



May 15, 2006

SUPREME COURT VACATES RULING STRIKING DOWN TAX CREDITS FOR INVESTMENT

(DaimlerChrysler Corp. v. Cuno)

The U.S. Supreme Court today overturned a federal appeals court decision that had struck down a state program of tax incentives for economic development. The decision was a victory for WLF, which filed a brief asking that the lower court decision be overturned. The Court held that the plaintiffs' status as taxpayers did not provide them with the "standing" necessary to maintain their suit.

Ohio, like the majority of states, offers income tax incentives to encourage business investment within the state. After DaimlerChrysler entered into an agreement with the city of Toledo, Ohio to build a new factory in the city, creating thousands of jobs, the company received investment tax credits from the state. A group of taxpayers brought suit. The federal district court rejected the lawsuit, but the U.S. Court of Appeals for the Sixth Circuit held that Ohio's program was invalid under the "dormant" Commerce Clause of the Constitution. The U.S. Supreme Court later agreed to hear DaimlerChrysler's appeal from that decision.

The Supreme Court did not reach the merits of the Commerce Clause issue. Rather, it held that the appeals court should never have considered that issue because the plaintiffs lacked standing to raise it. The Court explained that to establish their "standing," federal court plaintiffs must demonstrate that they have been injured by the defendant's conduct. The court said that an individual taxpayer's contribution toward a single expenditure or tax credit is too minute and is too evenly spread throughout the general population to constitute the requisite injury. The court said that it has never recognized taxpayer standing to challenge federal or state expenditures, except in cases alleging violation of the Establishment Clause.

WLF's brief addressed both the Commerce Clause issue and standing. In its brief, WLF noted that the states have long granted incentives through prospective tax credits to attract new investment as a means of fostering economic growth in the state. WLF argued that the Ohio tax credit (and other such state programs) does not violate the dormant Commerce Clause, as the credit did not involve the type of protectionist tax regime that the Court has frequently invalidated in the past and did not in any way penalize a company for conducting activities outside the state. WLF also argued that the

appeals court's decision should be reversed and the case should be dismissed because the plaintiffs lacked standing to challenge the tax program.

Although the plaintiffs are now barred from pressing their claims in federal court, they are permitted to bring their Commerce Clause claims to Ohio state court if they so choose. States are free to establish their own standing rules in their own state courts. Thus, the Ohio courts are provide, if they so choose, to provide standing to the plaintiffs and to consider their claims on the merits.

J. Pat Powers, a partner in the Palo Alto, California office of Baker & McKenzie and co-chair of the firm's state and local tax practice, drafted WLF's brief on a *pro bono* basis.

WLF is a nonprofit, nonpartisan public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF engages in litigation and participates in administrative proceedings to defend free enterprise, individual rights, and a balanced civil justice system. To that end, WLF has frequently appeared in the U.S. Supreme Court and lower courts to address issues of importance to free enterprise.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of the brief is posted on WLF's web site, www.wlf.org.