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U.S. SUPREME COURT UPDATE

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Court Ends Term With Two More Grants of Certiorari

As the U.S. Supreme Court ended its 2013-2014 term, the two late-term decisions that got the most attention had nothing to do with state taxation (and thus, of course, will not be discussed here). The very next day, however, the Court did agree to hear two disputes (discussed further below) that have much to do with state taxation: the sales and use tax information reporting controversy in *Direct Marketing Ass'n v. Brohl,* and the railroad fuel sales and use tax discrimination case, *Alabama Department of Revenue v. CSX Transportation, Inc.*

The Court also denied requests for review in three cases whose certiorari petitions were previously discussed here, as well as in a just-filed petition. And in another newly filed petition for certiorari, the parties to the case subsequently requested that it be dismissed (and the Court granted that request, as discussed below).

As we go to press, we await the scheduling of oral argument in *Comptroller of the Treasury of Maryland v. Wynne,* a significant state and local tax case in which the Court previously granted the request for review. And we still await the Court's decision on whether to grant two previously filed requests for certiorari, *Missouri Gas Energy* and *India Lynch.* These three cases are also highlighted below.

Court Will Hear Tax Injunction Act Challenge

The Court has granted certiorari in *Direct Marketing Ass'n v. Brohl,* Docket No. 13-1032, *cert. granted* 7/1/14, ruling below at 735 F3d 904 (CA-10, 2013), *rem'gDirect Marketing Ass'n v. Huber,* DC Colo., No. 10-CV-01546-REB-CBS, 3/30/12, 2012 WL 1079175. In this case, the federal Court of Appeals for the Tenth Circuit overturned a district court's ruling that a Colorado law imposing information notice and reporting requirements on remote retailers, violated the Commerce Clause of the U.S. Constitution. The circuit court remanded the case to the district court for dismissal on procedural grounds, finding that the Tax Injunction Act (TIA, codified at 28 USC §1341) precluded federal court jurisdiction over the claims. The plaintiff, the Direct Marketing Association, asks the Supreme Court to clarify the scope of the TIA's jurisdiction.

(For more on this case, including a detailed discussion of the Colorado notice and reporting requirements, see U.S. Supreme Court Update, 24 JMT 40 (May 2014). For more background, see also Hecht, "Information Reporting for Out-of-State Vendors Just as Unconstitutional as Tax Collection Responsibility," 22 JMT 6 (August 2012).)

Court Grants Certiorari in 4R Act Tax Discrimination Challenge

The Court has agreed also to hear arguments in *Alabama Department of Revenue v. CSX Transportation, Inc.,* Docket No. 13-553, *cert. granted* 7/1/14, ruling below as *CSX Transportation, Inc. v. Alabama Department of Revenue,*720 F3d 863 (CA-11, 2013). In this case, Alabama has asked the Court to review the decision by the federal Court of Appeals for the Eleventh Circuit, which held that Alabama's failure to provide a tax exemption from the state's sales and use taxes for railroads' purchases of diesel fuel, while exempting both interstate motor carriers and water carriers, was discriminatory in violation of the federal Railroad Revitalization and Regulatory Reform Act of 1976 (the "4R Act," codified at 49 USC §11501).

Court seemingly ignores federal government's views on the petition. In response to the Court's 1/27/14 request, the U.S. Solicitor General, on 5/27/14, filed an amicus brief with the Court in this case. In its brief, the Solicitor General urged the Court to deny Alabama's petition for review, noting that this case is "not an appropriate vehicle" for resolving open questions about the 4R Act, namely the definition of an appropriate comparison class under the statute and whether other aspects of a state's tax scheme can justify a challenged tax's disparate treatment of rail carriers. As noted, of course, the Court accepted the case anyway.

(For more background on this request for certiorari, including a discussion of Alabama's tax scheme at issue, the procedural history of the litigation, and a dissenting opinion in this latest case, see U.S. Supreme Court Update, 23 JMT 40 (February 2014).)

Awaiting Oral Arguments in Resident Income Tax Credit Commerce Clause Challenge

In *Comptroller of the Treasury of Maryland v. Wynne,* Docket No. 13-485, *cert. granted* 5/27/14, ruling below at 431 Md. 147, 64 A3d 453 (2013), the Maryland Court of Appeals (the state's highest court) held that Maryland's law that provides a credit against Maryland state income tax for income taxes paid to other states violated the Commerce Clause of the U.S. Constitution because the credit was not available to offset county-level income taxes.

