Okies Enjoy Largest Tax Cut in State History

More than one million Oklahoma taxpayers will receive tax rebates later this year, thanks to a historic $150 million tax cut measure passed by the legislature on May 29 and signed by the governor on June 8. HB 1547 and SB 435 together provide the largest tax cut in Oklahoma history. The House bill reduces the top marginal tax rate from 7% to 5%.

NC Taxpayers Cry Foul Over Budget Tactics

Tax watchdog groups are denouncing how North Carolina’s House passed a massive new tax increase in the 2005-2007 budget. House members in June passed a $17.1 billion budget that hikes taxes $290 million. It was pushed through the state House of Representatives by the Democratic leadership on a near-party line vote in the middle of the night. The measure has gone to conference committee, where at press time lawmakers from the House and Senate are hammering out different versions.

Kansas Schools Get Boost

Kansas lawmakers, under threat the state’s high court would close down the state’s public education system, have given public schools even more money than the Kansas Supreme Court ordered on June 3.

In special session July 6, lawmakers approved adding $148 million to public school funding for the current fiscal year, $5 million more than ordered. The additional $148 million comes on top of a $142 million increase in education spending the legislature approved earlier in the year, for a total boost of $290 million. This coming January, the court could order the state to spend another $563 million over the next year.
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Tobacco Companies Squared Off
Major tobacco companies have taken opposite positions on the governor’s veto.
R.J. Reynolds Tobacco Company supported the bill, and two days after the veto, it issued a statement calling the veto a “loss for Tennessee.”

“The bill that was overwhelmingly approved by the state legislature was based on solid constitutional grounds,” said Tommy Payne, executive vice president of external relations for R.J. Reynolds, in the statement. “As passed by the Tennessee legislature, and enacted into law in four other states, this legislation is consistent with the MSA and would have generated needed revenue for the state.”

In early June, Phillip Morris USA sent a statement to Tennessee officials blasting the attempt to impose “equity fees” on small companies that are not signatories to the MSA.

“The equity assessment proposal being advocated by some tobacco companies that have signed the Master Settlement Agreement (MSA) would impose an extra tax in MSA states on Non-Participating Manufacturers (NPMAs) over and above the escrow payments that they are required to make by law,” the statement said.

Non-MSA Producers Angry
On June 10, Clark T. Corson, president of the Council of Independent Tobacco Manufacturers of America (CITMA), a trade association of tobacco companies that are not party to the MSA, issued a statement accusing R.J. Reynolds of backing the legislation to wipe out small company competition.

“This effort by Reynolds America to constrain states’ offers will be filled by a selective tax on a discounted price segment of the industry which only accounts for seven percent of the entire cigarette market in the United States is purely a market share grab, and is designed to put small companies out of business,” Corson said. In a telephone interview, Corson said there are about 100 small cigarette producers that did not sign the Master Settlement Agreement. They instead signed private agreements that require them to pay the same amount per carton as the MSA signers, with the collected money put into an escrow account to pay for future cigarette-related medical claims.

Tennessee Governor Vetoes Cigarette Tax Hikes

Tobacco industry split over proposal by Steve Stanek
Tennessee Gov. Phil Bredesen (D) vetoed legislation in June that would have increased taxes on off-brand cigarettes.

In a June 20 letter to Sen. John Wilder (D-Somerville), Bredesen said enacting SB2002 would endanger the state’s payments under the Tobacco Master Settlement Agreement (MSA). The settlement has generated more than $1 billion in payments to the state government from the tobacco industry since the agreement was reached in 1998.

Bredesen said he based his decision on a June 17 letter from Attorney General Paul G. Summers, who said some large tobacco companies might interpret the new tax as a violation of the MSA. Even though SB2002 included language that would have voided the measure if it was determined to be a violation, Summers wrote Tennessee’s tobacco payments still “might be delayed several years while we argue this point in court.”

Cigarette taxes in Tennessee are 20 cents a pack. They would have gone up another 50 cents a pack on off-brand cigarettes made by small companies that are not a part of the MSA.

The state estimated the tax increase would have brought in about $12 million. The money would have been used to help fund TennCare, which Tennessee created in 1994 to replace its Medicaid health care program for low-income individuals.
Congressional Energy Bills Pump Ethanol, Billions in Tax Breaks

by Dennis Byrne

U.S. motorists will be required by the federal government to sharply increase their use of the corn-based gasoline additive ethanol in the coming years. The only question now is, by how much?

The boost for ethanol is one of many objections critics of the new federal energy legislation now in conference committee cite. The Senate bill would cost the federal budget $56 billion in subsidies and tax breaks over 10 years. The House version would cost nearly $90 billion.

The nation would be mandated to consume, by 2012, either 78 percent more ethanol, under the House-approved bill, or 208 percent more, under the Senate-approved bill. These and other differences will be worked out in conference committee, perhaps this fall. If agreement can be reached, the legislation is expected to be signed by President George W. Bush.

The Senate version of the energy legislation includes $18.4 billion in tax breaks for favored industries. The legislation includes $8 billion in tax breaks for favored industries. The House version has $8 billion in tax incentives.

Midwest States Push Ethanol

The politics of the debate has followed geographic, rather than partisan, lines. Senators from Midwest corn-producing states strongly favored the creation of a government-mandated market for their corn growers and ethanol producers, while senators from coastal states opposed the legislation because they said it would force an increase in gasoline prices.

The legislation’s backers included ethanol producers and large campaign contributors, such as Decatur, Illinois-based Archer Daniels Midland, the nation’s largest ethanol producer.

One opposition leader was Sen. Charles Schumer (D-NY), who asked on the Senate floor, “Where are my friends from the free market when we need them? Is this a free market?”

Hastert Applauds Senators

House Speaker Dennis Hastert (R-Illinois) has been a strong proponent of the need for energy legislation.

After the Senate’s approval of the energy bill, Hastert issued a statement in which he said the legislation “will go a long way towards giving our nation the sound, comprehensive energy policy that our citizens need and deserve. It reduces our dependence on foreign oil by expanding domestic supplies and allowing oil and gas exploration right here in the United States.

“And, the legislation significantly expands the use of renewable fuels like ethanol and biodiesel—environmentally safe alternatives that can be found in the corn and soybean fields across the United States. Finally, the bill creates nearly a half million jobs in the manufacturing, construction, agriculture, and technology sectors.”

Subsidies Criticized

Jerry Taylor, director of natural resource studies at the Cato Institute, said the energy bill “represents more of the same, with a lot more subsidies. It’s a ‘pick ‘em’ as far as which are the most annoying or obnoxious.”

Taylor said the tax breaks “are particularly bad” because, with energy prices at record levels, there is no need to provide incentives for additional energy research or conservation. The price is the incentive.

“They’re subsidizing more bad investments,” Taylor said. “Ethanol, clean-coal technology, nuclear power ... they all have political merit but little economic merit. If a fuel or technology has merit, it doesn’t need a public subsidy. If it doesn’t have merit, no amount of subsidy is going to bestow it.

“These tax breaks and subsidies represent government interference in the market, favoring some sectors over others,” Taylor said. “This is the approach we took in the 1970s. It was a complete boondoggle then, and it is now.”

Ben Lieberman

“This is less of an energy bill and more of a pork-barrel bill. From wind or solar to generate electricity to diesel fuel made from soybeans or lard, just about every conceivable alternative that hasn’t been able to compete on its own is getting favorable tax treatment.”

Ben Lieberman

THE HERITAGE FOUNDATION

‘More of a Pork-Barrel Bill’

Ben Lieberman, senior policy analyst at The Heritage Foundation, is likewise skeptical of the subsidies.

“Ethanol already receives a 52-cents per gallon tax credit,” he said. “Now, not only are we giving ethanol a big subsidy, we’re mandating its use. If we need to use the tax code to encourage its use, that means it’s not worthwhile.

“This is less of an energy bill and more of a pork-barrel bill,” Lieberman said. “From wind or solar to generate electricity to diesel fuel made from soybeans or lard, just about every conceivable alternative that hasn’t been able to compete on its own is getting favorable tax treatment.”

Lieberman said the legislation does have “a few things that can be defended,” such as a 15-year rather than 20-year depreciation period for electric transmission lines, and some streamlining of regulations.

