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U.S. Supreme Court Update

U.S. SUPREME COURT UPDATE

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Oral Arguments Occur in Case Concerning W.V. Taxation of Federal Retiree

***40** At the time of this writing, the U.S. Supreme Court remains set to decide three cases involving state and local taxes in which certiorari was granted in 2018—*Washington State Dep't of Licensing v. Cougar Den, Inc.* (Docket No. 16-1498); *FTB v. Hyatt* (Docket No. 17-1299); and *Dawson v. Steager* (Docket No. 17-419). In addition, as we go to press, the Court has granted certiorari in one more previously reported petition (*North Carolina Dep't of Rev. v. The Kimberly Rice Kaestner 1992 Family Trust* (Docket No. 18-457)) and another one remains pending (*Alabama Dep't of Rev. v. CSX Transportation, Inc.* (Docket No. 18-447)). Finally, one new petition and a conditional cross-petition have been received.

As we await the Court's decisions, the Justices remain busy with oral arguments. Previously, we reported on the oral arguments in *Washington State Dep't of Licensing v. Cougar Den, Inc.*, which took place on October 30, 2018. In addition, the Court scheduled oral arguments in *FTB v. Hyatt* for January 9, 2019, and on December 3, 2018, the Court heard oral arguments in *Dawson v. Steager.* The latter arguments are discussed below.

As summarized in the lower courts' decisions, *Dawson v. Steager* involves West Virginia's statute that taxes the pensions paid to federal law enforcement retirees living in West Virginia, while simultaneously exempting from state income taxation the pensions received by certain state law enforcement retirees. Dawson, a retired U.S. Marshal in West Virginia, sought a West Virginia exemption for all of his FERS income (a federal pension program). The court below, however, noted that under West Virginia law, unlike certain state law enforcement retirees who may exempt all of their state retirement benefits from taxable income, Dawson was entitled to exempt only a portion of his FERS income. The court held that this distinction did not violate the doctrine of ‘intergovernmental tax immunity.‘ Instead, the court held the exemption at issue merely gives a benefit to ‘a very narrow class of former state and local employees, and that benefit was not intended todiscriminate against former federal marshals.‘

****2** In his petition for certiorari, Dawson asked the U.S. Supreme Court to consider: ‘Whether this Court's precedent and the doctrine of intergovernmental tax immunity bar states from exempting groups of state retirees from state income tax while discriminating against similarly situated federal retirees based on the source of their retirement income.‘ The Court, however, declined to grant certiorari with respect to Dawson's specific question, and instead granted certiorari limited to the issue presented by the Solicitor General in an amicus curiae brief filed on May 15, 2018.

The Solicitor General argued that '[t]he West Virginia Supreme Court of Appeals misapplied the doctrine of intergovernmental tax immunity' and that, '[u]nder the test articulated in *Davis v. Michigan Department of the Treasury*, 489 U.S. 803 (1989), the court should have asked whether the State's inconsistent tax treatment of former federal and state law-enforcement officers 'is directly related to, and justified by, significant differences between the two classes.' ' The West Virginia court's application of a 'totality of the circumstances' analysis, the Solicitor General argued, 'is inconsistent with *Davis* and with this Court's other intergovernmental tax immunity decisions.'

The Justices' comments at oral argument began with whether, broadly, a state must extend to all federal retirees the same income tax treatment extended to any state retiree living in that state. The Justices, however, appeared skeptical of such a broad approach, which Justice Kagan described as 'a most favored nation requirement.' Instead, the discussion quickly evolved to include a more fact-dependent inquiry that Justice Alito described as 'which group of state employees are most . . . similar to the federal employees' that are being taxed by the state.

Applying this more fact-dependent approach, many of the Justices appeared to concede that challenging questions would need to be considered in order to determine which state employees are most 'similarly situated' to the federal employee seeking an exemption. For example, Chief Justice Roberts suggested that under the facts provided, Dawson may be unlike many West Virginia state law enforcement officers because instead of 'accompanying fugitives . . . his job is . . . more policy, administrative.'

Dawson's attorney noted the difficulties with such granular distinctions, arguing that, at times, there were not specific or ***41** unique characteristics even among state employees that caused one state employee to receive an exemption while another did not. For instance, Dawson's attorney suggested that a deputy sheriff and a sheriff in West Virginia had essentially the same responsibilities, but only a deputy sheriff received the exemption. Justice Breyer also indicated the difficulties he saw in making such granular distinctions when comparing federal employees with state employees, stating 'there's dozens of differences between state employees [and] federal employees. They categorize them differently. They have slightly different jobs.'