The Maryland court analyzed the taxpayers' challenge to the statute under the dormant Commerce Clause test announced in *Complete Auto Transit, Inc. v. Brady,*430 US 274, 51 L Ed 2d 326 (1977), whereby a state tax will pass constitutional muster if the tax: (1) applies to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate or foreign commerce; and (4) is fairly related to the services provided by the state. Focusing on the requirements of fair apportionment and no discrimination against interstate commerce, the Maryland court found that the lack of a credit against the county tax resulted in the tax's failing both prongs.

Federal government supports petition, urges reversal. As previously reported here, on 4/4/14, the U.S. Solicitor General submitted an amicus brief (2014 WL 1348934) in response to the Court's 1/13/14 invitation to express the views of the federal government. In the brief, the government urged the Court to grant the petition for certiorari, reverse the Maryland Court of Appeals, and rule that Maryland's county income tax is constitutional. Here, as noted above, the Court did grant certiorari.

(For more on this case, including a discussion of Maryland's income tax scheme and a dissenting opinion in *Wynne,* see U.S. Supreme Court Update, 23 JMT 40 (February 2014). For an in-depth discussion of the U.S. Solicitor General's amicus brief, see U.S. Supreme Court Update, 24 JMT 39 (July 2014).)

Pending Petitions

As we go to press, as noted above, we still await the Court's decisions on whether to grant two previously filed requests for certiorari.

Amicus briefs filed in Commerce Clause challenge to ad valorem tax on natural gas.

Several organizations, including the American Gas Association (2014 WL 1761714), the Interstate Natural Gas Association of America (2014 WL 1878057), and the Council on State Taxation (2014 WL 2446750), have filed amicus briefs in support of the petition for certiorari in *Missouri Gas Energy v. State of Kansas Division of Property Valuation,* Docket No. 13-1216, petition for cert. filed 4/7/14, ruling below as *Appeals of Various Applicants From a Decision of Division of Property Valuation of State of Kansas for Tax Year 2009 Pursuant to K.S.A. 74-2438,*313 P3d 789 (Kan., 2013).

In the case below, the Kansas Supreme Court affirmed in part and reversed and vacated in part a decision of the Kansas Court of Tax Appeals regarding ad valorem taxes imposed on natural gas stored in facilities located in Kansas and under contract with interstate pipeline companies. The Kansas high court held that at least some of the taxpayers qualified as public utilities (i.e., out-of-state local distribution companies certified as public utilities in their states) and thus their gas was not exempt from tax under the Kansas Constitution, Article 11, §1, which

exempts merchants' inventory from ad valorem taxation but does not exempt tangible personal property owned by a public utility. The court remanded the case for further proceedings to decide which of the taxpayers qualify as public utilities. The court also held that the ad valorem gas tax does not violate the Commerce Clause or Due Process Clause of the U.S. Constitution. Several of the taxpayers have now petitioned the U.S. Supreme Court to review that holding, claiming that Kansas's tax unduly burdens interstate commerce.

(For more on this case, including a discussion of the Kansas Supreme Court's constitutional analysis, see U.S. Supreme Court Update, 24 JMT 39 (July 2014).)

Challenge to alleged racially discriminatory property tax. In *India Lynch v. Alabama,* Docket No. 13-1232, petition for cert. filed 4/10/14, ruling below as *I.L. v. Alabama,*739 F3d 1273 (CA-11, 2014), the federal Court of Appeals for the Eleventh Circuit considered a series of allegedly discriminatory property tax restrictions contained in the Alabama Constitution. The petitioners, black and white Alabama public school students, challenged state constitutional provisions dealing with both millage caps and property classifications, and argued that the provisions cripple the ability of certain rural, nearly all-black public schools in Alabama to raise necessary revenues. With regard to the students' challenges to the millage caps, the circuit court remanded the case to the district court with instructions to dismiss the challenges without prejudice for lack of standing. As for the challenges to the property classification provisions, the court affirmed the district court's 804-page order concluding that the students had failed to show that the allegedly discriminatory provisions were unconstitutional. The petitioners have asked the U.S. Supreme Court to review both the circuit court's ruling as to standing and to decide the correct constitutional standard for reviewing the allegedly discriminatory provisions of Alabama's Constitution.

