

Solicitor General

Washington, D.C. 20530

March 10, 1999

Thomas B. Griffith, Esq.
Senate Legal Counsel
United States Senate
Senate Hart Office Building
Room 642
Washington, D.C. 20510-7250

Re: Ranger Fuel Co., et al. v. United States
No. 3:98cv370 (E.D. Va.)

Dear Mr. Griffith:

Pursuant to 2 U.S.C. 288k(b), I am writing to advise you that the Attorney General and I have determined not to appeal the decision of the district court in the above-referenced case. A copy of the decision is enclosed.

The district court concluded in this tax refund case that the federal excise tax on sales of coal imposed by 26 U.S.C. 4121(a) cannot constitutionally be applied to export sales. In the recent decision in United States v. International Business Machines Corp., 517 U.S. 843 (1996), the Supreme Court held that even non-discriminatory federal taxes may not be applied to export sales of goods under the Export Clause of the Constitution. The Supreme Court's most recent decision under the Export Clause, United States Shoe Corp. v. United States, 118 S. Ct. 1290 (1998), reaffirms that holding. Applying that principle in this case, the district court held that "Section 4121 of the Internal Revenue Code [is] unconstitutional as applied to export sales of coal under the Export Clause * * *." Order of February 10, 1999.

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Although we have determined that we cannot pursue an appeal in this case, it is our view that the constitutional infirmity identified by the district court can probably be remedied by legislative amendment. The Department of Justice is available to assist Congress, if it so desires, in drafting legislation that could accomplish the objectives of this excise tax through constitutional means.

In the event that your office wishes to file a brief defending the statutory provisions on appeal, the time for filing a notice of appeal will expire on April 9, 1999.

Please let me know if we can be of assistance in this matter.

Sincerely,



Seth P. Waxman

Enclosure

cc: Geraldine R. Gennet, Esq.
General Counsel
United States House of Representatives
Cannon House Office Building
Room 219
Washington, D.C. 20515