Subsidizes Profitable Industries

On the whole, though, the legislation gives away far too much at taxpayer expense, Lieberman said.

“A lot of people are asking why taxpayers should be subsidizing profitable industries,” Lieberman noted, pointing out that the four largest oil companies last year earned nearly $100 billion. “It’s a legitimate question. Why have taxpayer subsidies of research and development when the market already provides the incentive to do it?”

Dennis Byrne (dbyrne1942@earth link.net) is a Chicago writer and consultant.
Indiana Launches Regional Development Effort

by Steve Stanek

Indiana has created a Regional Development Authority for the northwest corner of the state, allowing local officials to raise taxes for redevelopment of the Lake Michigan shoreline and for transportation projects, including bus and rail lines and expansion of Gary Airport.

Since announcement of the plan, taxes in one of the counties went up, on July 1. Hoosiers on both sides of the issue have reacted strongly, many raising concerns about the plan’s likely effectiveness. Those outside of the state and local governments have been especially skeptical. (See sidebar.)

The plan received support from virtually all area lawmakers, Democrats and Republicans alike, though some grassroots Republicans criticize the spending and tax hike authority. The bill passed April 29, near the close of the legislative session. A seven-member RDA board is slated to be seated in September.

Lawmakers say the RDA provides a way to rejuvenate an area that has lost thousands of jobs in steel and related industries. The Lake Michigan shoreline of Lake County once was a center of America’s steel industry. Southern Lake and neighboring Porter County are more rural.

One County Controls Board

The mayors of Gary, East Chicago, and Hammond will each appoint a member to the RDA board. Mayor Tom McDermott of Hammond has announced he intends to appoint himself.

The Lake County Council also gets an appointment, giving Lake County four of the seven RDA votes. The RDA board will decide which projects to pursue and how to fund them. It also will have the power to condemn private property, borrow money, and build.

“Rural people have a concern over what’s in it for them,” said State Sen. Vic Heinold of Kouts, Indiana, in Porter County, but he said he supported the bill because of its potential to improve the area economy.

“Two primary projects are the Gary Airport expansion and rail from southern Porter and Lake Counties to Chicago,” Heinold said. “We are so tied to Chicago. A lot of people from here work in Chicago. To keep growing our community, there is a large need for people to move here and go to Chicago,” for work.

‘Progressive Action Needed’

Indiana House Speaker Brian Bosma said, “We have to take progressive action to ensure a vital future. One of the key elements of the plan is expansion of Gary Airport.”

Bosma said the airport can receive federal matching grants “that will jump-start development of the entire area. Ground transportation is also critical for future growth. People are going to need to get from municipality to municipality and through to Chicago in a convenient and timely fashion. Whether that’s done by bus or rail will be up to local decision makers.”

“Indiana has created a Regional Development Authority for the northwest corner of the state, allowing local officials to raise taxes for redevelopment of the Lake Michigan shoreline and for transportation projects ...”

Taxes Already Rising

The RDA could spend $30 million annually on economic development projects in Lake and Porter Counties. Indiana has committed to give $5 million to the RDA in 2006 and 2007, though contributions could exceed that amount. Lake and Porter Counties and Gary, Hammond, and East Chicago each will contribute $3.5 million and have authority to raise taxes to provide the money.

Soon after the legislation became law, a local tax hike to fund the RDA was approved.

On a 4-3 vote in May, Porter County doubled a local income tax to 0.5 percent. That tax increase, which took effect July 1, is estimated to raise $7 million to be split between the RDA and property tax relief.

‘Diversification Extremely Important’

State Rep. Ralph Ayres (R-Chester ton) helped write the final version of the bill, which had the support of the entire Lake and Porter County delegations.

“The area is still strongly dependent on steel,” Ayres said. “Even though we’ve gone through bankruptcies and consolidations, the future of the steel industry there is unknown. Diversification is extremely important.”

Steve Stanek (stanek@heartland .org) is managing editor of Budget & Tax News.

Skeptics Express Doubts about RDA

Many outside state or local government are skeptical of the Northwest Indiana Regional Development Authority.

Gambling Money Disappears

In a May 8 column in the Post-Tribune newspaper of Merrillville, Indiana, Maurice M. Eisenstein, associate professor of political science at Purdue University, noted the area has little to show from $1.5 billion in gambling revenue that has come in since dockside casinos were approved 12 years ago.

“What do we have? About 1,000 low-paying jobs and the highest mortgage default rate in the country,” Eisenstein wrote.

Regarding the RDA plan, Eisenstein wrote, “The ... package, combined with the biennial budget, is an economic disaster for NWI [Northwest Indiana] by any objective standards of economic development. Economic development means bringing more money into a geographical area than goes out ... The new RDA authority primarily allows NWI to spend its own money.”

“Porter County was included in the bill because Lake County’s reputation for wasteful government spending and corruption did not bode well in selling the bill statewide. In other words, Porter County was used to pass a piece of legislation for Lake County.”

DAN WHITTEN
PORTER COUNTY COUNCIL

Politics Cause Concern

Tom Drake, a Munster, Indiana resident and local Republican activist, said, “This has become a nightmare. I thought this whole boondoggle would be dead when Republicans took over the House and governorship. Instead, our Republican governor [Mitch Daniels] embraced it. He has essentially ignored Lake County grassroots Republicans and suburban voters.

“As far as Gary Airport [is concerned], there probably could be economic development, but first they must take control away from the corrupt local politicians,” Drake said.

Some local politicians also have objections. In a column in the Munster Times, Dan Whitten, a member of the Porter County Council, complained, “all those involved with the bill admit that its spending priority is first the Gary/Chicago International Airport.

“Porter County was included in the bill because Lake County’s reputation for wasteful government spending and corruption did not bode well in selling the bill statewide. In other words, Porter County was used to pass a piece of legislation for Lake County.”

Whitten was one of three Porter County Council members who opposed raising a local income tax to fund the RDA.

In 1962, Bobby Kennedy, then U.S. Attorney General, called Lake County, Indiana the most corrupt county in America.
Rising Property Taxes Fuel Taxpayer Revolts

by Pete Sepp

Roughly a quarter-century has passed since Proposition 13 in California and Proposition 2-1/2 in Massachusetts touched off a coast-to-coast wave of public interest in property tax limitation measures. Yet today the property tax remains one of the most dominant fiscal policy concerns, and for good reason.

The property tax is no longer the overwhelming revenue source for states and localities it was in the early twentieth century, but it continues to be a major and often counter-cyclical role in public finance.

Property Taxes Rising Rapidly

Between December 2001, when the economic slowdown was still gripping the nation, and December 2004, state and local personal income tax proceeds declined by 1 percent, while sales tax revenues grew 12 percent, according to U.S. Census Bureau statistics. Property tax collections surged by 25 percent.

In many areas of the country, property taxes have risen far faster than the national rate. In Alexandria, Virginia, residents have faced an average 13 percent inflation-adjusted increase in their property tax bills each year for the past five years. Communities in states throughout the country, from Florida to Nevada, New Jersey to Illinois, Wisconsin to Rhode Island, report even bigger jumps in property taxes.

In many areas of the country, property taxes have risen far faster than the national rate.

Citizens, Politicians Seek Limits

Public officials and taxpayers have responded to these trends in various ways:

- On June 13, Times of Trenton political reporter Tom Hester Jr. noted both Jon Corzine and Douglas Forrester, who are challenging each other in the “off-year” New Jersey governor’s race, “talk about property tax help via increased state spending on property tax relief, not by reforming the system that forces New Jersey property owners to pay an average of $6,000 per year in property taxes.”

- Citizens in Maine, which has long ranked among the top five states for property tax burdens, qualified a measure for the 2004 ballot that limited the property tax rate and future valuation increases (much like Proposition 13 does). The proposal was rejected, but this year Maine activists—led by veteran tax-fighter Mary Adams (http://www.taxpayerbillofrights.com)—have mounted a new ballot drive modeled after another famous Constitutional limit, Colorado’s Taxpayer’s Bill of Rights (TABOR).

Lack of Accountability Crucial

National Taxpayers Union (NTU) President John Berthoud says real estate transfer taxes are “especially insidious because they can be levied at very little political risk to those proposing them. In most cases, neither the homebuyers nor the homesellers are able to vote in the jurisdiction that’s tapping both of their wallets. This lack of accountability is a politician’s dream and a taxpayer’s nightmare.”