****3** Justices Kavanaugh and Gorsuch appeared to take a more straight-line approach. Justice Kavanaugh stated that 'the only way to be sure . . . that you're not discriminating against the federal employees is . . . to give them the treatment that the favored state employees get.' While Justice Gorsuch argued that 'the statute here says if it discriminates on the basis of source, game over . . . [w]hy shouldn't that be the end of the inquiry under a normal statutory interpretation analysis where we don't bother looking at secret purposes when the plain text is clear?'

We will continue to update readers on any developments as we await the Court's final decision.

In addition to ongoing oral arguments, the Court also received a conditional cross-petition in the previously reported case of *Alabama Dep't of Rev. v. CSX Transportation* (Docket No. 18-447) and one new petition for certiorari in *Fielding v. Comm'r of Rev., Minn.* (Docket No. 18-664). In *Fielding*, the Court has been asked to review a Minnesota Supreme Court decision that held Minnesota's resident trust classification violates the federal and Minnesota Due Process Clauses as applied to four Minnesota trusts.

The Court also continues its review of a dispute between Delaware and several other states concerning which states have priority rights to claim abandoned, uncashed MoneyGram 'official checks.' The MoneyGram cases set for review are *Delaware v. Pennsylvania et. al.*, Case No. 220145, and *Arkansas et. al. v. Delaware*, Case No. 220146. As previously reported, the Court has assigned the Honorable Pierre N. Leval, of the U.S. Court of Appeals for the Second Circuit, as Special Master in these cases, tasked with coordinating the taking of evidence and making reports. (The Court typically assigns original jurisdiction disputes—cases such as disputes between states that are first heard at the Supreme Court level—to a Special Master to conduct what amounts to a trial court proceeding.) We will continue to update readers as more details become available.

Lastly, the Court has denied one petition involving state and local tax matters since our last update—*Franceschi, Jr. v. Yee* (Docket No. 18-585).

Review Sought of Minn. Resident Trust Provision Held Unconstitutional

On Nov. 11, 2018, the U.S. Supreme Court received a new petition for certiorari in *Fielding v. Comm'r of Rev., Minn.*, Docket No. 18-664, ruling below at 323 (Minn. 2018). In this case, the Minnesota Supreme Court held that Minnesota's resident trust classification violated both the federal and Minnesota Due Process Clauses, as applied to four Minnesota trusts, because (1) the state lacks sufficient contacts with the trusts and (2) there is no rational relationship between the income the state seeks to tax and the protections and benefits conferred by the state.

The formation of the trusts and sale of trust assets.

As explained by the court below, on June 25, 2009, grantor Reid MacDonald, a Minnesota domiciliary, created four separate trusts, one to benefit each of his four children. The trusts were funded with nonvoting common stock of Faribault Foods, Inc. ('FFI'), a Minnesota S corporation, and the original trustee was a California domiciliary. Initially, MacDonald retained control over the trust assets; thus for Minnesota income tax purposes, the trusts were treated as 'grantor-type trusts' and only MacDonald was required to file income tax returns (not the trusts themselves).

****4** On December 31, 2011, MacDonald relinquished his power to substitute the trust assets, making the trusts irrevocable. At that time, MacDonald remained a Minnesota domiciliary and, therefore, the trusts were classified as 'resident trusts' under Minn. Stat. §290.01, subd. 7b(a)(2). The trusts then each filed Minnesota income tax returns as resident trusts, without protest, in 2012 and 2013.

On July 24, 2014, William Fielding, a domiciliary of Texas, became trustee for the trusts. That same day, Fielding participated in a phone call with MacDonald and other shareholders of FFI to discuss ***42** the sale of the company's stock to La Costena USA, Inc. Shortly thereafter, all shareholders of FFI stock, including the trusts, sold their shares to La Costena USA, Inc. As explained by the Minnesota Supreme Court, 'because the trusts were defined to be Minnesota residents [at the time of sale] (as a result of grantor MacDonald's Minnesota domicile in 2011), they were subject to tax on the full amount of the gain from the sale of FFI stock . . . . Had the trusts not been deemed residents of Minnesota [under Minnesota law,] those items of income would have been assigned to the Trusts' domicile and would not have been subject to Minnesota income taxation.'

Trusts file Minnesota income tax under protest and appeal.

