

Keating Muething & Klekamp wins U.S. Court of Appeals Case for Worldwide Equipment against IRS

Intended primary design argument may impact whether coal haulers and other specially designed trucks are exempt from federal excise tax

May 19, 2010

CINCINNATI, OH — In a decision filed May 17, 2010, the United States Court of Appeals for the Sixth Circuit ruled in favor of Keating Muething & Klekamp's client, Worldwide Equipment, Inc., and vacated the original district court's grant of summary judgment, remanding the case to the U.S. District Court for the Eastern District of Kentucky for further proceedings. At issue in this case, *Worldwide Equipment, Inc. v. United States*, Case No. 08-5950, is whether a particular coal-hauling dump truck, designed and engineered to carry heavy loads of coal in the Appalachian coal fields, is an off-highway vehicle exempt from the 12 percent federal excise tax on oversized vehicles.

The plaintiff and appellant, Worldwide Equipment, Inc., is a truck dealer headquartered in Prestonburg, Kentucky. Worldwide serves the coal-mining industry in Kentucky, Ohio, West Virginia, Virginia, and Tennessee.

Worldwide filed the original suit for a refund of \$119,302 in heavy-truck excise taxes it paid the IRS for the first quarter of 2004, related to the sale of eight Model RD888SX coal-hauler dump trucks. The Defendant, the U.S. Government, counterclaimed for approximately \$1.15 million in excise taxes claimed to be due for the period from 1999 to early 2003. In the original case before the U.S. District Court for the Eastern District of Kentucky, the Government sought summary judgment on both the claim and counterclaim. The district court granted the Government's motion on both claims. Worldwide appealed its case to the U.S. Court of Appeals for the Sixth Circuit.

Worldwide Equipment purchases complete or incomplete new truck chassis from an original manufacturer, such as Mack Trucks, Inc., without paying federal excise tax. The Internal Revenue Code imposes a 12 percent tax on the first retail sale of any heavy-truck chassis or body weighing over 33,000 pounds if the chassis or body is sold for use as a component part of a "highway vehicle." Therefore, when Worldwide sells a truck to a retail customer, it is responsible for determining whether the excise tax is due, and if so, it is the party responsible for charging, collecting, and remitting the tax to the IRS.

At issue in this case is the off-highway vehicle exemption to the excise tax. The exemption provides if a vehicle is specially designed for the primary function of transporting a load other than over the public highways and is substantially impaired from highway use, it is exempt from the tax. In the district court, the Government argued that the RD888SX was not specially designed for the primary function of transporting a load other than over the public highway because it was designed to be used both on and off the highway. The district court agreed. Worldwide challenged the district court's conclusion.

Two Amici Curiae (friends of the court) Briefs were filed in support of Worldwide Equipment's appeal requesting reversal of the district court's opinion. One such brief was filed jointly by The National Automobile Dealers Association, the Kentucky Coal Association, the West Virginia Coal Association, and the Coal Operators & Associates, Inc., and stated that it shares a strong interest in ensuring that the off-highway exception is interpreted correctly and consistently in accordance with the Internal Revenue Code and applicable regulations.

The second Amicus Brief, filed on behalf of Mack Trucks, Inc., stated that if the off-highway exception is unclear, Mack's customers cannot reasonably determine whether a particular vehicle is subject to the federal excise tax and warned that Mack's commercial transactions will be adversely affected.

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James E. Burke, attorney with Keating Muething & Klekamp PLL representing Worldwide, argued that the district court incorrectly interpreted the special design prong of the off-highway vehicle exception as disqualifying dual-use vehicles. The Amicus Brief submitted by The National Automobile Dealers Association and various coal industry associations asserted that the district court's application of an "incidental use" standard was not supported by the plain language of the regulations. The U.S. Court of Appeals for the Sixth Circuit agreed with both arguments in its written opinion and concluded that "the district court erroneously considered evidence of presumed use instead of focusing on the objective design of the vehicle." The opinion further stated that "highway use that is more than incidental does not necessarily mean the truck was not designed primarily for off-highway use."

Worldwide Equipment Chief Executive Officer, President, and Chairman, Terry Dotson stated, "We are pleased with the judgment of the U.S. Court of Appeals. We believe their informed interpretation of the issues of law related to this case will greatly clarify our position that the RD888SX Coal Hauler is designed primarily to be an off-highway vehicle and is therefore exempt from federal retail excise tax. We are eager to pursue this case to its conclusion with these clarifications on the record."

"This opinion by the Sixth Circuit Court of Appeals is a win, not only for Worldwide Equipment, but for all heavy truck dealers and distributors like Worldwide, as well as for the coal industry operators and other industries that purchase and use heavy trucks designed primarily for off-highway use," stated Burke. "The Court of Appeals for the Sixth Circuit eliminated a great deal of confusion over what is an off-highway vehicle and clarified that the applicable test is objective and focuses on design, not use."

Attorneys for Worldwide Equipment Inc. include James E. Burke and Brenna L. K. Penrose of Keating Muething & Klekamp PLL.

The judgment and opinion of the U.S. Court of Appeals for the Sixth Circuit for *Worldwide Equipment, Inc. v. United States of America*, along with copies of the Amicus Briefs are posted at www.kmklaw.com.

About Keating Muething & Klekamp PLL

The law firm of Keating Muething & Klekamp PLL (KMK®), based in Cincinnati, Ohio, is a nationally-recognized law firm delivering sophisticated legal solutions to businesses of all sizes — from *Fortune* 500 corporations to start-up companies. KMK has been recognized as a leading law firm in general commercial litigation, bankruptcy and restructuring law, and corporate and mergers & acquisitions law in the 2010 edition of *Chambers USA: America's Leading Business Lawyers*®. KMK has been ranked #1 in Ohio in project finance law and #1 in Cincinnati in corporate law, municipal law, employee benefits law, land use & zoning law, project finance law, and real estate law in the 2010 edition of *Best Lawyers in America*®. Founded in 1954, KMK has approximately 115 lawyers and a support staff of 150 employees. Additional information is available at www.kmklaw.com.

About Worldwide Equipment, Inc.

Worldwide Equipment, Inc., established in 1967, is one of America's largest truck dealers, specializing in Mack, Volvo, Kenworth, GMC, Hino, and Benson Trailers. Currently Worldwide Equipment, Inc. employs more than 700 employees and operates from 32 locations in five states, including Kentucky, Ohio, Tennessee, Virginia, and West Virginia. Additional

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information is available at www.thetruckpeople.com.