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Transportation

Lawsuit Labels Turnpike Tolls An Illegal Tax in Massachusetts

BOSTON—A lawsuit now pending in Massachusetts state court alleges that tolls imposed on those persons traveling on the eastern section of the Massachusetts Turnpike amount to an illegal tax that is being improperly used to fund the much-assailed “Big Dig” highway project (*Murphy v. Massachusetts Turnpike Authority*, Mass. Super. Ct., Docket No. 09-1794, complaint filed 5/8/09).

The original complaint in the case charges that under prevailing state law, the toll charged by the Massachusetts Turnpike Authority for transit constitutes an “improper tax” as opposed to a more lawful fee, because more than half of the revenue raised from the toll is diverted to fund nontolled road expenses.

The initial case was filed by Boston attorney Jan R. Schlichtmann, whose office reported that approximately 1,600 individuals have signed on to join the class action. The first named plaintiff in the case is Sandra Murphy, a nurse from Natick, Mass., who commutes to work via the Massachusetts Turnpike.

Don Griswold, an attorney with the firm of Reed Smith, who recently joined the case, told BNA June 9 that the suit argues that, when government charges a user more than a reasonable fee for a service in order to divert the excess revenue to other needs, then it is no longer a user fee, but has become a tax.

He explained that the “targeted, earmarked tax on toll-road users is unconstitutional under the U.S. Supreme Court’s standard as set out in *Complete Auto Transit v. Brady*, not only because the tax is ‘not fairly related to the benefits received,’ but also because it ‘discriminates against interstate commerce.’ ”

Interstate Commerce Affected, Says Griswold

The toll discriminates against interstate commerce because persons traveling to Logan Airport—a point of interstate commerce—via the Massachusetts Turnpike and related highways to complete their business are required to pay the toll, Griswold explained.

The suit seeks reimbursement for members of a class made up of those individuals who have paid tolls on the section of the Massachusetts Turnpike running from Route 128 to Logan Airport.

Those tolls are tentatively set to increase July 1 as the state seeks to cover a budget shortfall. However, a transportation bill currently under debate by the state Legislature may halt those toll hikes.

Lawmakers are considering a provision in the transportation reform bill that would mandate that tolls be used for maintenance, capital expenditures, and operating expenses of the road where they are collected—uses that have nothing to do with the so-called “Big Dig” project.

Calls to the Massachusetts Turnpike Authority seeking comment were not returned.

The debate over toll revenues and how to cover state funding shortfalls comes as members of the Massachusetts House and Senate meet in conference committee to hammer out differences in the FY 2010 budgets as passed by the two chambers. Included in both those budget plans (H. 4101, S. 2060), and thus expected to be a part of the conference committee report, is a 25 percent increase in the state sales tax from 5 percent to 6.25 percent.

By Martha Kessler

*Documents associated with Murphy v. Massachusetts Turnpike Authority are available at
<http://www.tollequity.com/litigation.html>.*

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