The trusts filed their 2014 Minnesota income tax returns under protest, asserting that the statute classifying them as resident trusts, Minn. Stat. §290.01, subd. 7b(a)(2), was unconstitutional as applied to them. The trusts then filed amended tax returns claiming refunds for the difference between the taxes owed as resident trusts and the taxes owed as nonresident trusts—a tax savings of more than $250,000 for each trust.

The Minnesota Commissioner of Revenue denied the trusts' refund claims. The trusts appealed the Commissioner's ruling to the Minnesota Tax Court, which granted the trusts' motion for summary judgment on due process grounds. Ultimately, the Tax Court held that 'Minnesota did not have a sufficient basis to tax the trusts as 'residents'' because the grantor's domicile at the time the trust becomes irrevocable was not 'a connection of sufficient substance' to support the exercise of taxing jurisdiction.

The Minnesota Supreme Court affirmed, holding that the trusts' contacts with Minnesota were either 'irrelevant or too attenuated' for due process purposes. Both the Minnesota Tax Court and Supreme Court focused on the limited definition of 'resident trust' as provided by Minn. Stat. §290.01, subd. 7b(a)(2): 'a trust, except a grantor type trust, which . . . is an irrevocable trust, the grantor of which was domiciled in this state at the time the trust became irrevocable.' The Minnesota Supreme Court

held that under a due process challenge, all relevant contacts between the taxpayer and the state must be examined to determine whether the taxpayer may be taxed as a resident.

To that end, the Commissioner argued that the trusts had several contacts to Minnesota. Specifically, MacDonald was a Minnesota resident when the trusts were created, was domiciled in Minnesota when the trusts became irrevocable, the trusts were created by a Minnesota law firm, and the trusts held stock in a Minnesota S corporation. However, the Minnesota Supreme Court determined that only contacts during the year at issue—2014—were relevant because that was the year the relevant income was generated. The Minnesota Supreme Court determined that, in 2014, the trusts and the trustee had virtually no contacts with Minnesota and, therefore, taxation by Minnesota violated due process.

Question presented.

****5** Minnesota now asks the U.S. Supreme Court to consider the following question: 'Does the Due Process Clause prohibit states from imposing incomes taxes on statutory 'resident trusts' that have significant additional contacts with the state, but are administered by an out-of-state trustee?'

Petitions Previously Granted

In addition to hearing oral arguments in *Dawson v. Steager*, the Court also remains set to decide three other previously granted petitions: *Washington State Dep't of Licensing v. Cougar Den, Inc.* (Docket No. 16-1498); *FTB v. Hyatt* (Docket No. 17-1299) and *North Carolina Dep't of Rev. v. The Kimberly Rice Kaestner 1992 Family Trust* (Docket No. 18-457).

Oral arguments heard over Yakama Nation 'right to travel' without taxation.

***43** As previously reported, the Court heard oral arguments on October 30, 2018, in *Washington State Dep't of Licensing v. Cougar Den, Inc.* The question before the Court is, 'Whether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of public highways.'

As summarized in the decisions below, Article II of the Yakama Nation Treaty of 1855 provides in relevant part that 'if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured them; as also the right, in common with citizens of the United States, to travel upon all public highways.' (Treaty with the Yakamas, 12 Stat. 951, 952-953 (1855)).

Cougar Den, a Confederated Tribes and Bands of the Yakama Nation corporation, traditionally transported fuel over a 27-mile route from Oregon to the Yakama Indian Reservation without paying Washington's fuel tax, which is imposed on the importation and transportation of fuel. The Washington Department of Licensing (the 'Department'), however, issued tax assessments on the imported fuel ($3.6 million of taxes, penalties, and fees for hauling the fuel across state lines) in 2013. Cougar Den refused to pay the assessment, arguing that the imposition of the tax violated its right to travel under the Yakama Nation Treaty of 1855. The Washington Supreme Court, in *Washington State Dep't of Licensing v. Cougar Den, Inc.,* 188 Wash. 2d 55 (Wash. 2017), agreed with Cougar Den, holding that the Yakama Nation 'tribe[] w[as] entitled under [the Yakama Nation] [T]reaty to import fuel without holding [an] importer's license and without paying state fuel taxes.'

At oral argument in the U.S. Supreme Court, the Department, joined by the Assistant U.S. Solicitor General, argued that the tax at issue was off-reservation and therefore a non-discriminatory tax on fuel itself that applied to everyone. Accordingly, the Department claimed that the Yakama Nation was being appropriately treated 'in common with citizens of the United States,' as required by the Treaty.

