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Transacting with the STARS: Gargantuan Foreign Tax Credits Stumble over Economic Substance

By Donald P. Board • Wood LLP

For a decade, the IRS has been trying to use the economic-substance doctrine to take down the notorious Structured Trust Advantaged Repackaged Securities transaction (STARS). With several billion dollars of tax on the line, the big banks that participated in STARS deals have been litigating their cases to a fare-thee-well. If a CFO is facing a $300 million tax hit, it can make sense—in expected value terms—to budget $30 million for legal bills, as long as there is at least a seven-percent chance of winning and the fees are deductible.

The big banks' chances probably looked a *lot* better than that when the litigation was getting started back in 2007. The crux of the economic-substance issue is whether a STARS transaction has a reasonable prospect of generating a profit, independently of tax consequences. The answer depends on whether the billions in U.K. taxes that the banks paid to Her Majesty's Revenue and Customs should be subtracted as *expenses* in this profit calculation.

The banks no doubt found it reassuring that the two leading cases at the time—which involved tax credits and ADRs—had *refused* to treat foreign taxes as expenses for economic-substance purposes. [*See IES Indus. Inc.*, CA-8, 2001-2 USTC ¶50,471, 253 F3d 350; *Compaq Computer Corp.*, CA-5, 2002-1 USTC ¶50,144, 277 F3d 778.] The banks may also have been comforted by the knowledge that their U.K. counterparty, Barclays Bank PLC, had devised STARS with the assistance of KPMG, which knows a thing or two about taxes, and shelters. Top that off with tax opinions from both KPMG and a leading U.S. law firm (Sidley Austin), and the banks could well have concluded that they were in the driver's seat.

Litigation Unlimited—Strategic Error?

But even if the banks believed that they had the law on their side, they were certainly in no hurry to get the economic-substance issue in front of a judge. The taxpayers spent the first several years of the STARS litigation fighting the IRS tooth and nail about discovery and procedural issues. In one of the cases we will examine below, there were more than *300 items* on the trial court docket—and the case was not even tried.

In retrospect, postponing the day of substantive reckoning may have been a mistake. While the litigators were going through their motions, the tax environment was changing. In 2010, Congress codified the economic-substance doctrine. Officially, new Code Sec. 7701(o) applied only prospectively. But the fact that it was cast as a "clarification" of what the courts had already been doing blurred the line between prospective and retroactive effect.

Besides, much of the significance of Code Sec. 7701(o) lay in its effect on judicial psychology. These days, judges considering departing from literal application of a statute have to worry about being branded "usurpers" of legislative authority. For them, Congress's endorsement of the judicially created economic-substance doctrine was a much-needed shot in the arm. After all, the principal function of the doctrine is to block schemes that "work" under a literal reading of the Code.

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But the new provision did more than reassure judges that Congress *wants* them to watch its statutory back. It also included a couple of touch-ups to the doctrine itself. Code Sec. 7701(o)(2)(B) actually directed Treasury to issue regulations *requiring* foreign taxes to be treated as expenses when evaluating a transaction's profit potential. Retroactive or not, this left no doubt about where Congress stood on the central issue in the STARS cases.

New Routines?

Another significant development was the Treasury Department's issuance of temporary regulations essentially *outlawing* STARS transactions in 2008 [T.D. 9416, IRB 2008-46, 1142]; the regulations became final in 2011 [T.D. 9535, IRB 2011-39, 415]. The new regulations were prospective, so in theory they were irrelevant to the pending cases.

But living for even a couple of years with a new legal norm has a way of making it feel, well, *normal*. Perceptions of normalcy matter, especially when the taxpayer is claiming, a decade or more after the fact, that some arcane transaction was business as usual. If the transaction in question vanished years ago, unlamented and without a trace, even the fairest-minded judge may find it hard to take the taxpayer's position seriously.

That seems to be how things have been working out for the big banks in the STARS cases. Since 2015, *three* U.S. Courts of Appeal have held that taxes paid to the United Kingdom must be subtracted when determining whether those deals had any real profit potential. The opinions take it almost as given that the transactions had *nothing* to do with normal business.

Would the banks have gotten a more sympathetic hearing, say, four years *earlier*? That is hard to say, but changes in the tax law, combined with the sheer passage of time, *did* create an opportunity for attitudes to shift and harden against the STARS transaction. Scorched-earth litigation tactics have their place, but they carry the risk of strategic miscalculation.