(For more on this case, including a detailed discussion of the ruling below and an examination of standing and the Tax Injunction Act, see U.S. Supreme Court Update, 24 JMT 39 (July 2014).)

New Petition Filed Then Dismissed

In a case involving whether state property tax assessments were preempted by the federal Telecommunications Act of 1996 (P.L. 104-104, 2/8/96), *Bresnan Communications, LLC v. Montana Department of Revenue,* Docket No. 13-1471, petition for cert. filed 6/6/14, ruling below at 315 P3d 921 (Mont., 2013), *reh'g den.* 1/7/14, the parties subsequently filed an agreement with the U.S. Supreme Court that the case be dismissed. On 6/30/12, the Court did just that.

The state-level proceedings. At the state level, the Montana Supreme Court, with two justices dissenting, reversed a Montana district court and found that Montana law requires the taxpayer, Bresnan Communications, LLC, to be reclassified as a "class thirteen, telecommunications service provider," and its properties centrally assessed at 6% of their market value. The lower court had determined that central assessment did not apply to Bresnan, and that it owned exclusively "class eight, cable television system" property, which is taxable at a 3% rate.

Although Bresnan functionally had bundled its customer services consisting of cable programming, high-speed Internet, and voice-over Internet telephone, which it labeled as its "Triple Play" package, it reported 10% of its property (voice property) as subject to central assessment at the 6% rate and 90% of its property as cable and Internet properties subject to tax at the 3% rate.

Bresnan's Montana cable business. According to the Montana Supreme Court, Bresnan purchased its Montana cable television network infrastructure in 2003. Initially, the network allowed Bresnan to provide only cable television services. Shortly after its purchase, however, Bresnan began to upgrade the network's infrastructure to allow for new services, including "expanded cable programming (cable), on-demand video services, high-speed internet data services (internet), and voice-over internet protocol telephony services (VoIP)," the bundled "Triple Play" package noted above.

Montana's property classifications. Montana categorizes taxable property into various classes, with each class assessed and taxed in a unique manner. At issue in the case were two of Montana's property classes: "class eight property," which includes "cable television systems," and "class thirteen property," which includes "telecommunications services companies" (Mont. Code Ann. §§15-6-138(1)(k) and 15-6-156(1)(d), respectively). Taxes on class eight cable property are assessed locally, at the county level, at a rate of 3%. By contrast, taxes on class thirteen telecommunications property are centrally assessed at 6%. In addition, centrally reported property, including telecommunications property, is valued using the unit method of valuation (Mont. Admin. Rul. 42.22.111). Unit valuation considers the market value of the company as a whole, rather than the value of individual components. In other words, centrally reported telecommunications property is not only subject to a higher tax rate, but the value of the property being taxed also increases when the property is centrally assessed. Unsurprisingly, Bresnan, in reporting its taxable property, did not wish to see all of its network infrastructure centrally assessed as telecommunications property.

Physical attributes of property vs. use, productivity, and utility. At trial, Bresnan challenged the Montana Department of Revenue's reclassification of its property. The district court concluded that Bresnan owned exclusively class eight properties (taxable at 3%), and that the Department of Revenue could not retroactively reassess Bresnan. The Department appealed the district court's decision to the Montana Supreme Court, which reversed.

According to the Montana Supreme Court, the district court wrongly determined that Bresnan owned exclusively class eight cable property. The high court noted that the lower court relied heavily on the physical attributes of Bresnan's property, namely "the transfer of electrical data signals." In the high court's view, "[p]hysical attributes do not represent the standard that Montana courts use to classify property." The court explained that, instead, "[t]he physical attributes of Bresnan's property *and* the productivity that results from the use of that property represent the proper metric to classify Bresnan." (Emphasis in original.)