In Pennsylvania and elsewhere, the threat from these levies is increasing. Other states that are considering adopting or raising transfer taxes include Connecticut, Maine, New Jersey, Ohio, Tennessee, and Washington.

Even localities have gotten into the act. In June, the Ketchum, Idaho city administrator proposed creation of a real estate transfer tax to help fund a “Regional Transit Authority” among several cities in the Wood River Valley area. Such a tax would require approval from a skeptical state legislature. So serious has this trend become that NTU recently formed United Homeowners, a coalition designed to give voice to the millions of homeowners, buyers, and sellers who work hard to protect their investment. NTU and its partners—the Commonwealth Foundation, Lincoln Institute, Americans for Tax Reform, Citizens Against Government Waste, and the American Association of Small Property Owners—have organized a Web site at http://www.unitedhomeowners.info to help taxpayers stay informed of developments in their own states and take action against tax hikes.

- Pete Sepp

New Threat: Transfer Taxes

One other, less welcome, response to rising property taxes from some elected officials has been to bury the heavier burdens elsewhere. The revenue-raiser of real estate transfer tax, which usually hits both the buyer and seller of a piece of property with a large bill, based on the property’s value.

Pennsylvania, for example, charges a flat 1 percent on the state level, and localities get an additional 1 percent. On the average Pennsylvania home, this amounts to $3,670—and it is twice that amount in Philadelphia and Pittsburgh. A proposal from Gov. Ed Rendell (D) earlier this year would have raised the state’s “share” of the tax by 4 percent, in order to bail out mass transit systems in Philadelphia and other areas.

“Homeowners have been unwilling passengers on this high-tax express, and they’re clamoring for a more responsible engineer who can apply the brakes.”

JOHN BERTHOUD
NATIONAL TAXPAYERS UNION

Rendell’s plan has since been shelved, but it was not defeated outright. Commonwealth Department of Revenue statistics have confirmed that through the month of May, real estate transfer tax revenues were already running $68.5 million ahead of projections.

New Jersey and New York have “progressive” transfer taxes—the rates climb with the sale price of the home.
Although best-known for having helped defeat the imposition of a statewide income tax for several years, activists with Tennessee Tax Revolt (http://www.tntaxrevolt.org) have flexed their muscles on behalf of local TABOR movements in cities such as Spring Hill and Oak Ridge.

Bills drafted by Minnesota State Rep. Phil Krinkie (R-Shoreview) and State Sen. Warren Limmer (R-Maple Grove) would replace the current “Truth in Taxation” property-tax grievance process with a survey that would ask each property owner whether he or she was content with the proposed level of property tax in the locality for the year ahead. If the number of “not satisfied” surveys returned to the state exceeded 20 percent of the parcels in a given jurisdiction, then a binding voter referendum between the proposed property tax rate and the rate already in effect would be held.

At press time the legislature was still in special session and the fate of the bills, which have support from Gov. Tim Pawlenty (R) and the Taxpayers League of Minnesota (http://www.taxpayersleague.org), was uncertain.

A citizen group in South Carolina (http://www.stopntax.org) seeks outright elimination of the property tax on homes and is enlisting legislative allies to accomplish the task. Palmetto State Sen. David Thomas (R-Fountain Inn) has proposed legislation (for 2006) that would replace the residential property tax with a 3 percent sales tax, while also reducing commercial property taxes.

In Pennsylvania, a movement led by a former radio talk show host (http://www.grandoldusa.com) wants to abolish property taxes on homeowners in exchange for higher taxes on incomes and elsewhere. Meanwhile, a group of Pennsylvania House members known as the Commonwealth Caucus (http://www.commonwealthcaucus.org) has crafted a different approach: Phase out school-related and other property taxes in favor of a broadened 5 percent state sales tax.

Similarly, Texas lawmakers grappled throughout this year’s legislative session with property-tax relief plans, some of which would create a new business “payroll tax” that would function much like a statewide tax on incomes. (Texas is one of nine states without such a tax.)

Some Alternatives Called Worse

These “abolish and replace” proposals ought to signal a cautionary note to would-be reformers: From an economic standpoint, some alternatives are worse than property taxes themselves. In a 2002 study conducted for the Texas Public Policy Foundation (http://www.tppf.org), Ohio University Professor Richard Vedder concluded that in addition to keeping total taxes at a tolerable level, policymakers seeking healthy economies should avoid steep, “progressive” income taxes and orient their systems toward sales and consumption taxes ... while keeping property taxes moderate as well.

Vedder also noted overall tax burdens increased three times faster in states enacting an income tax in the past 40 years than in states that shunned a broad-based wage tax.

Prof. Richard Vedder

“Ohio University Professor Richard Vedder concluded that in addition to keeping total taxes at a tolerable level, policymakers seeking healthy economies should avoid steep, ‘progressive’ income taxes and orient their systems toward sales and consumption taxes ... while keeping property taxes moderate as well.”

Relief On Its Way

David H. Bradley, a policy analyst with the liberal Center on Budget and Policy Priorities, wrote in a June 6 article for the Wall Street Journal, “if the historical trend holds, property taxes will stabilize or decline over the next several years, without the need for tax revolt-type limitations.” But taxpayer advocates around the country aren’t so sure.

Property tax limits and TABOR-type measures were the two hottest topics at the 2005 National Taxpayers Conference, sponsored by the National Taxpayers Union’s research affiliate and held in Washington, DC on June 16-18. The event, which featured networking and training opportunities for citizen activists, shattered all attendance records for previous conferences, which have been held biennially since 1989.

“National Taxpayers Conference alumni have participated in virtually every major citizen-based tax limit campaign over the past 15 years, so the future will likely hold many surprises for elected officials who believe the property-tax gravy-train will just keep rolling along,” NTU President John Berthoud remarked. “Homeowners have been unwilling passengers on this high-tax express, and they’re clamoring for a more responsible engineer who can apply the brakes.”

Pete Sepp (pressguy@ntu.org) is vice president for communications with the National Taxpayers Union (http://www.ntu.org).

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Citizens Fighting Eminent Domain Abuse www.CastleCoalition.org
“It is far more dangerous for budgeting purposes to increase government spending than to cut taxes.”

Grover Norquist

The Senate bill increases the state's standard deduction for taxpayers who do not itemize their deductions, from $2,000 to $4,000 over a two-year period. Combined, a family of four with an income of $50,000 will save $225 under the two measures.

Brandon Dutcher
Oklahoma Council of Public Affairs

“It’s the tax cutters who have the momentum, and they’ll be back next year for another whack at the income tax and also the death tax. Better still, TABOR continues to be an issue that will not go away.”

Brandon Dutcher agreed. “There is no question that the GOP pushed through the income tax rate cut. Gov. [Brad] Henry (D) is no fan of rate cuts, but he is a big fan of living revenues.”


The tax cut package passed only months after Republicans took control of the House of Representatives, which they had last controlled in 1921-22.

“The GOP took control of the State House in Oklahoma last election for the first time in over 80 years. The Democrats in the Senate see the writing on the wall, so they compromised on tax relief, which they have been reluctant to do until now.”

“They have come to rely upon. It is far more dangerous for budgeting purposes to increase government spending than to cut taxes. If a downturn occurs, and the state cannot balance, it is difficult to cut government programs that people have come to rely upon. It is far better fiscal policy to restrain government growth and keep enough Rainy Day funds to accommodate a temporary downturn.”

Brandon Dutcher, author of the House bill, “The GOP took control of the State House in Oklahoma last election for the first time in over 80 years. The Democrats in the Senate see the writing on the wall, so they compromised on tax relief, which they have been reluctant to do until now.”

Dutcher agreed. “There is no question that the GOP pushed through the income tax rate cut. Gov. [Brad] Henry (D) is no fan of rate cuts, but he is a big fan of living in the mansion. So with an eye to reelection, he thought it prudent to move to the middle and sign the tax cut bill, even though his base was aghast.”

