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DOJ will not seek U.S. Supreme Court review of case concerning crude oil tax imposed by section 4611(b)

The Solicitor General of the U.S. Department of Justice (DOJ) wrote a letter to House Speaker Nancy Pelosi to advise that the DOJ has decided not to file a petition for a writ of certiorari in a case in which the U.S. Court of Appeals for the Fifth Circuit concluded that the federal tax on crude oil imposed by section 4611(b) cannot constitutionally be applied to exporters.

The case is: *Trafigura Trading LLC v. United States*, No. 21-20127 (5th Cir. March 24, 2022). Read [TaxNewsFlash](#)

In the [letter](#) [PDF 142 KB] (October 13, 2022), the Solicitor General notes that while the DOJ does not agree with certain aspects of the Fifth Circuit's conclusion, the DOJ will not seek Supreme Court review because:

- The Fifth Circuit is the first federal court of appeals to resolve a challenge to the constitutionality of section 4611(b), and thus there is not yet any disagreement in the courts of appeals on the issue.
- No opinion commanded a majority of the Fifth Circuit panel in the case, because one judge concurred only in the judgment and another dissented.
- It may be possible to remedy the putative constitutional infirmity the lead opinion identified through legislative amendment.

However, the letter includes that:

The Department of Justice does not agree with certain aspects of the Fifth Circuit's conclusion that the tax imposed by 26 U.S.C. 4611(b) cannot be treated as a permissible user fee under the Supreme Court's Export Clause precedent, and we remain committed to defending the statute in other circuits.

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