

## POLICY NOTE

# Sound Transit officials seek preferential treatment from state Supreme Court in car tab tax lawsuit

By Mariya Frost, Director, Coles Center for Transportation

July 2019

### Key Findings

1. Sound Transit claimed that allowing Division 2 of the state Court of Appeals to review the class action lawsuit regarding unfair car tab taxes might impose a financial disadvantage by slowing approval of a US Department of Transportation (USDOT) loan and Federal Transit Administration (FTA) grant for Federal Way Link – a process they started and have known about since 2016.
2. Sound Transit has requested that the car tab tax lawsuit be transferred from the state Court of Appeals to the state Supreme Court, and that it receive expedited review.
3. Sound Transit admits that the agency has already told USDOT and FTA about the litigation and it provided no evidence that this disclosure had any negative result.
4. Sound Transit applied for and received a federal grant last year for \$100 million while this same lawsuit was pending.
5. Sound Transit received a \$500 million federal grant in 2003 during pending litigation regarding Initiative 776, which challenged the agency's car tab tax.
6. There does not appear to be a real reason to transfer or expedite the case to the state Supreme Court. Nonetheless, the Commissioner for the state Supreme Court has granted the request to transfer, but has denied the request to expedite review.

### Summary

Citizens are suing Sound Transit in a class action lawsuit because of the agency's unfair collection of car tab tax overcharges. In a legal maneuver, Sound Transit officials have succeeded in bypassing the normal review by Division 2 of the state Court of Appeals and are going straight to the state Supreme Court. The agency submitted a motion to transfer the case and receive expedited review by the Supreme Court. Their request for a transfer was granted by the Commissioner on June 10, 2019, but their request for expedited review was denied. Per the ruling, "the clerk of the court is requested to set the case for oral argument at the earliest date available during the Fall 2019 term."<sup>1</sup>

### Background

Seven taxpayers in King, Pierce and Snohomish counties filed this class action lawsuit in June 2018, alleging Sound Transit officials did not get proper legal authorization to raise the annual car tabs of people living in the Sound Transit taxing areas of these counties. The first court hearing took place in September 2018, with Pierce County Judge Kathryn Nelson concluding that the legal arguments and policy issues presented were "above [her] pay grade." She then promptly sided with Sound Transit and against taxpayers in her ruling.<sup>2</sup>

An appeal was immediately filed on behalf of taxpayers, and the first appeal brief was filed in January. Sound Transit responded in February, and the citizens replied in March. The court was fully briefed, and the case was ready to be heard by three judges of the state Court of Appeals.

However, nine months after the appeal was filed, and almost two months after the court briefing was finished (when Sound Transit first could have asked for a transfer), Sound Transit officials claimed they needed a decision in less than six months. They claimed they might lose out in securing federal grants and low interest loans for their government agency if this lawsuit wasn't settled quickly.

1 Supreme Court Commissioner ruling regarding motion to transfer and accelerate review, Appellate Court Case: Taylor Black et al, Appellants v. Central Puget Sound Regional Transit Authority, June 10, 2019.

2 "Big defeat for taxpayers seeking car tab relief in wake of ST3," by Hanna Scott, September 7, 2018, at <https://mynorthwest.com/1105363/taxpayers-sound-transit-court-tabs/>.

## Analysis

This was an extraordinary request. On paper, Sound Transit won the first round of this case, and the normal appellate process would send the case first to the state Court of Appeals for a ruling, after which the losing party could ask for a review by the state Supreme Court. Instead, Sound Transit claimed that this is a case that warrants direct review by the state Supreme Court, bypassing the normal appeals court review.

Additionally, Sound Transit effectively wanted a promise that the Court would decide the case in its favor by December 2019. Getting any court, particularly the state Supreme Court, to allow one case to leapfrog over those of others who are patiently waiting in line, is unusual. As the citizen plaintiffs put it, “requests for accelerated review are rarely made, and even more rarely granted.”

Is the claim about getting federal money the real reason Sound Transit wanted the case to go directly to the state Supreme Court?

Sound Transit officials claimed that allowing the Court of Appeals to review the case might impose a financial disadvantage by slowing approval of a U.S. Department of Transportation (USDOT) loan and Federal Transit Administration (FTA) grant for Federal Way Link – a process they started and have known about since 2016. If these deadlines really required accelerated court review, why didn’t Sound Transit officials ask for it earlier?

Sound Transit’s Director of Fares and Grants, in a declaration supporting the [motion to transfer](#) to the state Supreme Court, argued that pending litigation could hurt the agency’s chances of getting a \$629 million low-interest loan from USDOT and a \$790 million capital investment grant from the FTA to fund Federal Way Link construction, which she said are codependent.<sup>3</sup> If the court does not resolve this case by December 22, 2019, she said, then the pending litigation could hurt the agency’s chances of getting the USDOT loan at the interest rate decided on in the project master agreement, which contains the terms and conditions governing the project.

