



TaxNewsFlash

United States



No. 2023-022
January 20, 2023

Eleventh Circuit: Permanent injunction against “tax mandate” in American Rescue Plan Act upheld

The U.S. Court of Appeals for the Eleventh Circuit today upheld a federal district court’s permanent injunction against enforcement of the “tax mandate” provision in the American Rescue Plan Act.

The case is: *West Virginia v. U.S. Department of the Treasury*, No. 22-10168 (11th Cir. January 20, 2023). Read the Eleventh Circuit’s [decision](#) [PDF 239 KB]

Background

Thirteen states* sued the U.S. Treasury in the United States District Court for the Northern District of Alabama to challenge a tax offset provision in the American Rescue Plan Act, a coronavirus stimulus package passed by Congress in 2021. That offset provision prohibits states from using rescue plan funds “to either directly or indirectly offset a reduction in [their] net tax revenue” that results from a change in law that “reduces any tax.” The States argued that this so-called “tax mandate” is an unconstitutionally ambiguous and coercive condition under the Spending Clause and violates the Tenth Amendment’s anti-commandeering doctrine.

The district court found that the tax mandate is unconstitutionally ambiguous under the Spending Clause. Noting that (1) “[m]oney is fungible” and (2) the Act did not flesh out what “directly or indirectly” means, the district court concluded that receiving any rescue plan money could potentially constitute an indirect offset “in [a state’s] net tax revenue from a change in state law or policy.” The rescue plan left states holding the bag, with “no guidance on critical interpretive questions,” like how they can avoid indirectly offsetting net tax revenue with recovery funds. The district court therefore concluded that the tax mandate is inherently ambiguous, and that ambiguity may disincentivize the States in a way that unconstitutionally infringes on state sovereignty. The district court thus permanently enjoined enforcement of the tax mandate. The Secretary appealed.

Eleventh Circuit

The Eleventh Circuit agreed with the district court that the tax mandate is not ascertainable, and that the provision's ambiguity injured (and continues to injure) the states' sovereign interests. The Eleventh Circuit further found that the district court did not abuse its discretion in permanently enjoining enforcement of the tax mandate.

*The thirteen states were Alabama, Alaska, Arkansas, Florida, Iowa, Kansas, Montana, New Hampshire, Oklahoma, South Carolina, South Dakota, Utah, and West Virginia.

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.3712, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)