Brandon Dutcher
Oklahoma Council of Public Affairs

Sandra Fabry (sfabry@atr.org) is state government affairs manager for Americans for Tax Reform.
Lawsuit Filed to Block North Carolina Tax “Giveaways”

Suit challenges $280 million incentives package for Dell Computer

by Steve Stanek

A former North Carolina Supreme Court Justice has filed a lawsuit challenging the constitutionality of a $280 million tax incentive package granted to Dell Computer by the State of North Carolina, Forsyth County, and city of Winston-Salem.

“The question is whether [the incentive package] violates the Commerce Clause of the U.S. Constitution,” said Robert Orr, now director of the North Carolina Institute for Constitutional Law.

Orr, representing seven state taxpayers, filed the suit June 23 in Superior Court in Raleigh, North Carolina.

Defendants include the state of North Carolina, Forsyth County, Winston-Salem, and state and local officials.

“It makes no sense to punish the broad base of businesses that are already in North Carolina while attempting to attract a few new businesses with targeted subsidies. The existing businesses end up subsidizing new business, sometimes their direct competitors. It’s bad economics, and it’s unfair.”

ROBERT ORR NORTH CAROLINA INSTITUTE FOR CONSTITUTIONAL LAW

Credits, Cash, Perks Given

The North Carolina legislature approved the incentives in 2004, in exchange for Dell’s commitment to build a manufacturing plant in Winston-Salem. The incentives include a combination of tax credits, cash, and perks such as worker training and police monitoring. Dell promised state officials about 1,700 employees, earning $9.50 to $14 an hour, will be hired.

A Dell spokesman in Austin, Texas said the firm does not comment on litigation.

Reversal, Clarification Sought

Plaintiffs are asking for:

■ a declaratory judgment that the Dell legislation, city and county resolutions, and any contracts entered into for the incentives package be declared unconstitutional;
■ an order that any public moneys or benefits already paid by the defendants to Dell be refunded to the public treasury of the city, county, and/or State of North Carolina; and
■ a judicial resolution regarding the scope of and limitations to state and local economic development subsidies and practices under the North Carolina and United States Constitutions.

Cuno Ruling Cited

The Constitutional complaints in the lawsuit track with last summer’s ruling of the 6th U.S. Circuit Court of Appeal in Cuno v. DaimlerChrysler. That ruling struck down a part of a $281 million package of incentives the State of Ohio offered local officials to attract the corporation in 1998 to build a Jeep manufacturing plant in Toledo.

The appellate judges ruled an investment tax credit Ohio granted DaimlerChrysler gave the firm preferential treatment to entice it to locate in Ohio, thus violating the interstate Commerce Clause of the U.S. Constitution, which prohibits states from favoring in-state businesses over out-of-state firms.

That ruling has been appealed to the U.S. Supreme Court, which has not decided whether it will hear the case.

Incentive Supporters Unite

The Council on State Taxation (COST) has formed a coalition to promote federal protection of state tax incentives, in response to the Cuno ruling. Kevin Thompson, COST’s legislative counsel, said Orr’s lawsuit “is interesting. They seem to be hanging their hat on the Commerce Clause challenges and are throwing in the state challenges. It’s tough to say what will happen.”

He said states need to have the flexibility to offer incentives to compete not just with other states but with other countries. He also said states should be free to set their tax policies.

He noted the Cuno ruling struck down an investment tax credit that was not unique to DaimlerChrysler. In North Carolina, “most of the state’s incentives were crafted with a specific company in mind. I’m not sure if that will have an impact on the resolution of the case.”

Richard Wagner, editor of Carolina Journal, which has written about North Carolina incentives programs, noted the North Carolina package is worth nearly three times as much as the Dell plant, which is estimated to cost $100 million. The plant is scheduled to open in September.

States in Bidding War

Wagner also noted North Carolina had engaged in a bidding war with Virginia and may have offered Dell more than $100 million more than Virginia offered to win the plant.

Orr said that is one reason he opposes such tax incentives.

“We’ve seen a proliferation of these large corporations playing one state against another, one community against another,” Orr said. “Our hope is our lawsuit will determine the types of selected subsidies that violate the Constitution. On the assumption it will end up in appellate court, we’ll get a broader ruling on how tax incentives can be spent.

“We hope to generate an increasing-ly detailed national debate on the issue of incentives and whether Congress should step in and stop this war among the states by limiting what states are doing in this incentives gamesmanship,” Orr said.

Firms Subsidizing Competitors

States argue such tax giveaways pay off over the long term, but Orr says the prime beneficiaries are the corporations that end up with huge subsidies instead of paying taxes as other businesses must do. He also said large corporations with political connections are much more likely to receive favorable treatment than smaller firms that do not have political connections or the financial muscle to buy connections.

“It makes no sense to punish the broad base of businesses that are already in North Carolina while attempting to attract a few new businesses with targeted subsidies,” Orr said. “The existing businesses end up subsidizing new business, sometimes their direct competitors. It’s bad economics, and it’s unfair.”

Steve Stanek (stanek@heartland.org) is managing editor of Budget & Tax News.
Justice’s House Targeted for Development

“The Lost Liberty Hotel would feature a “Just Desserts Café” and include a museum, open to the public, featuring a permanent exhibit on the loss of freedom in America. Instead of a Gideon’s Bible each guest would receive a free copy of Ayn Rand’s novel Atlas Shrugged.”

by Steve Stanek

Supreme Court Justice David Souter’s house could be seized to build a hotel, if a property rights advocate whose “phone has been ringing off the hook with people wanting to donate money” to the project gets his way.

Souter, who lives in Weare, New Hampshire, was one of five justices who on June 23 ruled local governments may seize private property and give it to a new owner who will use it for economic development that generates more tax revenue.

Application Process Has Begun

On June 27, Logan Darrow Clements faxed a request to Chip Meany, code enforcement officer of the Town of Weare, seeking to start the application process to build a hotel on the site of Souter’s home at 34 Cilley Hill Road.

Clements, CEO of Freestar Media, LLC in Los Angeles, pointed out Weare will certainly gain greater tax revenue and economic benefits with a hotel, not by allowing Souter to own the land. Freestar Media produces shows about government abuse.

“I'm serious,” Clements said. “If and when enough money comes in, I will go forward.”

Clements’ plan is to raise investment capital from pro-liberty investors and draw up architectural plans. Those plans would then be used to raise additional investment capital to complete the project.

‘People Throwing Money’

Within a few hours of issuing a news release announcing his plans to build “The Lost Liberty Hotel” on Souter’s property, “people began calling and throwing money at me,” Clements said. “I think I will have enough money to shepherd this through the process.”

Clements is not a real estate developer, so he said he plans to “bring people on board who know what they’re doing,” including architects, lawyers, and land speculators.

The Lost Liberty Hotel, he said, would feature a “Just Desserts Café” and include a museum, open to the public, featuring a permanent exhibit on the loss of freedom in America. Instead of a Gideon’s Bible, each guest would receive a free copy of Ayn Rand’s novel Atlas Shrugged.

‘Not a Prank’

“This is not a prank” said Clements. “The Town of Weare has five people on the Board of Selectmen. If three of them vote to use the power of eminent domain, to take this land from Mr. Souter, we can begin our hotel development.”

Calls from Budget & Tax News to the Town of Weare were not returned. However, a June 30 article by the Associated Press quoted Laura Buona, chairman of Weare’s Board of Selectmen, as saying, “At this point, the Board of Selectmen are taking no action.”

Meany told the Associated Press, “Am I taking this seriously? But of course. If it is their right to pursue this type of end, then by all means let the process begin.”

Steve Stanek (stanek@heartland.org) is managing editor of Budget & Tax News.

Heartland Experts React to Eminent Domain Ruling


Paul Fisher, director of real estate law at McGuire Woods LLC in Chicago, member of the board of directors of The Heartland Institute:

“The U.S. Supreme Court has given a major victory to urban planners, large property owners, and government in the Kelo decision announced June 23. The major losers are those who treasure private property rights and the respect for those rights as set forth in the U.S. Constitution, and with the least political power to protect themselves.

“In Kelo, the Court has stretched the term ‘public use’ to encompass whatever has economic development benefits in the view of local government as long as it is ‘carefully considered’...”

“The carefully considered test can probably be passed by creating the right record of hearings and a nice pamphlet or book with color photos. There is no need to say that the affected properties are blighted or dangerous. Virtually all of the economic development tools now being used will work and new tools will certainly be developed. Current state statutes which require a finding of ‘blight’ as a condition for condemnation may well be amended to do away with that inconvenient requirement.”

