



# TaxNewsFlash

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## Ninth Circuit: Oregon's taxation of railroad intangible property held discriminatory

The U.S. Court of Appeals for the Ninth Circuit—agreeing with other circuit courts of appeals—today held that a rail carrier may challenge a state's imposition of a tax on intangible personal property, such as accounting goodwill, as discriminatory under the "Railroad Revitalization and Regulatory Reform Act" (the "4-R Act").

The Ninth Circuit held that the taxpayer railroad could challenge the Oregon property tax under the 4-R Act, which prohibits taxes that discriminate against rail carriers.

The Ninth Circuit rejected the Oregon Department of Revenue's argument that the intangible property tax was generally applicable and that the railroad's challenge was no more than a demand for exemptions offered to other taxpayers. The federal appellate court, however, reasoned that Oregon commercial and industrial taxpayers generally are subject to personal property tax on real and tangible (but not intangible) personal property. Thus, imposing tax on intangible property of railroads was not merely a failure to provide an exemption for railroads, but was a new tax that was imposed on railroads but not on commercial and industrial taxpayers. The Ninth Circuit concluded the intangible personal property tax discriminated against the taxpayer railroad and violated provisions of the 4-R Act.

The case is: *BNSF Railway Co. v. Oregon Dept. of Revenue*, No. 19-35184 (9<sup>th</sup> Cir. July 8, 2020). Read the Ninth Circuit's [decision](#) [PDF 105 KB] that includes a concurring opinion.

### KPMG observation

Today's decision is part of a line of cases finding that state taxation of railroad property is discriminatory in violation of the 4-R Act. For instance, the Fourth Circuit in May 2020 held that a South Carolina real property tax discriminated against railroads in violation of the 4-R Act. Read [TaxNewsFlash](#)

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