Under this test, the court found that Bresnan's "upgraded network, combined with Bresnan's attendant property has expanded Bresnan's operation beyond a 'cable television system' as defined by any section of the Montana code, including [Mont. Code Ann.] §15-6-138(1)(k)." The court found it significant that Bresnan used its network to provide cable, to provide data, and to provide voice services. Based on these activities the court, quoting Mont. Code Ann. §15-53-129(10)(a), concluded that Bresnan offers "retail telecommunications services" (i.e., "the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is charged to a customer with a Montana service address"). Accordingly, the court held that, as such, the company qualified as a class thirteen "telecommunication services company," as that term is used under the Montana code. Moreover, the court found that "[n]othing in the classification statutes requires ... that the Department [of Revenue] apportion Bresnan's property among Montana's various property tax classifications."

In response to the dissent's argument that "the overwhelming use of Bresnan's property takes the form of 'one-way transmission that receives and amplifies television broadcast signals,'" the court argued that "[t]he Department's audit of Bresnan revealed, however, that very little of Bresnan's use of its system involves exclusively cable television that relies on one-way transmissions that receive and amplify, broadcast signals." The court further noted, that "most of Bresnan's system, as currently used, has the capacity to support the two-way transmission of electrical data signals." And, "[t]he operation of a 'telecommunications services compan[y],' involves the two-way transmission of electrical data signals."

Retroactive tax assessments. The Montana Supreme Court also reversed the district court's ruling that the Department of Revenue lacked authority to impose retroactive property tax assessments against Bresnan. As part of its audit, the Department issued revised assessments for Bresnan's property for three prior tax years. As explained by the supreme court, the district court had found that reassessment is allowed only in circumstances where there had been a clerical error or a ministerial mistake, and that Montana case law did not allow for reassessments "'made to comport with a change in assessor judgment' to avoid impermissible prejudice to the

taxpayer." According to the high court, the district court had reasoned "that the Department's shift away from Bresnan's prior income statement and balance sheet to a centralized assessment represented a shift in assessor judgment."

The Montana Supreme Court disagreed with this district court analysis. The high court "decline[d] to characterize the discovery of property that has not been taxed fully according to appropriate tax procedures due to a misclassification on the taxpayer's part as a mere 'change in assessor judgment.'" According to the court, when taxpayers, like Bresnan, self-report their assets into different assessment classes, an audit constitutes the only vehicle for the Department of Revenue to "discover" the property that has escaped assessment. And once the property has been discovered, Mont. Code. Ann. §15-8-601 grants the Department of Revenue the authority to reassess property subject to central assessment when it determines that such property has not been taxed fully according to appropriate tax procedures. Thus, the Montana Supreme Court determined that Department of Revenue's actions were proper under the cited statute.

A dissent. One Montana Supreme Court justice wrote a dissent in which a second justice joined. According to the dissent, the proper application of the "physical attributes" and "use and productivity" tests results in Bresnan's being taxed under multiple property classes, as it initially reported.

The dissent would find instead that "[c]onsistent with the classification system as a whole and the duty to construe the statutes in favor of the taxpayer, only property that actually meets the definition of telecommunications services property should be so classified. Thus, the statutes require an apportionment of taxes between Bresnan's two-way transmission property-which demarcates a telecommunications service company in the first place-and its predominately one-way cable television property." In light of the Department of Revenue's forcing Bresnan to report all of its property under class thirteen, the dissent accused the Department of creating a "disincentive for companies to expand their telecommunications services" and of engaging in "information superhighway robbery."

The question the U.S. Supreme Court will now not have a chance to consider.

Prior to the dismissal of Bresnan Communications' petition for certiorari (2014 WL 2582799), the petitioner sought to have the U.S. Supreme Court consider the following question:

"Whether Montana's attempt to impose a massive tax increase on cable companies solely because they offer telephony over broadband in addition to cable service is preempted by federal law."

New Petition Filed but Quickly Denied

In *Sonera Holding B.V. v. Cukurova Holding A.S.,* Docket No. 13-1386, petition for cert. filed 5/21/14, *cert. den.* 6/30/14, ruling below at 750 F3d 221 (CA-2, 2014), a Dutch holding corporation (Sonera) that brought suit in the Southern District of New York against the parent company (Cukurova) of a large Turkish conglomerate had asked the U.S. Supreme Court to consider a question similar to that presented in *Daimler AG v. Bauman,*134 S.Ct. 746, 187 L Ed 2d 624 (2014), *rev'gBauman v. DaimlerChrysler Corp.,*644 F3d 909 (CA-9, 2011), *reh'g and reh'g en banc den.* CA-9, 11/9/11.