James M. Taylor, managing editor, Environment & Climate News:

“It is distressing that the Court has given government the go-ahead to take property from one private citizen and give it directly to another private citizen solely for the purpose of improving the tax base. The ‘public use’ restriction on the government’s previously limited eminent domain power has been eroded in one fell swoop. ...”

“Government can claim almost any taking and transfer of property from one private citizen to another is predicted to generate increased tax revenue. ...”

“The Court’s decision illustrates the vital role state legislatures and local representative government must play in protecting our rights. I think I will have enough money to shepherd this through the process.”

Meany told the Associated Press, “Am I taking this seriously? But of course. If it is their right to pursue this type of end, then by all means let the process begin.”

Steve Stanek (stanek@heartland.org) is managing editor of Budget & Tax News.

Maureen Martin, Heartland Institute Senior Fellow for Legal Affairs, managing editor of Lawsuit Abuse Fortnightly:

“In 1954, in Berman v. Parker, the Court upheld a District of Columbia plan to condemn blight-ed property, acquire it, and transfer the land to other private parties for redevelopment, including the construction of low-income housing. ...”

“Thirty years later, the Court found constitutional a Hawaii state statute that forced landowners to sell their property to their tenants. The harm to be remedied in Hawaii Housing Authority v. Midkiff was that nearly half of the land in the state was owned by state and local government, and another 47 percent of the land was in the hands of only 72 landowners. The Court held that addressing ‘the social and economic evils of a land oligopoly’ qualified as a valid public purpose. Further, the Court held a state taking would be constitutional so long as it was ‘rationally related to a conceivable public purpose.’

“The difference in Kelo is that the property to be taken by the city is not blighted, but rather is an area of well maintained single-family homes near the waterfront of New London, Connecticut. ...”

“The danger, as pointed out by Justice O’Connor in her dissenting opinion, is that there is virtually no limit to the takings power established by the majority.”

Contact Freestar Media at 310/593-4843, logan@freestarmedia.com, or visit the company’s Web site at http://www.freestarmedia.com.
Ruling
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the opposite view. “The National League of Cities is pleased that the Supreme Court upheld 50 years of precedent today, allowing local officials the continued use of eminent domain to bolster depressed economic neighborhoods,” said NLC President Anthony A. Williams, mayor of Washington, DC, in a statement.

“It’s important to note that the Court did not expand the power,” Williams continued, “but reaffirmed its current use, which has been indispensable for revitalizing local economies, creating much-needed jobs, and generating revenue that enables cities to provide essential services.”

“All Property at Risk
Many who have reviewed the ruling take issue with Williams’ view, saying the ruling does indeed expand the power of government to take private property. Justice Sandra Day O’Connor said as much in a blistering dissenting opinion.

“The specter of condemnation hangs over all property,” she wrote. “Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.”

There is no need for the property in question to be blighted or in an economically depressed area, according to the Court’s decision. Furthermore, private developers who obtain seized property may keep whatever profits they realize from the redevelopment projects.

‘Perverse Result’ Feared
O’Connor warned of powerful interests being able to cozy up to politicians to get what they want.

“The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms,” O’Connor wrote. “As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The founders cannot have intended this perverse result.”

Justice Clarence Thomas issued a separate dissenting opinion in which he wrote, “Something has gone seriously awry with this court’s interpretation of the Constitution. Though citizens are safe from the government in their homes, the homes themselves are not.”

Chief Justice William Rehnquist and Justice Antonin Scalia joined O’Connor and Thomas in dissenting.

‘Public Purpose’ ≠ ‘Public Use’
Justice John Paul Stevens wrote the majority opinion, which states economic development projects are “public use,” as intended by the Fifth Amendment to the Constitution. That amendment says government may take private property for “public use” after paying the property owner “just compensation.”

For most of the nation’s history, public use was understood to mean something widely used by and for the public, such as public roads or utilities. In 1954 the U.S. Supreme Court upheld 50 years of precedent for “public use” after paying the property owner “just compensation.”

The majority of justices in the Kelo case—Stevens, Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy, and David Souter—found that “[p]romoting economic development is a traditional and long accepted function of government.” Local governments may seize private property for another owner who will use the land in ways that stimulate economic activity, generating more tax revenue in the process, the justices ruled.

“A city, in its planning and development, the city is trying to coordinate a variety of commercial, residential and recreational land uses, with the hope that they will form a whole greater than the sum of its parts.”

‘Public Purpose’ = ‘Public Use’
The Supreme Court’s ruling yesterday that the economically troubled city of New London, Conn., can use its power of eminent domain to spur development was a welcome vindication of citizens’ ability to act in the public interest,” the newspaper wrote.

The Chicago Tribune took a decidedly different view. “The majority advised property owners to urge their state legislatures to set limits on the power to take private property. That’s laughable advice. The Bill of Rights was crafted precisely to protect individuals from the power of the state. The court now advises individuals to go hat in hand to the state, to ask politely for protection from its considerate power.”

Minorities Concerned
Critics of the ruling contend middle-class and lower-income homeowners and small business owners will be especially at risk of having their property seized and bulldozed to make way for new real estate projects, even if the properties have been well-maintained and improved by their owners.

In an amicus brief in the case, the Christian Leadership Council, the Southern Christian Leadership Council, and other groups wrote, “The history of eminent domain is rife with abuse specifically targeting minority neighborhoods. Indeed, the displacement of African-Americans and urban renewal projects were so intertwined that ‘urban renewal’ was often referred to as Negro removal.”

Nonpartisan Movement Forming
John Tillman, president of Americans for Limited Government, which has been tracking eminent domain cases across the country, said the decision frightened him.

“This ruling gives more power to the people who have an instaible desire to tax and spend,” Tillman said. “If government can make its decisions about private property based on what’s best for government revenues, liberty is lost.

“I think we will see a grassroots movement on eminent domain.”

— Steve Stanek
Are Cigarette Taxes Becoming Obsolete?

by Richard E. Wagner

Excise taxes originated centuries ago when governments were small, life was local, its pace was slow, and "capital" referred to bulky and heavy objects. We now live in an increasingly service-oriented economy, where life moves fast on a global scale and where much capital is immaterial in nature.

Social and economic changes force us to ask whether excise taxes are obsolete. If they are, governments will increasingly find that excise taxes do more harm than good.

Cigarette taxes, because states have raised them precipitously during the past 10 years, provide a good test of the obsolescence theory.

"Excise taxes originated centuries ago when governments were small, life was local, its pace was slow, and capital referred to bulky and heavy objects. We now live in an increasingly service-oriented economy, where life moves fast on a global scale and where much capital is immaterial in nature."

Revenue Shortfalls

Excise taxes often generate less revenue than originally projected. As taxes rise, people turn increasingly to other channels of commerce that they did not seek out when taxes were lower. They cross state borders to shop. They use the Internet to shop. They come across vendors who are selling lower-taxed, untaxed, or counterfeit cigarettes. And they do these things with increasing intensity as the tax rate rises.

The Master Settlement Agreement of 1998 set in motion a tobacco spending frenzy where legislatures boosted appropriations on programs from A to Z. Democratic politics face strong temptations to expand spending by borrowing. The Master Settlement Agreement opened a new opportunity for deficit finance, as states increased current spending by borrowing against future settlement revenues. However, settlement revenues have declined about 20 percent from initial projections, which has increased the interest burden on state debt.

In New Jersey, for instance, law- makers have sold bonds based on future revenues from the master settlement. Payment on those bonds depends on high sales of taxable cigarettes, but the state has depressed those sales by raising its cigarette tax to $2.40 per pack, second highest in the nation. This creates a vicious cycle in which the state reacts to lower-than-expected revenue with sharp tax rate increases, which in turn drive down settlement revenue and drive up interest on the bonds.

Underground Economy

Smuggling is a natural consequence of high taxation. It is well-known that organized crime is heavily involved in smuggling. The logistics of such high-volume operations in the underground economy require a good deal of organization. High taxation is a close cousin to prohibition. The U.S. experience with alcohol prohibition is thus instructive. Prohibition did not eliminate the use of alcohol. It drove 70 percent of the market underground, where organized crime and its violent methods of resolving commercial disputes prevailed.

