

Business Law

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The Top Ten Business Bankruptcy Cases of 2007	94
Lawrence Peitzman	
Here is the author's list of ten decisions rendered by the U.S. Supreme Court or the Ninth Circuit in 2007 that are likely to have an impact on business bankruptcy cases in the years to come.	
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Summarizing the highlights.	
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Chris Micheli	
This article reviews recent tax measures enacted by the California Legislature that are of interest to business lawyers.	
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Keith McBride	
Release 18-G describes how notice should be given to the Commissioner of Corporations concerning certain pending settlements under the Class Action Fairness Act of 2005.	
Also, an update on "best practices" guidelines for the nontraditional mortgage market.	
Employers and Employees	110
Robert M. Cassel	
Employers should become familiar with how the USERRA affects their personnel decisions with respect to returning veterans seeking their former jobs. <i>Perez v Uline</i> explores the issue of releases and the USERRA.	
The California Supreme Court weighs in on the issue of employee expense reimbursement in <i>Gattuso v Harte-Hanks Shoppers, Inc.</i>	
Finally, <i>Wysinger v Automobile Club of Southern California</i> has several worthwhile lessons for employers faced with, or handling, employment discrimination cases.	
Federal Taxation	109
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The determination of true market value for property tax purposes may be affected by the state's choice of valuation methods. In <i>CSX Transportation, Inc. v Georgia State Bd. of Equalization</i> , the U.S. Supreme Court held that a taxpayer may challenge the method chosen.	

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See this author's column at 29 CEB CBLR 61 (Nov. 2007) for a discussion of these earlier proposed regulations. The proposed regulations were revised during August 2007 and again during October 2007. As revised and as proposed to be adopted, the rulemaking implements the Guidance by requiring licensees to implement these "best practices."

COMMENT: Residential mortgage lending continues to be a highly regulated industry, and the Department of Corporations has provided guidance concerning various lending practices (see, e.g., Frequently Asked Questions (FAQ) on the Department's website, at <http://www.corp.ca.gov/commiss/rel55fs.htm>). Forms for making reports of nontraditional and adjustable rate mortgage products and for making certain disclosures as specified in the rules are also available on the Department's website, www.corp.ca.gov. Release No. 62-FS may be obtained from any office of the Department and may also be found on the Department's website. —K.McB.❖

Federal Taxation

Marilyn Barrett

Property Tax

The Supreme Court holds that the Railroad Revitalization and Regulatory Reform Act permits railroads to challenge state methods for valuing railroad property.

CSX Transp., Inc. v Georgia State Bd. of Equalization (2007) __ US __, 169 L Ed 2d 418, 128 S Ct 467

CSX Transportation maintains several rail routes across the state of Georgia, and as a result is subject to Georgia's ad valorem property tax. In 2001, the state set CSX's ad valorem tax liability at \$4.6 million. In 2002, using a different valuation method, the state set the railroad's tax liability at \$6.5 million, based on a real property market value assessment of \$7.8 billion, 47 percent higher than the previous year. CSX sued, alleging the state grossly overestimated the market value of CSX property compared with other commercial property in the state in violation of the Railroad Revitalization and Regulatory Reform Act (the 4-R Act) (49 USC §11501). The 4-R Act provides that a railroad's ratio of assessed value to market value may not exceed the ratio applied to other commercial property by 5 percent or more; if that happens, the district court may enjoin the tax. 49 USC §11501(c). The court declined to accept the lesser \$6 billion valuation of CSX property that the railroad's expert calculated using methods different from the state appraiser's, and the 11th Circuit affirmed. The Supreme Court granted certiorari to resolve divided opinion among the circuits as to whether the 4-R Act allows railroads to challenge state valuation methods.

To determine whether a state's assessment ratio violates the 5-percent ratio rule, courts must determine

whether the state's appraisal reflects true market value. Doing so requires the court to "look behind the State's choice of valuation methods." Otherwise, courts would have no option but to accept the state's valuation. If those valuations were routinely overestimated using inappropriate methodologies, the result would be the discriminatory—albeit "mathematically accurate"—taxation the Act is intended to thwart. The Court rejected the state's argument that allowing a railroad to challenge the state's valuation of true market value with a valuation based on its own methodologies would lead to "a futile clash of experts." The Court reversed the 11th Circuit ruling, holding that the 4-R Act was clear: To avoid discriminatory taxation, Congress ordered the federal courts to find true market value, regardless of the challenge the mandate poses to state valuation methods.

COMMENT: This case involved the application of a federal statute, the Railroad Revitalization and Regulatory Reform Act of 1976 (49 USC §11501), to a state's right to determine the fair market value of railroad property for purposes of real property taxes. The Supreme Court concluded that the language of the Act was clear: States may not tax railroad properties at a higher assessed-to-true market value ratio than the ratio applicable to other commercial and industrial properties. Further, the determination of true market value may be affected by the state's choice of valuation methods and, if taxpayers could not challenge the valuation methods selected, the Act would be rendered a "largely empty command." Had Congress intended to insulate the states from challenges to their chosen valuation methodologies, it could have done so. Congress clearly permitted courts to question such methodologies when it banned discriminatory assessment ratios and made true market value a question to be litigated in federal court. —M.B.

Income

Taxpayer had to prove entitlement to deduction before he could benefit from approximation of losses from depreciation.

Sparkman v Commissioner (9th Cir, Dec. 11, 2007, No. 06-71476) 2007 US App Lexis 28462

James S. Sparkman (Sparkman) operated a sole proprietorship under the registered trade name "Mercury Solar," which sold water heating systems to homeowners. Sparkman created Mercury Solar Pure Trust Organization (Trust) and Hawaii Environmental Holdings (Holdings), an unincorporated business organization, and operated the business of Mercury Solar through them.

Hawaii Electric Company (HECO) paid incentives to contractors installing solar systems. Because of delays in payment, Mercury Solar contracted with ABA Funding to pay it the amount of the incentives immediately, less a percentage in return for an assignment of the full amount of incentives due. HECO reported the incentive payments on Form 1099 as nonemployee compensation paid to Mercury Solar.