SENATE BILL 2034

By Hensley

AN ACT to amend Tennessee Code Annotated, Section 9-4-207; Title 67, Chapter 6; Title 67, Chapter 3, Part 2 and Chapter 602 of the Public Acts of 2007, relative to taxation of railroads.

WHEREAS, this state imposes a sales and use tax on railroads at the rate of seven percent (7%) for their purchase or use of diesel fuel in Tennessee; and

WHEREAS, Class 1 (main line) railroads obtained a judgment in the United States District Court for the Middle District of Tennessee on August 27, 2013, in *Illinois Central Railroad Company v. Tennessee Department of Revenue*, which has resulted in an injunction forcing the State of Tennessee to cease collecting the sales tax previously paid by the plaintiff railroads; and

WHEREAS, the court held that the sales and use tax assessments imposed by Tennessee are discriminatory because railroads are taxed at a percentage of the price they pay, while motor carrriers are taxed at a number of cents-per-gallon; and

WHEREAS, the stoppage of funds to the 18 short line railroads in Tennessee has caused the Tennessee Department of Transportation to order that all projects to which this state has been contributing must cease work immediately; and

WHEREAS, defunding of these projects not only stops current and planned repairs and replacements of bridges and tracks, some of which have safety issues, but also, hinders and in some cases halts economic development in many areas of this state; and

WHEREAS, most of the authorities which work with short line railroads have no income except small administrative fees included in state contracts, and if this source of income is not expeditiously restored, they will not be able to pay any of their operating expenses and may cease to exist; and

WHEREAS, this General Assembly wishes to impose a fair and equitable method of taxing railroads by affording rail carriers the same exemption from the sales and use tax as motor carriers and imposing a per gallon tax rate for diesel fuel used by railroads to operate locomotives, which is the same per gallon tax rate imposed on motor fuel used by motor carriers to operate motor vehicles; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-3-202, is amended by deleting subsection (c) and by substituting instead the following language:

(c) Except as provided in subsection (d), the purchase of diesel fuel that is indelibly dyed in accordance with internal revenue service regulations and is legal for exempt use only, such fuel shall not be considered subject to the diesel tax imposed under this section.

SECTION 2. Tennessee Code Annotated, Section 67-3-202, is further amended by adding the following new subsection:

(d) Dyed diesel fuel used to power railroad locomotives shall be subject to the diesel tax imposed by subsection (a). The tax collected under this subsection (d) shall be deposited in the transportation equity trust fund created by § 9-4-207 and be used solely for the benefit and operation of railway-related programs and activities.

SECTION 3. Tennessee Code Annotated, Section 9-4-207, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) All funds received from taxes on the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation or water carriers that are directed to be deposited to the fund pursuant to § 67-6-103(b) shall be so deposited and shall be administered by the department of transportation and used only for the benefit and operation of aeronautics and waterways programs and related activities.

(c) All funds received under § 67-3-202(d) from the tax imposed on the use or consumption of diesel fuels used to power railroad locomotives on or after the effective

date of this act, shall be deposited by the commissioner in the fund and used by the department of transportation solely for the benefit and operation of railways-related programs and activities. Railways programs and operations are vital to the economic and social development of this state and the department is urged to consider these programs and operations an equal priority of the department in the administration of its programs.

SECTION 4. Tennessee Code Annotated, Section 67-6-103(b)(1), is amended by deleting the language "aviation, railways, or water carriers" in the first sentence and substituting instead the language "aviation or water carriers"; and by deleting the language "railways, aeronautics, and waterways" in the second sentence and substituting instead the language "aeronautics and waterways".

SECTION 5. Tennessee Code Annotated, Section 67-6-103(b)(2), is amended by deleting the language "railways, aeronautics and waterways programs" and substituting instead the language "aeronautics and waterways programs".

SECTION 6. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new, appropriately designated section:

67-6-3__.

(a) Notwithstanding this chapter, there is exempt from the sales and use tax imposed by this chapter the sale or use of diesel fuel sold to or used by a common carrier that is actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

(b) Common carriers seeking to make purchases of diesel fuel to be used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce exempt from tax shall apply to the commissioner for a certificate as provided in § 67-6-529 to obtain the exemption. The carrier shall give a copy of the certificate or a

fully completed Streamlined Sales Tax certificate of exemption to each dealer from which it intends to make purchases of qualified diesel fuel exempt from tax.

(c) If the common carrier fails to keep records as required by the commissioner to establish that diesel fuel purchased exempt from tax was actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce, then the common carrier shall be liable for tax on the property at the full rate provided by § 67-6-203 regardless of whether the carrier had previously obtained a certificate as provided by this section.

SECTION 7. Section 129 of Chapter 602 of the Public Acts of 2007, is amended by deleting amendatory § 67-4-2306 in its entirety and redesignating the remaining amendatory sections accordingly.

SECTION 8. Section 155 of Chapter 602 of the Public Acts of 2007, is amended in amendatory § 67-6-386, by deleting subsection (b) in its entirety and redesignating the remaining subsections accordingly; by deleting the amendatory language "locomotives or railcars" wherever it appears and substituting instead the language "airplane or aircraft motors"; and by deleting the amendatory language "or qualified diesel fuel" wherever it appears.

SECTION 9. Section 157 of Chapter 602 of the Public Acts of 2007, is amended by deleting the language “, and by inserting the language ‘and Section 67-4-2306’ between the word ‘chapter’ and the word ‘from’ in subdivision (2)”.

SECTION 10. Section 160 of Chapter 602 of the Public Acts of 2007, is amended by deleting the following language in subsection (a):

> or is a common carrier that actually uses diesel fuel in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce

SECTION 11. Section 160 of Chapter 602 of the Public Acts of 2007, is further amended by deleting subsection (d) in its entirety.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.