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## Tax credit ruling could hurt gas line negotiations

By SAM BISHOP News-Miner Washington Bureau

WASHINGTON--The U.S. Supreme Court may rule this year on the constitutionality of a tax credit similar to the one that Gov. Frank Murkowski wants to offer oil companies for in-state investments, according to a lawyer who analyzed Murkowski's proposal for the Alaska Legislature.

If the court rejects the tax credit, it could eliminate one plank of the package with which Murkowski hopes to lure oil companies into building a pipeline to bring Alaska North Slope natural gas to market, according to Marvin Kirsner, a tax lawyer with Greenberg Traurig in Boca Raton, Fla.

Oil company executives, testifying before legislators Tuesday in Juneau, declined to say whether any changes in that package might doom the gas line.

"It's too early to draw that conclusion," said Becky Hultberg, the governor's spokeswoman, on Thursday.

The Supreme Court on Wednesday heard oral arguments in the case on which the tax credit's future may hinge.

The case began when some Ohio residents sued over tax credits their state gave DaimlerChrysler Corp. for building a Jeep assembly plant. A district court rejected the citizens' argument, but an appeals court reversed the decision.

DaimlerChrysler appealed to the nation's high court, which agreed to hear the case.

The Ohio residents say their state's tax credit violates the U.S. Constitution. The constitution gives Congress the power to regulate interstate commerce, so courts have frequently prohibited states from taking actions that might limit such commerce, Kirsner said in an interview Wednesday.

The Ohio taxpayers argue that their state's tax credit improperly burdens interstate commerce because the credits are available only to companies that spend money in Ohio.

Murkowski's proposed tax credit is similar to the Ohio credit, Kirsner said.

At Wednesday's court hearing, Justices Antonin Scalia and David Souter offered comments indicating they didn't buy the constitutional argument.

Companies are free to invest elsewhere, Souter observed. "That's not discrimination, that's free choice," he said.

Scalia said fights over whether to offer such tax credits should be decided by politicians, not judges.

Members of Ohio's delegation in the U.S. Senate and House, who are nevertheless worried about the court challenge, filed legislation last year to give states the authority to offer such tax credits.

Nothing in the constitution prohibits Congress from extending such authority; states are on less certain legal territory if they try it themselves, Kirsner said.

That legislation may get a boost if the Supreme Court rules in favor of the Ohio taxpayers, Kirsner said, because thousands of similar tax credits are offered across the country.

"I have the feeling that Congress will have no choice," he said, if the court rejects the tax credits.

In his analysis, Kirsner suggested the state put its shoulder behind the legislation in Congress.

Murkowski's proposed tax credit would let oil companies deduct up to 20 percent of the value of any in-state investment from their taxable income in Alaska. They would also get a \$73 million standard deduction for any such investment.

Hultberg, Murkowski's spokeswoman, said the administration is considering Kirsner's analysis.

"It is one issue that one consultant has raised, so we're going to look into it," she said.

State Sen. Gene Therriault, R-North Pole, said he had discussed the issue with oil company representatives. They were aware of the Supreme Court case but did not express any serious concern about it, Therriault said Wednesday.

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