

United States

US Court of Appeals Expedites Appeal on State Tax Cuts Ban

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Report from our correspondent Jannica Robles Santos, J.D.

The US Court of Appeals for the Sixth Circuit (Court of Appeals) has ordered to expedite the appeal filed by the State of Ohio (State) related to the state tax cuts ban (i.e. tax mandate) under the [American Rescue Plan Act of 2021](#) (ARPA) (see [United States-16, News 7 July 2021](#), [United States-6, News 2 July 2021](#) and [Note](#)). The Court of Appeals partly granted Ohio's Motion to Expedite on 7 September 2021 (*State of Ohio v. Janet Yellen*, Case No. 21-3787, Order, 7 September 2021).

Prior to this action, the US Treasury (Treasury) appealed the United States District Court for the Southern District of Ohio's decision to grant a permanent injunction prohibiting the enforcement of the tax mandate.

In Ohio's Motion to Expedite, the State requested for an expedited briefing, proposing an 11-10-11 day schedule and expedited submission, argument and decision by 1 November 2021. According to the State, the question of whether the tax mandate is constitutional and binds Ohio is critically important. In addition, the State needs the final answer (which will ultimately require word from the Supreme Court) as soon as possible because it:

- will have no certainty regarding which tax policies it can lawfully implement until the case is finally resolved; and
- needs to spend the Rescue Plan funds quickly.

The Treasury filed a Response to Motion to Expedite on 3 September 2021, routinely agreeing to reasonable expedition but noting that it could not consent to the schedule that Ohio has proposed. According to the Treasury, there is no:

- basis for a compressed schedule which would give the federal government just 11 days from the docketing of its appeal to file its opening brief and only 11 days to file its reply brief;
- imminent intention (or, indeed, any intention at all) on Ohio's part to make use of its Fiscal Recovery Funds in a manner that would violate the tax mandate; or
- way for Ohio to obtain Supreme Court review during October Term 2021.

The State then filed a Reply on 3 September 2021, countering the Treasury's arguments by stating that:

- the Treasury has eighteen days since noticing its appeal and fifteen days since learning of the proposed schedule in which to brief this case under the proposed schedule;
- the tax mandate's ambiguity injures the State every day it is forced to operate under a cloud of uncertainty; and
- the State could seek to expedite proceedings before the Supreme Court.

The Court of Appeals granted the motion to expedite in part and provided the following filing deadlines:

Brief	Deadline
Appellant (US Treasury) Brief	28 September 2021
Appellee (Ohio) Brief	19 October 2021
Optional Brief	Within seven days after the filing of the Appellee Brief

Furthermore, the Court of Appeals ruled that:

- upon completion of briefing, the appeal will be submitted to it at the earliest practicable date that its schedule will permit; and
- the decisions as to when and whether oral argument will be conducted and whether to expedite the issuance of a decision are reserved to the merits panel where the appeal will be assigned.

Note: The ARPA aims to provide USD 1.9 trillion in relief to Americans suffering from the economic impacts of the ongoing COVID-19 pandemic. The tax mandate under the ARPA prohibits US states from using COVID-19 relief funds to offset a reduction in state net tax revenues if said reduction results from state tax cuts.

For more information on ARPA, see [United States-1, News 15 March 2021](#).

The IBFD will continue to monitor this dispute and report on developments as they occur.

See also

[United States-16, News 7 July 2021](#)

[United States-6, News 2 July 2021](#)

[United States-1, News 15 March 2021](#)

[United States - Corporate Taxation - Country Surveys section 1.6.1.4.](#)

[United States - Individual Taxation - Country Surveys section 1.](#)

[United States - Country Analyses - Corporate Taxation section 1.7.2.6.](#)

[United States - Individual Taxation - Country Analyses sections 1.](#)

[United States - Corporate Investment Income section 2.1.2.1.](#)

[United States - Ohio - State/Provincial Corporate Taxation Surveys 1.6.1.](#)