Sound Transit’s argument raises many unanswered questions.

1. What difference would it make to USDOT and the FTA if this state lawsuit is still pending? Sound Transit admits that the agency has already told USDOT and the FTA about the litigation and the agency provided no evidence that this disclosure had any negative result.<sup>4</sup>
2. When did Sound Transit report to the USDOT and FTA about the pending state litigation, and how did the federal agencies respond?
3. If this pending litigation is such a problem, how is it that Sound Transit applied for and received a federal grant last year for \$100 million while this same lawsuit was pending?<sup>5</sup> In fact, the agency received the grant the same day the court ruled in its favor. Presumably, the FTA knew about the lawsuit when federal officials

<sup>3</sup> Declaration of Lisa Wolterink in support of Sound Transit’s motion to transfer, Appellate Court Case: Taylor Black et al, Appellants v. Central Puget Sound Regional Transit Authority, May 10, 2019.

<sup>4</sup> Ibid – see #3 in document.

<sup>5</sup> “Double win for Sound Transit: \$100 million from feds, lawsuit dismissed,” by Joel Connelly, September 7, 2018, at <https://www.seattlepi.com/local/politics/amp/Double-win-for-Sound-Transit-100-million-from-13213654.php>.



**Mariya Frost** is the Director of the Coles Center for Transportation at Washington Policy Center. Born in Russia, she and her family came to the United States in 1993 and she grew up in Washington state. She is a graduate of the University of Washington with a degree in Political Science. Mariya completed a studies program in the Dominican Republic, Spain and northern Africa through the University of Nations, and has completed courses in accounting and business administration at Saint Martin's University. She spent ten years working in the private sector and as a staff member at the U.S. House of Representatives and the Washington state senate.

Mariya has lived in both Eastern and Western Washington, and believes strongly in the freedom of mobility for all Washingtonians. She is on the Board of Directors for the Eastside Transportation Association, a member of the Jim MacIsaac Research Committee, and a member of the Women of Washington civic group.

*Washington Policy Center is an independent research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.*

Published by  
Washington Policy Center  
© 2019

**washingtonpolicy.org**  
**206-937-9691**

decided to give Sound Transit the federal grant. How is the current application any different?

4. Sound Transit received a \$500 million federal grant in 2003 during pending litigation regarding Initiative 776, which challenged the agency's car tab tax. The litigation lasted from 2002 to 2006. All Sound Transit had to do was send a letter to the FTA explaining what they would do in a "worst case scenario" in which the car tab tax collection was reduced (Sound Transit Board Resolution No. R2003-20).<sup>6</sup> Can't they just do the same in this case?
5. At what point in the last year did Sound Transit officials learn that they needed an expedited court review?
6. Why didn't Sound Transit ask for expedited review months ago from Division 2 of the state Court of Appeals? Why did they wait to ask for expedited review from the state Supreme Court instead?

**Conclusion**

Even when Sound Transit's property tax and sales tax revenues are booming due to a hot economy (financial projections show an increase of \$3.8 billion), officials always say they want more money.<sup>7</sup>

Officials' decision to seek transfer and expedited review shows a disregard for taxpayers who deserve a thorough, rather than speedy, review of the car tab tax overcharges they have been paying for the last three years. It also shows a disregard for the judicial process, as Sound Transit, the wealthiest and most powerful transit agency in Washington, seeks preferential treatment above every other litigant in the state. Even worse, Sound Transit's manufactured concerns to justify the request, which contradict its position on previously received grants during pending litigation, exacerbate the agency's growing lack of credibility.

While the Supreme Court prepares to scrutinize the legislation Sound Transit drafted to overcharge citizens and secure its exorbitant car tab taxes, Sound Transit officials will have to come up with a better argument than "We need the money." Manipulating the judicial process to get more money is neither defensible nor a good precedent for other powerful litigants seeking preferential treatment from the courts.

<sup>6</sup> Sound Transit Resolution No. R2003-20, Sound Transit, October 23, 2003, at [https://www.soundtransit.org/st\\_sharepoint/download/sites/PRDA/FinalRecords/2003/Resolution%20R2003-20.pdf](https://www.soundtransit.org/st_sharepoint/download/sites/PRDA/FinalRecords/2003/Resolution%20R2003-20.pdf).  
<sup>7</sup> "2018 Financial Plan Projections Includes SM, ST2 and ST3 Plans," 2018 Financial Plan COP Briefing, Sound Transit, January 3, 2019, at <https://www.soundtransit.org/sites/default/files/documents/citizens-oversight-panel-financial-plan-presentation-20190103.pdf>.