Anatomy of a STARS Transaction

Before we look at the case law, we need a working understanding of how a STARS transaction was supposed to work. We will

start by describing the transaction's structure. Then we will inject some dollars to illustrate how the tax magic happened.

In a STARS deal, the participating U.S. bank (Bank) starts by transferring income-producing assets worth several billion dollars to an entity (Trust) in exchange for its Class A units. Trust is disregarded for U.S. tax purposes, so its income continues to be reported on Bank's U.S. tax return.

Trust is managed by an entity owned by Bank but classified as a U.K. resident. That is enough, under U.K. law, to subject *all* of Trust's income to U.K. tax at a rate of 22 percent. This does not affect Bank's bottom line—assuming that the U.K. taxes are creditable against Bank's U.S. tax liability under Code Sec. 901(a).

Barclays, which is a U.K. taxpayer, pays a billion or so to purchase Class B units from Trust. Trust uses the cash to immediately redeem some of the Class A units from Bank. Trust also agrees to repurchase all of Barclays' Class B units at a *fixed price* on a future date.

For U.S. tax purposes, this sale-and-repurchase arrangement is treated as a *secured loan* from Barclays to Bank. The United Kingdom, however, views Barclays as holding an equity interest in Trust. The parties allocate all of Trust's income to Barclays.

Trust's income, net of its U.K. tax payments, is then distributed to Barclays—or, rather, to a blocked account at Bank with Barclays' name on it. It's a short visit because Barclays is required to immediately use the funds to purchase additional Class B units from Trust. Except for the taxes paid to the United Kingdom, the cash flows in a circle.

Barclays does not derive any economic benefit from buying more Class B units. Trust will eventually redeem Barclays' *entire* interest for a fixed price, regardless of how many units Barclays holds. Recognizing that Barclays is paying something for nothing, the United Kingdom lets Barclays deduct the funds it repays to Trust as a "trading loss."

Barclays makes a monthly payment to Bank (the "Tax Benefit Payment") equal to 50 percent of the value of a defined portion of the U.K. tax benefits Barclays derives from the arrangement. After a few years, Trust uses its accumulated after-tax cash to repurchase Barclays' Class B units at the prearranged price. Trust then distributes its assets to Bank, including any remaining cash, in redemption of Bank's Class A units.

It's Alive! It's Alive!

Now that the monster has been stitched together, let's zap the Trust with $100 of income and see what happens. We begin with events in the United Kingdom.

Trust's $100 of income triggers $22 of U.K. tax. As noted, however, the full $100 of pre-tax income is allocated to Barclays. Barclays is taxed at 30 percent, so it incurs $30 in U.K. tax. Under U.K. law, Barclays can claim a credit for the $22 of tax already paid by Trust, so Barclays only has to pay $8 of additional tax.

Trust distributes its $78 of after-tax income (*i.e.*, $100 *minus* $22) to Barclays. This does not trigger any additional U.K. tax. Barclays must then pay the $78 back to Trust to purchase additional (but meaningless) Class B units. Barclays' $78 deduction for its "trading loss" produces a U.K. tax benefit worth $23.40 (*i.e.*, 30 percent of $78).

After subtracting the $8 tax liability referred to above, Barclays realizes a net U.K. tax benefit worth $15.40. Barclays must now pay Bank $11 (the Tax Benefit Payment), which equals 50 percent of the $22 credit that Barclays applied against its U.K. tax. This payment is deductible, so Barclays receives an additional U.K. tax benefit worth $3.30.

All told, Barclays is ahead by $7.70. This corresponds to Barclays' $15.40 net tax benefit described above, *minus* its $11 Tax Benefit Payment to Bank, *plus* the $3.30 value of the resulting U.K. deduction.

Back Across the Pond

Now let's return to the United States, where Trust's $100 in income would have been taxable to Bank at 35 percent. Bank claims a foreign tax credit for the $22 that Trust has paid to the United Kingdom. Bank still pays $35 in tax: $13 to the United States and $22 to the U.K. Receipt of the $11 Tax Benefit Payment will stick Bank with an additional $3.85 in U.S. tax.

