

DOR#7



Dan Bucks  
Director

# Montana Department of Revenue



Brian Schweitzer  
Governor

To: Dan Bucks, Director

From: C. A. Daw, Chief Administrative Legal Officer

Date: September 18, 2007

Subject: Kentucky v Davis and CSX v Georgia Summaries

Pending before the Supreme Court of the United States in *Kentucky v. Davis*, is a challenge to Kentucky's tax exemption of bond interest earned by its residents on Kentucky issued bonds. The states are taking the position that: (1) a state does not violate the dormant Commerce Clause by exempting interest earned on bonds issued by that state and its political subdivisions while treating interest earned on bonds issued by other states and their political subdivisions as taxable, and (2) any unavoidable burdens that tax differential imposes on interstate commerce are outweighed by the benefits to the state. Montana has joined in these positions by signing on to North Carolina's amicus brief and approving the Multistate Tax Commission's amicus brief. Montana is interested because Montana has a similar exemption that is implicated if the decision is adverse to Kentucky.

According to the Office of Tax Policy Research, if the decision were adverse to Kentucky and found applicable to Montana, the estimated annual reduction in state income tax revenues would be approximately \$3 million or slightly more per year. Further, in that event, the state would be responsible for up to five years of income tax refunds in an estimated \$15 to \$16 million range.

Also pending before the Supreme Court is *CSX v. Georgia*, which will determine whether the railroads are bound to apply state assessment methodologies when challenging their ad valorem (property) tax assessments under the 4-R Act. Briefing is currently under way. Montana has an interest because the statutory and administrative assessment procedures for railroad property could be displaced if Georgia loses this case.