SUPREME COURT OF TEXAS

In re Nestle USA, Inc.

387 S.W.3d 610 (Tex. 2012) · No. No. 12-0518 · Decided October 19, 2012

SUMMARY

The Supreme Court of Texas considered Nestle USA, Inc.'s constitutional challenge to the Texas franchise tax in an original mandamus proceeding. Nestle argued that the tax violated the Texas Constitution's Equal and Uniform Clause, the Fourteenth Amendment, and the Commerce Clause because of its rate structure, deductions, exemptions, and combined-group reporting requirements. The court concluded that it had jurisdiction to consider the challenges and rejected Nestle's claims.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Nathan L. Hecht; Chief Justice Jefferson; Justice Medina; Justice Green; Justice Johnson; Justice Guzman; Justice Willett; Justice Lehrmann
JURISDICTION	Texas
DECIDED	October 19, 2012
DOCKET	No. 12-0518
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding on Nestle USA, Inc.'s petition for writ of mandamus challenging the constitutionality of the Texas franchise tax.
STANDARD OF REVIEW	Constitutional challenges to taxation are reviewed with a strong presumption of validity. For the Texas Equal and Uniform Clause, classifications must be rational, group similar things and differentiate dissimilar things, and relate to differences in doing business that affect the value of the privilege taxed. The court applied the four-part dormant Commerce Clause test from Complete Auto Transit.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Nestle USA, Inc. v. Comptroller of Texas, Attorney General of Texas

TOPICS

state and local tax · tax · equal protection · due process · appellate jurisdiction

PRACTICE AREAS

state taxation | constitutional law | appellate and original jurisdiction

QUESTIONS PRESENTED

1. Whether the Texas franchise tax violates the Texas Constitution's Equal and Uniform Clause because its rates, classifications, deductions, exemptions, and combined-reporting requirements are not reasonably related to the value of the privilege of doing business in Texas.
2. Whether the franchise tax violates the Fourteenth Amendment's Equal Protection Clause.
3. Whether the franchise tax violates the Fourteenth Amendment's Due Process Clause because it is not fiscally related to the protection, opportunities, and benefits provided by Texas.
4. Whether the higher franchise-tax rate applicable to Nestle discriminates against interstate commerce or is not fairly related to services provided by Texas under the dormant Commerce Clause.
5. Whether the Supreme Court of Texas had original jurisdiction over Nestle's facial and as-applied constitutional challenges.

HOLDINGS

1. The Supreme Court of Texas had jurisdiction to consider Nestle's facial and as-applied constitutional challenges because the claims presented issues of substantial public importance, did not depend on disputed facts, and challenged the foundations of a tax affecting the public fisc.
2. The Texas franchise tax does not violate the Equal and Uniform Clause. The Clause permits reasonable classifications, deductions, and exemptions in a franchise tax when they are related to differences in doing business that affect the value of the privilege of doing business in Texas.
3. The Texas franchise tax does not violate the Fourteenth Amendment's Equal Protection Clause.
4. The Texas franchise tax does not violate the Fourteenth Amendment's Due Process Clause because the tax bears a sufficient fiscal relation to the protection, opportunities, and benefits provided by Texas.
5. The higher franchise-tax rate for entities with manufacturing activities does not discriminate against interstate commerce and is fairly related to services provided by Texas.

KEY QUOTATIONS

> *"Further, tax classifications must not only be rational but must attempt to group similar things and differentiate dissimilar things."* (387 S.W.3d at 622)

> *"Further, the franchise tax's classifications must relate to differences in doing business that affect the value of the privilege."* (387 S.W.3d at 622-623)

> *"(1) applies to an activity lacking a substantial nexus to the taxing State; (2) is not fairly apportioned; (3) discriminates against interstate commerce; or (4) is not fairly related to the services provided by the State."* (387 S.W.3d at 625)

FACTUAL BACKGROUND

Nestle manufactures and distributes food and beverages nationwide, but its Texas operations are limited to wholesale and retail activities. Because Nestle manufactures products outside Texas, it was taxed at the 1% franchise-tax rate rather than the 0.5% rate applicable to entities primarily engaged in wholesale or retail trade. Nestle and 32 affiliates were required to report as a combined group, limiting their ability to select separate deductions, and Nestle received no benefit from certain deductions and exemptions available to other businesses.

PROCEDURAL HISTORY

Nestle initially challenged the franchise tax without paying under protest, and the Supreme Court of Texas dismissed that proceeding because payment under protest was a jurisdictional prerequisite. Nestle then paid its 2012 franchise tax under protest and refiled its constitutional challenge. The Supreme Court exercised original jurisdiction over the facial and as-applied constitutional challenges and denied the petition.

DISPOSITION

writ_denied

CASES CITED

- In re Allcat Claims Serv., L.P., 356 S.W.3d 455 (Tex. 2011)
- Love v. Wilcox, 28 S.W.2d 515 (Tex. 1930)
- Vinson v. Burgess, 773 S.W.2d 263 (Tex. 1989)
- Collingsworth County v. Allred, 40 S.W.2d 13 (Tex. 1931)
- Enron Corp. v. Spring Independent School District, 922 S.W.2d 931 (Tex. 1996)
- Tex. Co. v. Stephens, 103 S.W. 481 (Tex. 1907)
- Hurt v. Cooper, 110 S.W.2d 896 (Tex. 1937)
- Bullock v. Nat'l Bancshares Corp., 584 S.W.2d 268 (Tex. 1979)
- Gen. Dynamics Corp. v. Bullock, 547 S.W.2d 255 (Tex. 1976)
- Bullock v. Sage Energy Co., 728 S.W.2d 465 (Tex. App.—Austin 1987, writ ref'd n.r.e.)
- Allegheny Pittsburgh Coal Co. v. Webster County, 488 U.S. 336 (1989)
- Nordlinger v. Hahn, 505 U.S. 1 (1992)
- Wisconsin v. J.C. Penney Co., 311 U.S. 435 (1940)
- Allied-Signal, Inc. v. Director, Division of Taxation, 504 U.S. 767 (1992)
- Ford Motor Co. v. Beauchamp, 308 U.S. 331 (1939)
- Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)
- Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175 (1995)
- Amerada Hess Corp. v. Director, Division of Taxation, 490 U.S. 66 (1989)
- Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978)
- Great Atl. & Pac. Tea Co. v. Grosjean, 301 U.S. 412 (1937)
- In re Cao, 619 F.3d 410 (5th Cir. 2010) (en banc)
- Woessner v. H.T. Cottam & Co., 47 S.W. 678 (Tex. Civ. App. 1898, writ denied)