity in the earlier stipulation, held that the district court did not abuse its discretion in rejecting the state's position.

As to the second element, the appellate court also held that the district court did not clearly err when it determined the state's change of position "was calculated to make a mockery of the courts". Of particular importance was the determination by both courts that the state's decision to "strategically reverse course on the stipulated fact solely because intervening court decisions had, in the state's words, made that fact (*i.e.,* that water carriers competed with railroads) 'go from irrelevant to paramount.'" The Court of Appeals also drew attention to the fact that the state had "hedged its bets" by staying the present cases while it litigated its position in *CSX* only to then change its position after *CSX* was finalized; the appellate court also stressed the reliance various courts had placed on the stipulation. Accordingly, the Court of Appeals, with one dissenting judge, determined the district court did not err and had ample support for its application of judicial estoppel. As such, it upheld the district court judgment that Alabama cannot impose its tax on diesel fuel consumed by interstate railroads while exempting interstate water carriers from the levy. Alabama has until about November 1, 2026, to seek review by the U.S. Supreme Court.

Please contact Scott Jackson, Justin Stringfield, or Harley Duncan with questions regarding *BNSF Railway Company v. Alabama Department of Revenue*.