Bank has $111 of revenue: $100 in income from Trust and $11 from Barclays. On the expense side, Bank pays $22 of tax to the United Kingdom and $16.85 (*i.e.*, $13 *plus* $3.85) to the United States. Bank's after-tax profit is

therefore $72.15. That's $7.15 more than the $65 it would have netted if it had earned $100 but not participated in the STARS transaction.

For every $1 billion of income run through Trust, Barclays clears an after-tax profit of $77 million. Bank picks up an additional $72.15 million. The gives the parties almost a $150 million incentive to shoot for the STARS.

Federal Circuit's Strong Lead: *Salem Financial*

The Federal Circuit was the first U.S. Court of Appeals to consider a STARS transaction. In *Salem Financial, Inc.* [CA-FC, 2015-1 USTC ¶50,304, 786 F3d 932, *cert. denied*, 136 SCt 1366 (2016)], Branch Banking & Trust Corporation (BB&T) transferred assets worth $5.75 billion to a STARS trust in 2002. Over the next five years, the trust earned $2.25 billion of income, on which it paid $498 million in U.K. tax.

Volunteering to pay half a billion dollars in tax to the United Kingdom seems like an odd choice, but BB&T was counting on the U.S. Treasury to pick up the tab. Barclays rewarded the bank with $240 million in Tax Benefit Payments. Even on an after-tax basis, BB&T came out ahead by $156 million.

Thanks to a tip from the U.K. tax authorities, the IRS got woke to what was going on in STARS transactions. The IRS denied BB&T its $498 million in foreign tax credits. BB&T paid the gigantic deficiency, then sued for a refund in the Federal Court of Claims. After BB&T's forum-of-choice ruled in favor of the IRS, the bank appealed to the Federal Circuit.

Rebate Red Herring

Not surprisingly, the foreign tax credit does not apply to the extent that the foreign country rebates the tax to the U.S. taxpayer. [Code Sec. 901(i).] The notion of "rebate" extends to any kind of government payment or subsidy, whether direct or indirect, that benefits the taxpayer. Reg. §1.901-2(e)(3)(ii) backs this up by stating that "substance and not form" must govern the determination.

However, the IRS conceded that the Tax Benefit Payments were *not* a rebate of BB&T's U.K. taxes. Although Barclays paid an amount *calculated* as 50 percent of the benefit it expected to receive from BB&T's tax payment, the courts generally refuse to treat such third-party payments as, in substance, payments by the foreign country. Consequently, the IRS acknowledged that BB&T had *not* received rebates that would bar U.S. tax credits under Code Sec. 901(i).

BB&T went to town on this. The existence of Code Sec. 901(i) demonstrates that Congress did not intend to allow a credit for rebated taxes. But the IRS had conceded that BB&T's taxes had *not* been rebated. Hence (according to BB&T), awarding massive credits to BB&T in the STARS transaction is *consistent* with Congressional intent.

BB&T was right that Congressional intent matters. From its inception, the economic-substance doctrine has operated to block tax benefits that were *not intended* by Congress. As the Supreme Court told Mrs. Gregory, "the ultimate question is whether what was done, apart from the tax motive, was *the thing which the statute intended*." [*E. Gregory*, SCt, 293 US 465, 469, 35-1 USTC ¶9043, 55 SCt 266 (emphasis supplied).]

The problem with BB&T's argument is its assumption that, when Congress expressly prohibits a specific form of statutory abuse, it has no objection to any practice that it *fails* to address. Congress was obviously concerned that tax rebates might be disguised as other forms of largesse. But the Federal Circuit declined to infer that Congress thought it had covered all relevant forms of tax-credit abuse in Code Sec. 901(i).

Substance-over-Form Versus Economic Substance

Stated abstractly, BB&T's rebate argument falls under its own weight. When observed in the wild, however, it also trades on the multiple meanings of "substance" that cause so much confusion in this area of the tax law. Notably, it tends to conflate the economic-substance doctrine with the primacy of substance over form.

The substance-over-form doctrine, which is echoed in Reg. §1.901-2(e)(3)(ii), requires courts to cut through labels and legal formalities to identify what is *really* going on. This doctrine can be very powerful stuff. Over the decades, it has upset many a carefully stacked applecart.

But the substance-over-form doctrine is essentially *procedural*. Maybe it's ironic, but the doctrine does not have a substantive tax agenda of its own. Its function is to clear the way so that other tax rules—which *are* substantive—can be applied to the real situation.