****6** Justice Kagan questioned the importance of characterizing the tax as a broad tax on the possession of fuel. In her opinion, from the Yakama Nation's point of view, the tax burdens exactly what they bargained for when signing the treaty—that is, the ability to transport their goods without any burdens or tax. Justice Kavanaugh appeared to agree with Justice Kagan, stating that, in exchange for an area of land about the size of Maryland, the Yakama Nation were promised an ability to take their goods to market without a burden and, here, the Yakama were facing a burden when trying to transport their goods from market.

The Department pushed back, arguing that the tax did not impede the Yakama Nation's treaty-protected right to travel; instead, the tax was on the right to possess fuel. And, engaging in a treaty-protected act like travel does not exempt the Yakama Nation from other, general state laws. If it did, the Department argued, members of the Yakama Nation would be able to possess illegal firearms or other contraband when travelling in their vehicles. Justice Gorsuch appeared to push back against this argument, stating that the phrase 'in common with' allowed the state to impose certain regulations that facilitate both native and non-native travel along highways for the public good—such as safety regulations, speed limits, and other broad rules.

In response, the Yakama Nation argued that the treaty preempts the application of the tax for two reasons: (1) by transporting fuel, the Yakama Nation is exercising the treaty-protected right to travel unburdened; and (2) as interpreted by state law, the tax is a tax on transportation and not the possession of fuel. Chief Justice Roberts appeared to question both of the assertions made by the Yakama Nation. First, because the tax is imposed on the owner of the fuel, and not the owner of the truck who is merely transporting the fuel from one point to another, the Chief Justice questioned whether the right to travel was infringed upon. Then, because the tax is imposed on a per-gallon basis, and not on a per-mile basis, Chief Justice Roberts suggested that the tax was on possession and not the transportation of fuel. Justice Breyer appeared to agree with the Chief Justice, arguing ***44** that if the Yakama Nation could avoid this particular tax, it would allow the Yakama Nation to refuse to pay a multitude of taxes that have nothing to do with transportation, but are instead meant to regulate the importation of certain goods.

We will continue to update readers on any developments regarding this case.

Court considers whether FTB is immune from taxpayer tort claims.

In *Franchise Tax Bd. of Cal. v. Hyatt*, Docket No. 17-1299, ruling below at 407 P.3d 717 (Nev. 2017) the Nevada Supreme Court held that the California Franchise Tax Board (the 'FTB') was not entitled to immunity from intentional and bad-faith tort claims brought by a former California resident, Gilbert Hyatt.

****7** The granting of certiorari marks the latest in a long-running saga between Hyatt and the FTB. Hyatt's dispute with the FTB stems from the agency's attempt to collect approximately $10 million in taxes on patent licensing fees earned by Hyatt in the 1990s. Following an audit, in which the FTB determined Hyatt to be a California resident, Hyatt sued the FTB in Nevada state court claiming that the FTB's abusive investigation techniques cost him business opportunities and inflicted emotional distress. The Nevada Supreme Court eventually largely reversed a jury award of tort damages and punitive damages awarded to Hyatt. Citing to *Nevada v. Hall*, 440 U.S. 410 (1979), however, which held that the U.S. Constitution does not grant states sovereign immunity from suit in the courts of other states, the Nevada Supreme Court rejected the FTB's claim of complete immunity. Ultimately, the U.S. Supreme Court affirmed Nevada's decision in *Franchise Tax Bd. of Cal. v. Hyatt (Hyatt I)*, 538 U.S. 488 (2003).

After another round at the Nevada Supreme Court, which held that the FTB was liable for fraud and intentional infliction of emotional distress, the FTB sought review once again in the U.S. Supreme Court. The Court granted certiorari for the second time, agreeing to consider two questions: (1) whether the Nevada Supreme Court erred by failing to apply to the FTB the statutory immunities available to Nevada agencies and (2) whether the U.S. Supreme Court's prior decision in *Nevada v. Hall*, 440 U.S. 410 (1979), should be overruled.

In its second decision, *Franchise Tax Bd. of Cal. v. Hyatt (Hyatt II)*, 136 S. Ct. 1277 (2016), the Court held that, with regard to California's first claim, the Full Faith and Credit Clause does not 'permit[] Nevada to award damages against California agencies

under Nevada law that are greater than it could award against Nevada agencies in similar circumstances.' As to California's second question, however, the Court, in the wake of Justice Antonin Scalia's death, spilt 4-4 on whether *Hall* should be overruled.