In *Daimler AG,* a Due Process Clause case, the Supreme Court found the fact that an indirect corporate subsidiary had performed services on behalf of a foreign corporation in the forum state was not sufficient to assert personal general jurisdiction over the foreign corporation. The Court declined to address whether the Ninth Circuit's jurisdictional test based on what it described as an "agency relationship" was the proper test in the context of general jurisdiction, finding that under existing personal jurisdiction precedent, the foreign corporation could not be considered "at home" in the forum state. Thus, the issue of greatest importance to state and local tax practitioners, i.e., whether the exercise of agency-based general jurisdiction is proper under the Due Process Clause, was not resolved.

In *Sonera Holding,* the federal Court of Appeals for the Second Circuit reversed the district court's denial of the Turkish company's motion to dismiss for lack of personal jurisdiction and remanded the case for dismissal. Similar to the Supreme Court's ruling in *Daimler AG,* in *Sonera Holding* the circuit court found that "even assuming the

activities of Cukurova's affiliates can be ascribed to it for the purposes of a general jurisdictional analysis, Cukurova lacks sufficient contacts with New York to render it 'at home' there."

Due Process Clause test for general personal jurisdiction. In *Daimler AG,* the Supreme Court was asked to consider "whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State." The Court, however, did not directly respond to the question presented and, instead, found that even if the Court were to assume that the subsidiary's contacts are imputable to the parent corporation under an agency theory, there still would be no basis to subject the parent, Daimler, to general jurisdiction in California, the forum state in that case.

State and local tax practitioners had been watching the Daimler case because in order to withstand a constitutional challenge, a state tax must comport with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. (For a more-detailed analysis of the Supreme Court's opinion in that case, see U.S. Supreme Court Update, 24 JMT 39 (Mar/Apr 2014).)

The *Sonera Holding* case: *Daimler* 2.0? Sonera Holding B.V., a Dutch holding corporation, had brought suit in federal district court in New York against Cukurova Holding A.S. for enforcement of an arbitration award that was granted in its favor by a tribunal in Geneva, Switzerland. Although Cukurova has no operations and owns no property in New York, Sonera asserted that Cukurova was nonetheless subject to general personal jurisdiction in New York based on Cukurova's own actions and the actions of Cukurova's affiliates. These actions included: (1) failed negotiations by Cukurova or one of its affiliates to sell an interest in a Turkish television broadcaster to two New York-based private equity funds; (2) Cukurova's sale of shares in a Turkish joint-stock company to an underwriter in London, which subsequently offered the shares for sale on the New York Stock Exchange; (3) a Turkish Cukurova affiliate's agreement to provide digital television content to a U.S.-based company; (4) the use of a New York office by two Turkish companies affiliated with Cukurova; and (5) statements on one of those affiliate's websites describing itself as having been "[f]ounded in New York City in 1979" and as

Cukurova's "gateway to the Americas." According to Sonera, the actions of Cukurova's affiliates should be imputed to Cukurova under New York's agency theory of jurisdiction.

In reversing the district court's denial of Cukurova's motion to dismiss for lack of personal jurisdiction, the Second Circuit focused its analysis on the Due Process Clause, with which every exercise of personal jurisdiction must comport, and did not address New York's agency theory of jurisdiction. (That theory focuses on a forum-state affiliate's importance to the defendant, rather than on whether the affiliate is so dominated by the defendant as to be its alter ego.) Instead, the circuit court found that it was unnecessary to determine whether New York's agency analysis is valid under the U.S. Constitution. Taking a page from *Daimler AG,* the circuit court found that "[e]ven assuming that all of [the affiliates'] contacts should be imputed to Cukurova, the company's contacts with New York do not come close to making it 'at home' there." In other words, the question left unanswered after *Daimler AG* remains unanswered.

And these questions presented to the Court will again remain unanswered.

In Sonera's now-denied petition for certiorari (2014 WL 2120862), the company asked the Court to revisit the agency theory of general personal jurisdiction and, in that regard, offered the following two questions:

> (1) "Whether a foreign parent corporation is 'at home' in a state for purposes of general personal jurisdiction when it controls and dominates a subsidiary or affiliate domiciled in the subject forum."
>
> (2) "Whether the existence of general personal jurisdiction over a subsidiary or affiliate that is controlled and dominated by a foreign parent corporation creates jurisdiction over the parent, regardless of the subsidiary's or affiliate's domicile."

