



## **UPDATE 2-U.S. Supreme Court takes PPL appeal in tax credit case**

By: Jonathan Stempel and Patrick Temple-West - Oct 29, 2012

---

Oct 29 (Reuters) - The U.S. Supreme Court said on Monday it will take the rare step of considering a tax case, one with hundreds of millions of dollars at stake and broad implications for companies with businesses abroad and for the Internal Revenue Service.

The court agreed to hear an appeal by PPL Corp, a Pennsylvania-based utility and energy holding company, in a case addressing when a company can claim U.S. tax credits to offset taxes it has already paid to a foreign government.

The case is being watched by a range of U.S. utility companies, including American Electric Power Co Inc and Entergy Corp, but the foreign tax credit question extends well beyond the power business.

A Supreme Court win for the IRS would give the agency more authority to challenge foreign tax credit claims where the law may be vague, said Jerold Cohen, a partner at law firm Sutherland Asbill & Brennan LLP and a former IRS chief counsel.

"The issue is relevant to any international company," Cohen said. "The (Supreme) Court takes very few tax cases."

PPL is appealing a December 2011 decision by the 3rd U.S. Circuit Court of Appeals in Philadelphia. In a related dispute, the 5th U.S. Circuit Court of Appeals in New Orleans ruled in June 2012 in favor of Entergy.

Both cases involve tax credits claimed by utility companies after they paid a "windfall tax" imposed by the United Kingdom.

U.S. utility companies acquired stakes in 32 UK power companies when they were privatized in the 1980s and 1990s.

In response to a public backlash in the UK that the privatized companies had been sold too cheaply, the British government imposed one-time windfall taxes on those companies. U.S. companies that had to pay the windfall tax claimed foreign income tax credits from the IRS.

But the IRS rejected their claims, saying the windfall taxes were based not on the British companies' profits, which could be credited, but on their unrealized value, which could not.

PPL had recorded a \$39 million expense in the fourth quarter of 2011 because of the 3rd Circuit ruling and Entergy could owe \$239 million in taxes and interest, the companies said in regulatory filings.

Several groups, including the Cato Institute and Goldwater Institute, filed briefs supporting the companies.

A Supreme Court decision is expected by the end of June.

The case is PPL Corp et al v. Commissioner of Internal Revenue, U.S. Supreme Court, No. 12-43.