The antidote to the violence of the underground economy is sensible, low taxation.

Unreliable, Destructive

"Cigarette taxes are already an unreliable revenue source," said Scott Hodge, president of the Washington, DC-based Tax Foundation, "and that unreliability will surely get worse as tax rates climb and more customers are forced to shop for low-tax cigarettes from legal and illegal sources."

The growth of these destructive consequences brings state governments to a crossroads. In one direction, governments use invasive, threatening, expensive, and ultimately futile tactics to enforce high tax rates. In the other direction, innovative, service-oriented state governments know they must compete with their neighboring jurisdictions by levying reasonable taxes.

Richard E. Wagner (rwagner@gmu.edu) is the Holbert R. Harris Professor of Economics at George Mason University in Fairfax, Virginia. He is the author of numerous volumes on excise taxation and tobacco taxes.

INTERNET INFO

Tactics

Continued from page 1

Dick Arney

Rep. Mitch Gillespie

Rep. Bill Faison

No Longer Lowest Rates

State Rep. Jim Crawford (D-Granville) defends the proposed tax hike. He told the Associated Press for a June 16 article, the budget bill “doesn’t raise any dollars that we don’t desperately need.”

Groups including the John Locke Foundation disagree, noting the $17.1 billion budget increases total spending by 7 percent. The North Carolina think tank produced an alternative budget that would reduce state spending.

According to the group’s Web site, analyst Joseph Coletti contended, “North Carolina’s recent string of budget deficits is the result of poor spending policies, not inadequate revenues or forces beyond our control.”

Michael Shiba (mshiba@freedomworks.org) is public affairs coordinator at FreedomWorks.


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Low-Tax Loss Leader Goes Up in Smoke

If the North Carolina budget becomes law, the Tar Heel State will no longer enjoy the lowest cigarette taxes in the nation, probably leading many shoppers to drive across the border to other low-tax states such as South Carolina, FreedomWorks State Director Allen Page said.

Members of the state legislature who oppose the tax hike echo this argument. According to the Associated Press on June 13, State Rep. Bill Daughtridge (R-Nash) said the low cigarette tax “is our hook, it’s our loss leader. It is why people stop.”

— Michael Shiba
Iowa, Illinois Economic Performance Diverging Sharply

Performance reflects fiscal policies of neighboring states

by Jamie Van Fossen

The Mississippi River is not the only thing that separates Iowa from Illinois. So does Iowa’s economic performance. New U.S. government statistics show the Iowa economy is surging at a pace that leads the nation. Neighboring Illinois, by contrast, has some of the weakest economic performance in the region.

Each state’s economic performance can be attributed, in large part to fiscal policy. Iowa’s policy has been to restrain state spending and taxes, whereas Illinois has been sharply increasing government spending and tax rates.

“I think whenever you can leave the wealth in the wealth creators’ pockets, you’re going to do better.”

STEWARD SANDSTROM
DUBUQUE AREA CHAMBER OF COMMERCE

Economic Differences Dramatic

Illinois has lost nearly 79,000 manufacturing jobs—10 percent of the total number of such jobs in the state—since November 2001, more than 31,500 of them since January 2003, according to the Illinois Coalition for Jobs Growth.

According to the coalition, if Illinois’ job growth had kept pace with national averages over the past decade, the state would have 475,000 more jobs today.

By contrast, “Manufacturing is still a significant component and one that is actually growing in Dubuque,” said Steward Sandstrom, president and chief operating officer of the Dubuque Area Chamber of Commerce. “John Deere has added jobs, several hundred of them. Eagle Window & Door recently finished an acquisition by Andersen Windows. That buyout will result in faster growth. They were on pace to add a couple of hundred jobs. Andersen is pushing them to add more than that. Right now they have about 1,000 employees. Four years ago they were at 500 employees.

“We have a number of companies that have seen substantial growth,” Sandstrom said. He also noted the service sector is expanding, citing as one example Prudential Financial, which is adding 100 employees to its Dubuque office.

Illinois Business Taxes Onerous

In February 2004, the Illinois State Chamber of Commerce and Chicagoland Chamber of Commerce released a study showing business fees and tax increases passed by the Illinois General Assembly to finance the FY 2004 budget would increase employers’ share of state and local taxes to 50.8 percent—almost 10 percent above the U.S. average of 42.6 percent and, in some cases, 25 percent above business taxes in other Midwestern states.

The state has done nothing since then to lighten those burdens. As the Iowa economy has grown, state government revenues have risen. For most of the current fiscal year, Iowa’s state revenue growth has far exceeded original projections.

Consider the following key indicators of growth through the first six months of FY 2005. (The higher the percentage shown, the greater the evidence of economic growth.)

- Individual Income Tax Collections: Iowa +7.4%, Illinois +2.9%
- Corporate Income Tax Collections: Iowa +31.2%, Illinois: +8.2%
- Sales Tax Collections: Iowa +4.9%, Illinois: +3.1%
- Total State Revenue: Iowa: +7.2%, Illinois: +1.2%

The figures show Iowans are earning more money and purchasing more taxable goods, and Iowa corporations are earning more profits than their counterparts in Illinois.

“I think whenever you can leave the wealth in the wealth creators’ pockets, you’re going to do better,” Sandstrom said. “That is what Iowa has used a variety of reserve funds, budget reductions, and efficiency strategies to make ends meet.

While Iowa legislators have controlled spending and taxes, Illinois lawmakers have drastically increased both. From FY 2002 to FY 2005, the contrasts are startling:

- Illinois raised state taxes by nearly $1.4 billion, while Iowa reduced taxes by a net $60 million (primarily due to a five-year plan to eliminate the state sales tax on utility bills).
- Illinois’ fiscal policy has been to restrain state spending and taxes, whereas Illinois has been sharply increasing government spending and tax rates.

“I think whenever you can leave the wealth in the wealth creators’ pockets, you’re going to do better." - Steward Sandstrom

Jamie Van Fossen (jamie.van.fossen@legis.state.ia.us) is a Republican state representative from Davenport, Iowa and chairman of the Iowa House Ways and Means Committee.
State Taxes Hit Telecom Services Doubly Hard

by Sean Parnell

State and local taxes imposed on telecommunications services continue to be more than double the average tax levied on general business, according to a recent study by the Council on State Taxation (COST).

The 2004 State Study and Report on Telecommunications Taxation, released in May 2005, shows the average state and local effective tax rate on telecommunications services is 14.17 percent, compared to 6.12 percent for general business nationwide. In many states, taxes make up more than 20 percent of a telecommunications consumer’s bill.

47,921 Tax Returns Each Year

“Tax laws in the states are antiquated and take money out of the pockets of every American telecommunications consumer,” said Stephen Kranz, tax counsel for COST and one of the study’s authors. “The fact that we require telecommunications providers to file over 170 tax returns per day demonstrates the time for unequivocal tax reform is long past.”

Compared to general business, telecommunications providers have 1,103 more transaction tax bases and 6,683 more taxing jurisdictions with which to contend, according to the study. A national telecommunications provider must file 47,921 tax returns per year compared to about 7,501 returns for a general business.

State Data Available

The COST study gives a national perspective on the tax load telecommunications consumers and providers must bear, and it also details the state and local telecommunications taxes and administrative costs imposed in each state.

Levels of taxation varied widely from state to state. Virginia taxes telecommunications more heavily than any other state, with an average of 29.77 percent in combined state and local taxes, followed by Maryland with an average rate of 27.31 percent, and Texas, which averaged 25.29 percent.

At the other end of the spectrum are Nevada (3.97 percent), Montana (5.88 percent), and Idaho (6.16 percent). Including federal taxes raises the tax bite by four percentage points in each state.

Stephanie Childs, vice president of government affairs and tax policy at the Information Technology Association of America (ITAA), said she has seen the study, which confirms what her organization has long known. “On the state and local side, many government entities are seeing telecom as the fatted calf,” Childs said. “We’re trying to make the case that this is discriminatory and unfair, to single out this portion of our industry for very high taxes.”