The economic-substance doctrine, in contrast, cannot be applied without making judgments regarding substantive tax law. Suppose that a court is faced with a situation in which (1) a transaction generates a tax benefit under a literal application of the Code, but (2) the transaction's non-tax *bona fides* cannot be established under the tests now codified in Code Sec. 7701(o). The court must then decide whether Congress *really* intended to confer the statutory tax benefit under the circumstances before it.

This is not to say that the two "substance" doctrines are unrelated in practice. If the question is what Congress intended under the circumstances, the court must be clear about what those circumstances really are. Dubious transactions are frequently dressed up to look like something else, so the substance-over-form doctrine plays a critical role in many economic-substance cases.

Despite BB&T's best efforts, the Federal Circuit had no trouble distinguishing between the two doctrines. The IRS had conceded that the Tax Benefit Payments were not, in substance, rebates of U.K. tax. This meant that Code Sec. 901(a) literally applied to the U.K. taxes, but it did not answer the *substantive* question of whether Congress intended to make tax credits available under these circumstances.

Subtracting U.K. Taxes

Turning to the economic-substance issue, the Federal Circuit declined to follow the decisions of the Fifth and Eighth Circuits holding that foreign taxes should not be considered when determining whether a transaction had true profit potential. For the Federal Circuit, whether a transaction makes economic sense—putting aside the U.S. tax system—is *totally* relevant to the question of whether Congress intended the transaction to be a beneficiary of the U.S. foreign tax credit.

BB&T deliberately incurred $22 of U.K. tax for every $100 of income earned by its STARS trust. That did nothing for BB&T, except earn it an $11 Tax Benefit Payment. Absent a tax-credit subsidy from the U.S. Treasury, BB&T would not have participated in Barclays' losing scheme.

Did Congress intend for Code Sec. 901(a) to apply on these facts? BB&T was confident that it did. The purpose of the foreign tax credit, according to the bank, is to prevent "double taxation," an evil that Congress is committed to fighting in all cases, no questions asked.

The Federal Circuit, however, concluded that the foreign tax credit serves an important but more limited policy. Congress wanted to take taxes out of the picture when U.S. firms were deciding whether to conduct business at home or abroad. With the foreign tax credit system in place, a U.S. company's income bears the same tax burden whether it is earned in Memphis or Mumbai (assuming the U.S. tax rate exceeds the foreign rate).

Whatever one thinks of the underlying policy ("capital-export neutrality"), preventing double taxation is simply a *means* to promote it, not an end in itself. Congress's goal was to let U.S. firms disregard taxes when choosing where to conduct *real business activities*. If a transaction is simply an exercise in tax arbitrage, however, allowing it to drain the U.S. Treasury does nothing to advance the purpose of Code Sec. 901(a):

> Although BB&T received income in the form of the [Tax Benefit Payment], the transaction that generated that income involved no genuine business activities, and the transaction that produced the [Tax Benefit Payment] would not have been engaged in but for the system of taxes imposed by the U.S and U.K. governments. ... Congress could not have intended to allow a taxpayer to claim a foreign tax credit, at the expense of U.S. tax revenue, for a transaction involving no commerce or bona fide business abroad and having no purpose other than to obtain foreign and domestic tax benefits.

[*Salem Financial, Inc.*, *supra*, 786 F3d at 954.]

Interest Deductions Allowed

BB&T's transaction with Barclays included a repo arrangement treated as a $1.5 billion secured loan. The U.S. bank deducted five years of LIBOR-based interest payments pursuant to Code Sec. 163(a). The IRS disallowed the deductions, asserting that the loan transaction lacked economic-substance.

The Court of Claims agreed with the IRS. The purpose of the loan was to camouflage a transaction that had no legitimate business purpose. The loan deserved no more respect

than the bank's transfer of income-producing assets into the STARS trust.

The Federal Circuit did not dispute the Court of Claims' description of the *motivation* for the loan. But it concluded that the loan, *per se*, had not been a sham. Camouflage or not, BB&T had really received the loan proceeds and used them in its actual economic activities. The Federal Circuit therefore allowed BB&T to deduct its interest expense.