Certiorari Has Been Denied in:

Cencast Services, L.P. v. U.S., Docket No. 13-1098, *cert. den.* 6/23/14, ruling below at 112 AFTR 2d 2013-6029, 729 F3d 1352, 2013-2 USTC ¶50511 (CA-F.C., 2013), in which the U.S. Court of Appeals for the Federal Circuit considered the annual wage-based caps under the Federal Unemployment Tax Act (FUTA) and the Federal

Insurance Contributions Act (FICA). FUTA and FICA each limit an employer's tax liability with a per-year, per-employer cap on taxable wages; wages paid above the cap are not taxed. In this case, the circuit court held that the petitioner, a payroll service company that serves various motion picture and television production companies, should have calculated the FUTA and FICA wage-based caps as though the employees who received payments from the petitioner were in an "employment" relationship with each of the several production companies that hired them, rather than with the payroll service company, the "statutory employer" that paid the wages. Noting that the production companies were the employees' common law employers, the circuit court explained that nothing in FUTA or FICA suggested that Congress intended that common law employers be given the option of choosing a different wage cap (effectively reducing the amount of their tax liability) based on whether they chose to administer payrolls themselves or to delegate that responsibility to a payroll service company. The petitioner had also raised a question concerning the common-law defense of recoupment.

Equifax, Inc. v. Mississippi Department of Revenue, Docket No. 13-1006, *cert. den.* 6/30/14, ruling below at 125 So 3d 36 (Miss., 2013), *reh'g den.* 11/21/13, *rev'g* Miss. Ct. App., No. 2010-CA-01857-COA, 5/1/12, 2012 WL 1506006 , *reh'g den.* 9/4/12, in which the Mississippi Supreme Court reversed the Mississippi Court of Appeals decision and reinstated the judgment of the chancery court, which had upheld the Mississippi Department of Revenue's assessment of corporate income and franchise taxes against Equifax, Inc. and its subsidiary, Equifax Credit Information Services, Inc. (collectively "Equifax"). In what was viewed by many as a surprising decision, the state high court upheld the Department's use of an alternative apportionment method-market-based sourcing-in determining Equifax's Mississippi income and, in particular, upheld the chancery court's ruling placing the burden of proof on the taxpayer to show that the Department's use of an alternative apportionment method was "arbitrary and capricious." The state supreme court found that the use of the market-based sourcing method was not a promulgation of a new rule in violation of the Mississippi Administrative Procedures Act and applied a more-limited trial court "arbitrary and capricious" standard of review, rather than a *de novo* standard of review of the substantive issues underlying the tax assessment. Applying this standard, the court also determined that the chancery court could not reverse the Department's decision to impose penalties against Equifax, notwithstanding that the chancellor would have ruled differently on the merits.

(For more on this case, including a more detailed discussion of the state court's ruling, see U.S. Supreme Court Update, 24 JMT 40 (May 2014). *Equifax* was also discussed in Wilson, "Mississippi: State High Court Reverses Lower Court's Shift of Burden of Proof to Revenue Department," 23 JMT 28 (January 2014). For related developments subsequent to this litigation, see Shop Talk, "Mississippi Legislation Includes Response to *Equifax* Decision," 24 JMT 36 (July 2014).)

WFC Holdings Corp. v. U.S., Docket No. 13-1037, *cert. den.* 6/9/14, ruling below at 112 AFTR 2d 2013-5815, 728 F3d 736, 2013-2 USTC ¶50485 (CA-8, 2013), in which the federal Court of Appeals for the Eighth Circuit affirmed the district court's ruling denying the petitioner a tax refund for a capital loss it claimed as a result of a complex transaction involving the transfer of commercial leases from two banking subsidiaries to a non-banking subsidiary in exchange for the stock of the non-banking subsidiary. According to the circuit court, WFC failed to show that the transaction had objective economic substance or that the transaction had a subjective, nontax business purpose.

(For a bit more on the details of the transaction at issue, see U.S. Supreme Court Update, 24 JMT 39 (July 2014). Had the Supreme Court agreed to hear this case, the holding might have been instructive in state tax cases involving questions relating to the bona fides of a transaction.)