

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 12-14611

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D.C. Docket No. 2:08-cv-00655-AKK

CSX TRANSPORTATION, INC.,

Plaintiff - Appellant,

versus

ALABAMA DEPARTMENT OF REVENUE,  
COMMISSIONER, ALABAMA DEPARTMENT OF REVENUE,

Defendants - Appellees.

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Appeal from the United States District Court  
for the Northern District of Alabama

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(August 19, 2015)

**ON REMAND FROM THE  
UNITED STATES SUPREME COURT**

Before WILSON and COX, Circuit Judges, and BOWEN,<sup>\*</sup> District Judge.

PER CURIAM:

This court previously determined the State of Alabama failed to sufficiently justify its decision to impose certain taxes on rail carriers, including CSX Transportation, Inc., when motor carriers and water carriers (both railroad competitors) are not subject to the same. *See CSX Transportation, Inc. v. Alabama Department of Revenue*, 720 F.3d 863 (11th Cir. 2013). The Supreme Court reversed and remanded, concluding that we should reconsider whether the State has offered sufficient justification—through the imposition of an alternative, comparable tax or otherwise—for exempting railroad competitors from the sales and use taxes the State imposes on railroads when they purchase or consume diesel fuel. *See CSX Transportation, Inc. v. Alabama Department of Revenue*, 575 U.S. \_\_\_, 135 S. Ct. 1136, 1143–44 (2015) (stating that “an alternative, roughly equivalent tax is one possible justification that renders a tax disparity nondiscriminatory,” and, while the State “cannot offer a similar defense with respect to its exemption for water carriers,” it offers other justifications that should be considered on remand).

In light of the Supreme Court’s decision and after the benefit of supplemental briefing by the parties, we vacate our prior opinion, reported at 720

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<sup>\*</sup> Honorable Dudley H. Bowen, Jr., United States District Judge for the Southern District of Georgia, sitting by designation.

F.3d 863 (11th Cir. 2013), vacate the judgment of the district court, and remand this case to the district court for further proceedings consistent with the Supreme Court's opinion.

VACATED and REMANDED.