On remand from *Hyatt II*, the Nevada Supreme Court followed the high court's instructions and held that the FTB was entitled to the benefit of Nevada's statutory damages cap and instructed the trial court to enter a damages award for fraud within the cap of $50,000. The FTB again asked the U.S. Supreme Court to grant certiorari, arguing that 'under our federal system, an agency of one State may not (absent its consent) be sued in the courts of another State. ' Specifically, the FTB asked the Court to answer the question it agreed to decide in *Hyatt II:* 'whether *Nevada v. Hall* should be overruled.' The Court granted this petition.

The Court heard oral arguments on Jan. 9, 2019. These arguments will be covered in a future issue.

N.C. challenges application of Due Process Clause to trust taxation.

On January 11, 2019, the Court granted the petition for certiorari in *North Carolina Dep't of Rev. v. The Kimberly Rice Kaestner 1992 Family Trust*, Docket No. 18-457, ruling below at 814 S.E.2d 43 (N.C. 2018), in which the North Carolina Supreme Court held that the North Carolina Department of Revenue (the 'Department') did not ***45** establish the minimum contacts necessary to satisfy the principles of due process required to tax an out-of-state trust.

****8** According to the state court, The Joseph Lee Rice, III Family 1992 Trust (the 'Joseph Trust') was created in New York in 1992 and, pursuant to the trust agreement, was governed by the laws of New York, where Mr. Rice was a resident. No party to the Joseph Trust resided in North Carolina until Rice's daughter and primary beneficiary, Kimberly Rice Kaestner, moved to North Carolina in 1997. On December 30, 2002, the Joseph Trust was divided into three share sub-trusts for the benefit of Rice's three children, including Kaestner. The Kimberly Rice Kaestner 1992 Trust (the 'Trust') was the separate share trust formed for the benefit of Kaestner and her three children, all of whom reside in North Carolina.

During the tax years at issue (2005 through 2008), the assets held by the Trust consisted of various financial investments, and the custodians of those assets were located in Boston, Massachusetts. Documents related to the Trust were kept in New York. None of the beneficiaries of the Trust had an absolute right to any of the Trust's assets or income because distributions could only be made at the sole discretion of the trustee, who was a Connecticut resident. During the tax years at issue, no distributions were made to the beneficiaries. For tax years 2005 through 2008, North Carolina taxed the Trust on income accumulated each year, even though no income was distributed to North Carolina beneficiaries. In response, the Trust sought a refund of those taxes, totaling more than $1.3 million. North Carolina denied the refund request on Feb. 11, 2011.

The Trust brought an action in North Carolina state court, asserting that North Carolina violated the U.S. Constitution's Due Process Clause by assessing taxes on undistributed income held by the Trust. The Trust argued that the Trust itself, as opposed to the Trust's beneficiaries, did not have a constitutionally sufficient connection with North Carolina. The state trial court agreed with the Trust's argument and, in a 6-1 decision, the North Carolina Supreme Court affirmed the decision and held that the in-state residence of the Trust's beneficiaries is not a sufficient connection with North Carolina to allow North Carolina to tax the Trust's income.

In its successful petition for review, North Carolina asks the Supreme Court whether 'the Due Process Clause prohibit[s] states from taxing trusts based on trust beneficiaries' in-state residency.'

Petitions Pending

In addition to the previously granted petitions, one previously reported petition, and a related newly filed conditional cross-petition, remained pending before the Court at the time of this writing.

Alabama seeks to end decades-old dispute with CSX over railroad fuel taxes.

In *Alabama Dep't of Rev. v. CSX Transportation, Inc.,* Docket No. 18-447, ruling below at *CSX Transportation, Inc. v. Alabama Dep't of Rev.,* 888 F.3d 1163 (11th Cir. 2018), the Supreme Court is asked to review the Eleventh Circuit's holding that the Alabama sales tax, which applies to diesel fuel purchases by rail carriers but not diesel fuel purchases by motor or water carriers, constituted a tax that impermissibly discriminates against rail carriers under §11501(b)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the '4-R Act').

****9** The 4-R Act prohibits states from imposing a tax 'that discriminates against a rail carrier.' CSX Transportation, Inc. ('CSX') is an interstate rail carrier that, according to the Eleventh Circuit, competes against trucking transport companies (motor carriers) and commercial ships, vessels, and barges (water carriers). In Alabama, the state's 4% sales and use tax applies to the purchase of diesel fuel, unless otherwise exempt. No exemption applies for rail carriers; however, motor carriers and water carriers are both exempt from the state sales and use tax. Motor carriers, however, are required to pay a Motor Fuels Excise Tax of $0.19 per gallon of diesel to Alabama, and water carriers are subject to a federal (but not state) excise tax of $0.291 per gallon of fuel.