Second Circuit Follows: *Bank of New York Mellon*

A few months later, the Second Circuit reviewed a STARS transaction in *Bank of New York Mellon Corp.* [CA-2, 2015-2 USTC ¶50,473, 801 F3d 104, *cert. denied*, 136 SCt 1377 (2016)]. Although the case involved only the first two years of a five-year deal, the taxpayer (Bank of New York) had already claimed *$199 million* in credits for taxes paid to the United Kingdom.

BNY's transaction with Barclays was nearly identical to BB&T's in *Salem Financial*. BNY transferred $6.5 billion in assets to a STARS trust, relying on a U.S. tax credit to make up for the U.K. liability it would incur. The maneuver generated a large U.K. tax benefit for Barclays, which paid BNY a fee equal to half of the taxes BNY had paid to the United Kingdom.

The Second Circuit declared that the purpose of the economic-substance doctrine is "to provide courts a 'second look' to ensure that particular uses of tax benefits comply with Congress's purpose in creating that benefit." [801 F3d at 113.] The court's analysis echoed the Federal Circuit:

> The purpose of the foreign tax credit is to facilitate global commerce by making the IRS [*sic*: taxpayer] indifferent as to whether a business transaction occurs in this country or in another, not to facilitate international tax arbitrage

[801 F.3d at 118.]

BNY had not conducted any real business in the United Kingdom. It had simply moved income-producing assets into a trust managed by a U.K. resident. There was no reason for the United States to pay $199 million to subsidize this paper transaction.

As in *Salem Financial*, Barclays had made a $1.5 billion loan to BNY. The Second Circuit agreed with the Federal Circuit that the loan could be treated as a separate transaction. It had enough substance to justify BNY's interest deductions, even if it couldn't save BNY's foreign tax credits.

The Second Circuit also took the opportunity to affirm the denial of $306 million in foreign tax credits claimed by American International Group Inc. in a different transaction. Star litigator David Boies insisted that the deal—which did not involve STARS—was a "genuine business transaction." But the court was unpersuaded that AIG was engaged in anything more than tax arbitrage. [*See* Robert W. Wood, *Economic Substance, Foreign Tax Credits, Shams and Interest Deductions*, THE M&A TAX REPORT (Oct. 2015).]

Three's A Crowd: First Circuit Gets in Line in *Santander Holdings USA*

Santander's predecessor, Sovereign Bancorp Inc., had claimed $234 million in foreign tax credits in connection with a STARS transaction. The IRS denied the credits, so Santander sued in the U.S. District Court in Massachusetts. The case attracted a good deal of attention when, somewhat unexpectedly, the District Court granted Sovereign's motion for summary judgment against the IRS. [*See Santander Holdings USA, Inc.*, 144 FSupp3d 239 (D. Mass. 2015), *rev'd and remanded*, CA-1, 2017-1 USTC ¶50,101, 844 F3d 15, *cert. denied*, 137 SCt 2295 (2017).]

The First Circuit reversed, adopting the rationale espoused by the Federal and Second Circuits. We need not review how the First Circuit dealt with the specific arguments adduced by the District Court. But it is worth noting the District Court's narrow view of what counts as abuse of the foreign tax credit.

Like the other banks, Sovereign entered the STARS transaction for the sake of the Tax Benefit Payments. Barclays was happy to pay because it had found a way to extract even larger tax benefits for itself in the United Kingdom. The plan required Sovereign to incur stupendous amounts of U.K. tax, but it expected to be made whole by claiming a credit under Code Sec. 901.

For the District Court, the key point was the fact that the STARS transaction *had not saved Sovereign any tax*. The bank still paid $35 of tax on each $100 of income earned by the trust. All

that had changed was that the $35 had been split between the United States ($13) and the United Kingdom ($22). Where's the tax abuse?

The District Court also thought it significant that the plan was to have the U.S. Treasury—not Sovereign—bear the economic cost of the U.K. taxes. In that case, what was the justification for treating the U.K. taxes as "expenses" borne by Sovereign? From Sovereign's perspective, the taxes were a wash.

Putting America's Treasury First?

The District Court's implicit point of comparison seems to have been the familiar case of a taxpayer who claims a tax credit to which he is not entitled under the Code. The taxpayer's illicit profit derives directly from the reduction in his tax liability. His gain is the flip-side of the Treasury's loss.

BB&T, BNY and Sovereign, in contrast, were not cutting their taxes. They were just trying to earn a few hundred million in Tax Benefit Payment from Barclays. The banks understood that this was going to cost the U.S. Treasury an equally impressive amount of lost revenue, but so what? From their perspective, the impact on the U.S. Treasury was just collateral damage.