Cable Customers Also Pay

While the COST study focused on state taxation of telephone services, both traditional wireline and wireless service, cable service is also highly taxed. Cable operators pay a franchise fee to local governments that typically is 5 percent, the maximum allowed under federal law. They also pay sales tax in 23 states, and additional fees and charges are frequently levied as well.

As with taxes on phone service, the rates vary. In Washington DC, consumers pay taxes of approximately 18 percent, and Texas cable customers face taxes of about 14 percent. Taxes paid by consumers are typically lower in states without sales taxes.

Cable companies also frequently provide “in kind” services to the communities they serve, and these are not included in tax calculations. For example, in Tucson, Arizona, Cox Communications must provide nine public access channels worth more than $4 million annually, as well as free cable service to schools and city buildings, estimated to be worth more than $1.4 million per year. The estimated value of these “in kind” services exceeds the approximately $4.2 million per year Cox pays directly to Tucson.

Fighting to Lower Taxes

On the federal side, the ITAA has teamed with various technology and taxpayer advocacy groups to persuade Congress to end the communications excise tax, enacted in 1898 to fund the Spanish-American War. That tax is a flat 3 percent on every telephone bill. It costs telephone and Internet users about $6 billion a year.

“That tax was put into effect a long time ago, when telephone service was a luxury only wealthy people could afford,” Childs said. “The fact that it’s still around shows how government policies have not adjusted to modern reality. We have regressive tax and regulatory policies that can stifle innovation and make it more difficult for people to afford these technologies.”

California Rep. Gary Miller (R) and Pennsylvania Sen. Rick Santorum (R) have introduced legislation to repeal the federal communications excise tax. In 2000 the House and Senate voted to end the tax, but President Bill Clinton vetoed the measure.

Sean Parnell (parnell@heartland.org) is vice president - external affairs for The Heartland Institute.

INTERNET INFO

To order a copy of the 2004 State Study and Report on Telecommunications Taxation, contact COST at http://www.tax.cchgroup.com or call 800/248-3248 and refer to CCH Offer #0-4400-301.

“[T]he average state and local effective tax rate on telecommunications services is 14.17 percent, compared to 6.12 percent for general business nationwide.”

Sen. Rick Santorum

Rep. Gary Miller

“Virginia taxes telecommunications more heavily than any other state, with an average of 29.77 percent in combined state and local taxes ... At the other end of the spectrum are Nevada (3.97 percent), Montana (5.88 percent), and Idaho (6.16 percent).”
Tax Protester Criminal Case Sure to Cause Confusion

Acquittal likely to be viewed as proving something it doesn’t

by Daniel J. Pilla

Joe Banister is a former special agent with the Internal Revenue Service. As a special agent, his chief function was to conduct investigations into alleged criminal violations of the U.S. tax code. According to his supervisors, he performed this task admirably for many years.

In 1999, he resigned from the IRS. Before resigning, he wrote a detailed treatise describing the results of an investigation he conducted into the legality of the income tax code. His treatise reported that the tax laws were voluntary, that self-incrimination barred him from representing clients before the IRS. The returns he prepared were amended tax returns for a California business owner by the name of Al Thompson. The returns sought a tax refund based upon the theories advanced by Banister and others, the key one being that the tax laws did not apply to U.S. citizens.

Barred for Claims

This wasn’t the first time Banister made such claims on behalf of his clients. In fact, he did so on so many prior occasions that in January 2004 the IRS’s Office of Professional Responsibility barred him from representing clients before the IRS. The grounds were that Banister was misrepresenting the tax law to his clients and that he failed to file his own personal tax returns.

But there was more to Thompson’s case. As a business owner, he had about 25 employees working for him. He was withholding income and Social Security taxes from their paychecks and making payments to the IRS of those taxes.

In July 2000, Thompson called a meeting with all his employees to explain that he was no longer going to withhold taxes from their paychecks. During the meeting, he explained that his research showed he was not required to comply with the tax code. Joe Banister appeared at the meeting to help Thompson explain the legal reasoning for his position.

Thompson was eventually ordered by a federal judge to pay the employment taxes. Thompson refused. The court then found him in contempt, and he was jailed for about three months. He was later indicted by a federal grand jury for tax evasion, filing false tax returns, and conspiracy to defraud the government. In January 2005, Thompson was found guilty of the charges and sentenced to six years in federal prison.

Indicted for Thompson Role

Banister was indicted for his role in Thompson’s case and was charged with conspiracy and with aiding and assisting in the filing of false tax returns. But unlike his unlucky client, a federal jury acquitted Banister in late June of all the charges.

Tax protesters across the nation are heralding the acquittal as proof that filing taxes is voluntary. But as is true of every criminal prosecution, there is no judicial precedent set by a jury verdict, and the results of one case are absolutely no indication of what will happen in the next one. If this wasn’t true, how is it that Thompson now languishes in prison while Banister was acquitted on essentially the same facts?

The answer to this question, and frankly, all questions involving criminal tax prosecutions, turns on the issue of willfulness. Before anyone can be convicted of any criminal tax violation, the IRS must be able to prove in court to the satisfaction of a jury beyond a reasonable doubt that the accused intended to break the law. That is, his actions were deliberate and for the purpose of violating a known legal duty.

“I guarantee you’ll see reports all over the Internet in the coming weeks saying the Banister trial proves there’s no law requiring the filing of a tax return.”

The concept of willfulness means the accused did not act on the basis of some good-faith reason, such as lack of understanding, mistake of law, reliance on counsel, or even through negligence. Instead, the person knew what the law required and made a conscious decision to violate it.

Could Not Prove Willfulness

Very simply, the IRS could not prove the element of willfulness in Banister’s case. This is not surprising, given that Banister was a respected federal law enforcement officer with a long history of enforcing the law. Moreover, long before he became involved with Thompson, he presented his written arguments to his supervisors and asked a series of questions based on his research. Rather than even attempt to answer the questions, his IRS bosses asked him to resign.

Banister presented all of these facts and more to Thompson’s employees during the July 2000 meeting. The meeting was videotaped, and the tape found its way into evidence in Banister’s trial. The jury was able to see that as a former IRS special agent and trained CPA, Banister was working in good faith to help his client make what was considered a legitimate claim to the IRS.

Banister was able to persuade the jury that, rather than carrying out a criminal plot to break the law, he merely raised legitimate concerns about the validity of the tax law on behalf of his client and was entitled to...
have them addressed. The jury believed him.

Does that mean Banister is right and there is no requirement to file tax returns? Not at all. It only means the jury didn’t buy the government’s claim that Banister deliberately and intentionally set out to join a shadowy conspiracy to violate the tax code and defraud the IRS.

Must Still Pay Taxes

This distinction may seem subtle, but it is vitally important to understand, because I guarantee you’ll see reports all over the Internet in the coming weeks saying the Banister trial proved there’s no law requiring the filing of a tax return. But if that were true, wouldn’t Thompson also have been acquitted? If the results of Banister’s trial constitute a binding decision that no law requires the filing of a tax return, wouldn’t it naturally follow that Thompson’s conviction must be overturned?

What do you suppose the chances are of that happening?

The fact is, Banister’s defense had little to do with substantive claims about the tax code. His defense was simply that as a tax professional and CPA, he had the right to present the good faith argument that no law requires the filing of a tax return. But what if Thompson also had been acquitted? If the results of Banister’s trial constitute a binding decision that no law requires the filing of a tax return, wouldn’t it naturally follow that Thompson’s conviction must be overturned?

To put it another way, there is no precedent in this case for anybody other than Joe Banister, and for him only to the extent that he no longer faces prison in connection with the Thompson affair. If Banister continues to make these types of claims to the IRS, given that he’s been barred from making them and was tried for these actions, it seems unlikely the “good faith” argument will play as well the second time as it did the first.

Daniel J. Pills (pillatax@aol.com) is a nationally known tax litigation consultant and author of eleven books on IRS abuse prevention and cure, and problems resolution issues. His latest book is The IRS Problem Solver (HarperCollins).


Kansas

Continued from page 1

The court’s ruling in Montoy vs. the State of Kansas “is stunning in its arrogance, momentous in its potential reach, and earth-shaking in its impact,” said State Sen. Tim Huelskamp (R-Fowler) in a June 7 statement.

