



# Supreme Court to hear case of PPL and Lady Thatcher's legacy

By: Patrick Temple-West – February 19, 2013

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The Supreme Court on Wednesday will hear arguments in a dispute between U.S. tax authorities and PPL Corp over a British tax imposed on the power utility after it bought one of many businesses privatized by former British Prime Minister Margaret Thatcher.

In a case that tests what sort of foreign taxes can be offset with foreign tax credits by U.S. corporations, the PPL fight with the Internal Revenue Service potentially involves tens of billions of dollars. It is being closely watched by U.S. multinational companies and lawmakers, tax professionals said.

All the more so because the nine Supreme Court justices rarely hear tax cases. An opinion is expected by June.

"The IRS recognizes the stakes in this case are broader than this particular (British) tax," said Dirk Suringa, a former Treasury official, now a partner at law firm Covington & Burling.

The court's ruling "could end up setting the standard as to what is a creditable tax for years to come."

The "Iron Lady," as Thatcher was sometimes called during her turbulent tenure in the 1980s, privatized many formerly state-owned businesses, including power utilities.

One of them, South Western Electricity PLC, was partially acquired by Pennsylvania-based PPL in 1996.

After Thatcher, a Conservative, stepped down in 1990, her Labour Party arch-rivals took power in Britain and slapped "windfall" taxes on the privatized businesses that they thought were sold off too cheaply.

## "WINDFALL" TAX CREDIT?

PPL's British utility was hit in 1997 with a windfall tax bill for about \$140 million. The company paid the bill and PPL claimed a U.S. foreign tax credit against it, as it would for other foreign taxes. Such credits can be claimed by U.S. corporations so they do not pay the same tax twice at home and abroad.

The IRS disallowed PPL's claim in 2007, saying it did not meet the letter-of-the-law tax code statute for the U.S. tax credit in part because British politics interfered with the way the tax was written.

The case went to U.S. Tax Court, which ruled in 2010 in PPL's favor, saying it should be able to claim the tax credit.

The IRS appealed the Tax Court decision and PPL lost in December 2011 in the 3rd U.S. Circuit Court of Appeals.

PPL was not alone in its situation. At least two other U.S. utility companies, Entergy Corp and American Electric Power Company, were hit by windfall tax bills after British acquisitions made as a result of Thatcher's privatizations.

Entergy, which is facing \$152 million in taxes on the PPL outcome, won against the IRS in June 2012 in the 5th U.S. Circuit Court of Appeals, creating an appeals court split.

The Supreme Court sometimes will step into such situations to resolve differences.

#### CHAMBER BACKS PPL

PPL recognizes the significant tax consequences of its case for other U.S. businesses and hopes the Supreme Court rules in its favor, said spokesman George Lewis.

An IRS spokesman declined to comment.

Backed by the U.S. Chamber of Commerce and the conservative Cato Institute and Goldwater Institute, PPL is arguing for a broad IRS interpretation of applying the foreign tax credit.

A ruling that strikes down the IRS's narrow interpretation of the credit would mean "all hell breaks loose," said Reuven Avi-Yonah, a University of Michigan Law School professor.

"Any tax can arguably be recast as a direct tax that becomes creditable," he said. "The current rules can really be manipulated," said Avi-Yonah.

U.S. companies claimed \$93.5 billion in foreign tax credits in 2009, the most recent IRS figure. The credit has been a frequent area of dispute between companies and the IRS.

Democratic President Barack Obama proposed in 2012 limiting foreign tax credits in a way that would raise \$61 billion in additional federal tax revenue over 10 years.

Democratic Senator Carl Levin of Michigan introduced legislation earlier this month that would limit companies' claims for the foreign tax credit.

Assistant Solicitor General Ann O'Connell is scheduled to argue the case on behalf of the IRS. Paul Clement, a partner with Bancroft PLLC who last year argued against Obama's healthcare law, is docketed to argue for PPL.

The case is No. 12-43 PPL Corporation and Subsidiaries v. Commissioner of Internal Revenue.