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Railroad Tax Fight Lands on Supreme Court Docket.

The U.S. Supreme Court will weigh in on whether state sales taxes on fuel — which do not apply to trucking companies and barge operators — unfairly discriminate against railroads.

The justices, who begin their annual term at the beginning of October, agreed to hear a case pitting Alabama tax collectors against CSX Transportation, a major freight railroad. In doing so, they may finally settle a long-running debate on the rules states must follow when taxing railroads.

The Multistate Tax Commission, a group of tax agencies in 47 states, said in court documents that a lower court decision, which blocked Alabama from collecting sales taxes on railroad fuel, needed a closer look. The decision, they said, “has already imperiled a significant source of revenue for the states, and this uncertainty may be extended to other tax impositions as well if not resolved now.”

Lawyers for the railroad say those worries are overblown. No other states joined Alabama in encouraging the high court to take the case. “The silence of the states hardly is surprising because ... Alabama’s taxing scheme is not common and very few states would be affected by the issue presented here,” the CSX attorneys wrote last year in asking the justices to deny the appeal.

The dispute centers on a 1976 federal law, called the Railroad Revitalization and Regulatory Reform Act, which prohibits states from imposing taxes that “discriminate against a rail carrier” regulated by the federal government. CSX claims that Alabama is discriminating against it because Alabama exempts trucking companies and barge operators from its sales taxes. Alabama officials counter that the state’s taxing scheme is fair because instead of paying the sales tax, trucking companies have to pay 19 cents per gallon in state fuel taxes.

The fuel tax and sales tax bring in roughly the same amount of money. The sticking point, however, is that municipalities can impose sales taxes on top of the state share with the exception of the state fuel tax on diesel for road use. Railroads pay more taxes on diesel when the price of diesel rises, CSX’s lawyers contend, while trucking companies pay the same amount of tax per gallon of diesel no matter how expensive the fuel is.

This is actually the second time the high court has stepped into the Alabama dispute. In 2009, the court allowed the railroad’s challenge to go forward over Alabama’s objections. That first decision, however, did not settle some of the key questions about how the law should be applied. Since then, lower courts have reached opposite interpretations.

In order to determine whether railroads are being discriminated against, the court will need to decide to which taxpayer group railroads should be compared. In the Alabama case, for example, CSX argues that it should be compared to its competitors — trucking companies and barge operators. The state, however, says CSX should be compared to all other commercial and industrial entities, such as construction companies, which currently pay the same sales taxes CSX does.

CSX lawyers are confident the high court will rule in their favor. They point to other court decisions that struck down similar taxing schemes for railroad fuel in Louisiana, Minnesota, Missouri and

Tennessee. Only six of the 23 jurisdictions CSX operates in tax railroad diesel fuel. Some of those, including Illinois and New York, impose the same taxes on road and off-road diesel.

The Supreme Court is expected to issue a decision on the case by the end of next June.

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BY DANIEL C. VOCK | SEPTEMBER 22, 2014

dvock@governing.com | <https://twitter.com/danvock>

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