The clear message from the First, Second and Federal Circuit Courts of Appeal is that the United States does not have to take this lying down. The courts recognized that a transaction can represent an abuse of the U.S. tax system even if it is not part of a plan to reduce somebody's taxes. Anyone who expects the United States to provide a 100-percent subsidy for taxes paid to another country should stick to transactions that promote the purposes for which Congress enacted Code Sec. 901(a) in the first place.

Deductions in the Dock

Following its loss in the First Circuit, Santander sought review by the Supreme Court. Its petition for *certiorari* was predictably denied on June 26, 2017. On August 24, Santander was back in the District Court, this time seeking to *deduct* its U.K. taxes. A deduction doesn't hold a candle to a full-fledged tax credit, but 35 percent of $234 million is not a bad consolation prize.

Santander emphasized that the deduction for foreign taxes in Code Sec. 164(a)(3) deliberately *omits* any requirement that the taxes be incurred in a business or even a profit-oriented activity. According to Santander, that demonstrates that Congress intended foreign income taxes to be *unconditionally* deductible—economic substance is not a requirement. The bank noted that several provisions in Code Secs. 901 and 908 authorize a deduction for foreign taxes, even after a foreign tax credit has been disallowed.

Santander also pointed to Congress's response to the *Compaq* and *IES Indus.* cases. After the Fifth and Eighth Circuits rejected economic-substances challenges to foreign tax credits generated in ADR transactions, Congress amended Code Sec. 901(k) to impose stricter holding-period and risk-exposure requirements. But the legislative history stated that taxpayers who fail the new statutory "substance" tests can still *deduct* the taxes they have paid.

Disregarded, but for What Purpose?

Santander may have a point. But it will have to contend with a recent decision in a STARS case in the U.S. District Court in Minnesota. In 2015, the court ruled that Wells Fargo could not claim a $177 million credit for a single year's worth of U.K. tax paid by its STARS trust. [*See Wells Fargo & Co.*, 116 AFTR 2d 2015-6738 (D. Minn. 2015).]

On September 15, 2017, the District Court held that Wells Fargo was also barred from *deducting* the payment. A jury had previously found that the trust was a "sham" for purposes of the economic-substance doctrine. The court concluded that the trust transaction must be disregarded for *all* tax purposes, including a possible deduction. [*See Wells Fargo & Co.*, 120 AFTR 2d 2017-5800 (D. Minn. 2017).]

The District Court's analysis appears to have skipped a step. The trust transaction lacked economic substance and involved an unintended exploitation of the foreign tax credit. That established that the transaction should be disregarded for purposes of a credit under Code Sec. 901(a). However, does it follow that the transaction must also be disregarded for purposes of a deduction under Code Sec. 164(a)(3)?

Analytically, the two issues are distinct. Suppose that Wells Fargo had deducted the U.K. taxes but had *not* claimed the foreign tax credit. If the IRS had challenged the deduction, it would have had to show that the transaction lacked economic substance, *and* that it was an

unintended exploitation of Code Sec. 164(a)(3). The IRS would not have been permitted to argue instead that Congress did not intend for *Code Sec. 901(a)* to apply.

The District Court disregarded the STARS transaction for *all* purposes, contending that this followed from the "ordinary operation of the sham-transaction doctrine" [120 AFTR 2d 2017-5800 at 5803]. But a tax benefit should not be denied unless, under the circumstances, allowing that benefit would be contrary to the Congressional purpose. Consequently, Wells Fargo is entitled to an explicit ruling on the question of whether Congress intended to allow foreign taxes to be deducted under Code Sec. 164(a)(3) in the context of a STARS transaction.

Looking Ahead

Treating Sovereign's $234 million in U.K. taxes as non-deductible would send a strong message to future promoters and consumers of credit-based corporate tax shelters. But, no matter how the District Court comes down, the First Circuit will have the final say. This movie has another reel to run.

On November 24, Wells Fargo filed a notice of appeal with the Eighth Circuit, which decided the *IES Indus.* case back in 2001. It will be interesting to see how things look now that three circuits have given STARS the thumbs down. But with perhaps $900 million in credits at stake (assuming a five-year deal with Barclays), Wells Fargo will leave no stone unturned.

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