



## Tax Legal Update

### Connecticut Supreme Court: DRS Argument Won't Fly

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On December 1, 2009, the Connecticut Supreme Court decided *Key Air v. Commissioner*, making plain that the Department of Revenue Services (DRS) cannot twist the meaning of a statute to create tax where none exists.

Key Air operated, for a fee, privately owned aircraft for owners of the aircraft. Essential to this arrangement was the provision of qualified pilots and it is no question that pilot training is a taxable business management service. However, Key Air concluded that such training services were not subject to tax because the statute defining business management services provides an exclusion for such services rendered "in connection with" an aircraft with a certificated takeoff weight of 6,000 pounds or more, and all of the aircraft fit that description.

DRS took the position that the services were not received "in connection with" the aircraft because it was Key Air who received and consumed the services rather than the aircraft owner. The Superior Court Tax Session had disagreed with this position, holding that the phrase "in connection with" has a broad meaning, requiring only a causal relationship between the training services and the aircraft, and DRS appealed.

The Supreme Court agreed with the Superior Court, holding that the plain meaning of the phrase is indeed broad, including any factual, contextual or causal relationship, so that services are rendered in connection with an aircraft if they have a cognizable relation or association with the aircraft. Here, the connection is obvious because the pilot is required by FAA regulations to receive the training to remain qualified to operate the aircraft.

In the course of its decision, the court also took the time to refute the DRS position that the phrase was ambiguous and, because it was part of an exemption, was to be construed narrowly against the taxpayer. The court noted, first, that the phrase is simply broad, not ambiguous, and that, in any event, the exclusions contained in statutory definitions of taxable services are part of taxing statutes, not exemptions. As such, even if they are ambiguous, they are to be construed against the commissioner, not the taxpayer.

Finally, the court declined to address an issue raised in the Tax Session opinion: Whether services rendered out-of-state, as these services were, are properly taxable in Connecticut. The court noted the issue but declined to address it in light of its conclusion that the training services were within the exclusion and not taxable.

The import of this decision extends beyond its immediate holding in several ways.

First, the decision makes clear that statutes mean what they say and the court interprets them in accordance with their plain meaning. The fact that the DRS or a taxpayer can concoct a tortured interpretation that differs from the plain meaning does not mean that the statute is ambiguous and subject to an interpretation other than its plain meaning.

Second, the plain meaning of the phrase "in connection with" is broad and unambiguous, encompassing any contextual, factual or causal relationship. This phrase appears several times

in the definitions of taxable transactions and in the exemptions section, generally in references favoring the taxpayer.

Third, if the meaning of a taxing statute is not clear, the rule that taxing statutes are to be construed narrowly against the taxing authority applies. DRS cannot take the position that something excluded from the scope of the tax is somehow transformed into a tax exemption that is narrowly construed against the taxpayer.

Finally, the decision leaves open the question raised by Judge Aronson in his Superior Court decision. The pilot training in Key Air was performed out-of-state. Judge Aronson questioned the DRS position that the services are taxable in Connecticut because Key Air consumed them noting that the training service was complete when the pilot completed it at the out-of-state location. This is an issue of constitutional dimension involving transactional nexus - a state's power to tax a transaction as distinct from its power to tax a person. As we noted in an [earlier update](#), the U.S. Supreme Court has never approved the imposition of a sales tax on services by a state in which no part of the services were performed.

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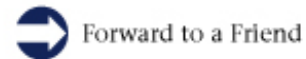
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