In 2008, CSX first sued the Alabama Department of Revenue (the 'Department '), seeking a declaratory judgment that the imposition of the state's sales and use tax violated the 4-R Act. CSX argued that the imposition of the tax against rail carriers, but not motor or water carriers, violated the language of the 4-R Act, which provides that a state may not 'impose another tax that discriminates against a rail carrier.' After CSX's complaint was dismissed by the district court and the Eleventh Circuit, the U.S. Supreme Court reversed and held that denying rail carriers exemptions provided to other ***46** carriers can be a form of discrimination under the 4-R Act. *CSX Transp., Inc. v. Alabama Dep't of Rev.* ('CSX I'), 562 U.S. 277 (2011).

On remand, the district court ruled that Alabama's sales and use tax scheme does not discriminate against CSX. The Eleventh Circuit reversed, however, after deciding to apply a 'competitive approach,' which compares rail carriers only to their direct competitors when addressing claims of discrimination under the 4-R Act. On review, the U.S. Supreme Court agreed with the Eleventh Circuit's use of a 'competitive approach' comparison, but disagreed with the circuit court's refusal to examine Alabama's alternate-tax based justifications for its disparate treatment of rail carriers. Instead, the Court held that 'an alternative, roughly equivalent tax is one possible justification that renders a tax disparity nondiscriminatory.' *Ala. Dep't of Rev. v. CSX Transp., Inc.* ('CSX II'), 135 S. Ct. 1136 (2015). Therefore, the Court determined that the lower courts should have allowed Alabama to 'justify its decision to exempt motor carriers from its sales and use tax,' and the Supreme Court remanded the case to the district court, setting the stage for CSX round three.

On remand (again), the district court agreed with Alabama that neither the motor carrier nor the water carrier exemption violates the 4-R Act. On appeal, the Eleventh Circuit partially agreed, at least regarding the motor carrier exemption. According to the Eleventh Circuit, the motor carrier exemption was justified because the state's sales and use tax is 'roughly equivalent' to the excise tax imposed on motor carriers. The Eleventh Circuit disagreed, however, with the district court's ruling as to the exemption for water carriers, holding that, in order to remedy the discrimination, Alabama must either (1) stop collecting sales and use taxes from CSX or (2) revoke the water carriers' exemption.

****10** Alabama now asks the U.S. Supreme Court to consider the following question in what could be the third round of the state's dispute with CSX: 'Under 49 U.S.C. §11501(b)(4), when can a State justifiably maintain a sales-and-use tax exemption for fuel used by vessels to transport goods interstate without extending the same exemption to rail carriers?'

CSX files a conditional cross-petition.

On Nov. 9, 2018, CSX filed a conditional cross-petition for certiorari with the Court (Docket No. 18-612) should the Court grant Alabama's petition, discussed above. CSX asks the Court to review the motor carrier portion of the Eleventh Circuit's

holding. The question presented is as follows: ‘Whether, as the Eleventh Circuit held, Alabama's imposition of a motor fuels tax used by the interstate motor carriers sufficiently justifies Alabama's imposition of a facially discriminatory sales and use tax on railroad diesel fuel, notwithstanding decisions of the Court and at least one state supreme court.‘

Petition Denied

One new petition has been denied by the Court since our last update. In *Franceschi, Jr. v. Yee, et. al.* (Docket No. 18-585), a petition for certiorari was denied for two cases in which the plaintiffs unsuccessfully challenged the constitutionality of two California statutes: Cal. Rev. & Tax. Code §19165 (which establishes a delinquent list of the top 500 delinquent taxpayers who owe in excess of $100,000) and Cal. Bus. & Prof. Code §494.5 (which, among other things, provides for the suspension of the driver's license of anyone who is placed on the list of the top 500 delinquent taxpayers until full payment of the tax obligation is arranged.)

The Justices appeared skeptical of a broad approach, which Justice Kagan described as ‘a most favored nation requirement.‘

The Minnesota Supreme Court held that Minnesota's resident trust classification violated both the federal and Minnesota Due Process Clauses.

Justice Breyer appeared to agree with the Chief Justice, arguing that if the Yakama Nation could avoid this particular tax, it would allow the Yakama Nation to refuse to pay a multitude of taxes.

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