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**TAX - WEST VIRGINIA**

## Matkovich v. CSX Transportation, Inc.

**Supreme Court of Appeals of West Virginia - November 16, 2016 - S.E.2d - 2016 WL 6833988**

Tax Commissioner appealed decision of the Office of Tax Appeals (OTA) which determined that taxpayer that paid motor fuel use tax was entitled to sales tax credit for the sales taxes it paid on motor fuel purchased from the cities, counties, and other municipalities of other states.

The Circuit Court affirmed. Tax Commissioner appealed.

The Supreme Court of Appeals held that dormant Commerce Clause required that taxpayer, which paid motor fuel use tax, receive sales tax credit for the sales taxes it paid on the motor fuel both to other states and to the subdivisions of other states.

Both the motor fuel use tax imposed on taxpayer and the corresponding sales tax credit allowed for sales taxes that taxpayer paid on motor fuel purchased from other states had substantial nexus with the State, as required for use tax and sales tax credit to comply with the dormant Commerce Clause. Taxpayer operated interstate rail transportation service in the State and purchased fuel outside the State which it used in its operations in the State.

Motor fuel use tax imposed on taxpayer that purchased motor fuel from other states which it used in its interstate rail transportation operations in the State was fairly apportioned, as required for use tax to comply with the dormant Commerce Clause. Use tax was calculated with specific reference to the amount of motor fuel that taxpayer used in the State, and use tax charged to taxpayer directly correlated to the fuel that it used for the miles it traveled within the State.

Dormant Commerce clause required that taxpayer, which paid motor fuel use tax, receive sales tax credit for the sales taxes it paid on the motor fuel both to other states and to the subdivisions of other states. Disallowance of sales tax credit for sales taxes imposed by subdivisions of other states would produce total tax burden on interstate commerce that was higher than purely intrastate transaction, and allowing sales tax credit only for sales taxes paid to other states would unfairly discriminate against interstate commerce.

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