In a July 11 telephone interview, Huelskamp complained the Kansas courts have usurped the constitutional power of the legislature to set budget and tax priorities. He said the ruling’s fiscal implications “are frightening. We’re looking at a massive tax increase like has never been done. Kansans haven’t seen the bill yet. Citizens are going to be furious.”

“We’re looking at a massive tax increase like has never been done. Kansans haven’t seen the bill yet. Citizens are going to be furious.”

SEN. TIM HUELSKAMP

R-FOWLER

Rule[d Finance Difficulties Irrelevant

Plaintiff’s attorney Alan Rupe, who argued the case for 15 school districts including Dodge City and Salina, said the state’s budget situation does not matter.

“Lack of money is no defense,” Rupe said.

“In Kansas, education is a constitutionally guaranteed matter. There is no legal defense based on economic necessity. In some areas of law, like the Americans with Disabilities Act, reasonableness and economy are factors as to whether accommodations are made. In this matter, there is no defense the state can afford it.”

The case hinged on the argument of funding equity and “suitability.” The midsize and large school districts represented by Rupe complained that small school districts received proportionally more money. They also complained the state was failing to meet a state constitutional requirement that all students receive a “suitable” education.

Spending Already Above Average

The state currently spends more than $8 billion annually for its 440,000 students. Per-pupil spending, with the additional $290 million this year, comes to $10,375, one of the highest amounts in the region, according to Huelskamp, who opposed the special session’s spending increase. Average test scores among Kansas students also are well above national averages.

Rupe acknowledged Kansas’ higher-than-average per-pupil spending and test scores but argued averages are misleading. He cited test scores showing big gaps in achievement between students from affluent communities and students in poorer school districts, particularly minority students.

The Kansas Supreme Court accepted that evidence and rejected testimony from others, including school finance expert Herbert Walberg, chairman of the Board of Directors of The Heartland Institute (publisher of Budget & Tax News), who testified there is little evidence that more education spending results in better student performance.
Senate Okays CAFTA

Sugar protections remain a major obstacle to trade agreement

by John W. Skorburg

The U.S. Senate on June 30 approved the Central America Free Trade Agreement (CAFTA), but final approval depends on action in the House, where opponents have vowed to defeat it.

The Senate vote was 54-45. Political analysts say the vote in the House may be too close to call. That vote was expected in July or early August, after this issue of Budget & Tax News went to press.

U.S. trade officials signed the agreement last year to create a free trade zone with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, as well as the Dominican Republic in the Caribbean, but it needs approval of both houses of Congress before going into effect.

In a statement released by the White House after the Senate vote, President George W. Bush said the agreement is “a strong boost for young democracies in our own hemisphere, whose success is critical to fair trade, open markets, and economic growth.”

As a result of past government protections for the sugar industry, the price of sugar in the United States is four times higher than it is on the world market.

“Implementation of the Dominican Republic-Central America Free Trade Agreement will increase South Dakota’s exports of agricultural products,” the statement continued.

Florida Farmers Doubtful

The Florida Farm Bureau, however, has taken a “hands-off” approach toward CAFTA. “Florida Farm Bureau does not have specific written policy addressing CAFTA,” notes its Web site.

“Florida Farm Bureau should continue withholding support for this agreement,” notes the Web site statement, “while urging affected segments of the agricultural industry and the Administration to seek mutually satisfactory agreements.”

Economic Benefits ‘Rock Solid’

Barry Bushue, president of the Oregon Farm Bureau, has called on his state legislators to support CAFTA. “We think (CAFTA) is a good package; it’s a winning package for Oregon and U.S. agriculture,” Bushue told the Capital Press for a June 24 article.

American Farm Bureau President Bob Stallman said, “The economic benefits of this agreement for the whole of American agriculture are rock solid.”

Stallman continued, “The Senate’s passage Thursday [June 30] of the Central American-Dominican Republic Free Trade Agreement is a big win for U.S. agriculture. The American Farm Bureau Federation appreciates the many efforts taken by the administration and Senate leaders to secure Senate passage of CAFTA-DR. This is a priority for American agriculture and we will work to ensure the same successful outcome in the House.”

“The Senate’s vote sends a clear message to the rest of the world that the United States is committed to fair trade, open markets, and economic growth.”

PHILIP NELSON

ILLINOIS FARM BUREAU

Other Deals at Risk

Portman warned rejection of CAFTA would be a blow for the overall U.S. trade agenda.

“If CAFTA fails, frankly I think our ability to push global trade talks and other trade initiatives, either regional or bilateral, would be damaged.”

John W. Skorburg

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Ethanol Deal Controversial

In a July 3 column in the Chicago Sun-Times, syndicated columnist Robert Novak reported the CAFTA agreement won Senate approval after closed-door briefings by Secretary of Agriculture Mike Johanns, who explained the government planned to buy sugar to manufacture ethanol.

Some senators complained about that plan.

“That’s adding a super-boondoggle to a boondoggle,” Sen. Charles Schumer (D-NY), a critic of both sugar and ethanol subsidies, told Novak.

“This move is intended to harness two powerful lobbies on behalf of CAFTA, but sugar lobbyists say they are still opposed,” Novak reported.

— John W. Skorburg
OECD Draws Criticism for Tax Positions

by John W. Skorburg

The Center for Freedom and Prosperity Foundation, Coalition for Tax Competition, and tax policy experts condemned the Organization for Economic Cooperation and Development (OECD) for its recent Ministerial Statement that indicated sympathy for global taxation and called for massive increases in foreign aid spending.

The Paris-based OECD issued the statement in May and met again in June in Berlin to discuss the issue.

“Slovaks welcome tax competition because it encouraged our leaders to introduce the new flat tax. Competition keeps politicians honest and accountable to voters.”

MARTIN CHREN
SLOVAK TAXPAYERS ASSOCIATION

Policies Called Anti-American

“The OECD has been pushing anti-American economic policies for years,” said Andrew Quinlan, president of the Center for Freedom and Prosperity Foundation, in a May 9 statement. “The international bureaucracy’s anti-tax competition/pro-tax harmonization project is a direct attack on America’s free-market, pro-growth tax policies.”

Quinlan continued, “Now the OECD is expressing sympathy for ‘innovative sources of financing,’ which is a clear reference to schemes for global taxes levied by the United Nations. It is time for the U.S. taxpayers, Congress, and the Bush administration to end financial support for the OECD.”

At the conclusion of its annual ministerial meeting in Paris, the OECD general forum endorsed a United Nations plan for achieving internationally agreed-upon development goals requiring each developing country to transfer 0.7 percent of economic output to Third World countries.

“This would require an increase in U.S. foreign aid spending from about $15 billion to more than $80 billion per year, an increase of 450 percent,” according to a statement by the Center for Freedom and Prosperity.

Experts Oppose Global Taxes

“Foreign aid spending has a terrible track record. It generally lines the pockets of the political elite in developing nations and often is a substitute for the pro-market reforms that nations need to boost growth.”

DANIEL MITCHELL
THE HERITAGE FOUNDATION

“The OECD’s opposition to tax competition is not only economically misguided, it is unethical,” said Mitchell. “Smaller, less powerful nations are being persecuted by larger nations for adopting the economic growth strategies that America and European countries previously pursued in the nineteenth century.”

OECD Strategy ‘Dangerous’

Julian Morris, economist and director of the International Policy Network in London, argues in the May 9 statement that there are “many ways of creating a level playing field, and the OECD strategy is a dangerous one because it could lead to globally high levels of taxation that would promote corruption and inefficiency and stymie economic growth.”

Veronique de Rugy

Slovak economist Martin Chren pointed out that his country recently “introduced a flat income tax of 19 percent as a direct consequence of tax competition. Slovakia’s flat tax is expected to enhance economic growth and increase tax receipts.”

Chren, who represents the Slovak taxpayers Association, observed, “Slovaks welcome tax competition because it encouraged our leaders to introduce the new flat tax. Competition keeps politicians honest and accountable to voters.”

INTERNET INFO

Excerpts from the OECD’s Council at Ministerial Level, May 3-4, 2005 Statement can be found online at http://www.olis.oecd.org/olis/2005doc.sf43b6b130e5e86e5f12569fa0b000d04cbad12750d5907276890c1256ff2005f8b89735f/blob40183455.pdf.


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The Center for Freedom and Prosperity Foundation

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