SUPREME COURT OF TEXAS

Kelly Hancock, Acting Comptroller of Public Accounts of the State of Texas; The Office of the Comptroller of Public Accounts of the State of Texas; and Ken Paxton, Attorney General of the State of Texas v. RJR Vapor Co., LLC

No. 24-0052 (Tex. May 8, 2026) · No. 24-0052 · Decided May 8, 2026

SUMMARY

The Supreme Court of Texas holds that VELO oral nicotine pouches are taxable as tobacco products under Texas Tax Code section 155.001(15)(E) because their blend of non-tobacco plant matter and nicotine functions as a substitute for tobacco in taxable pulverized-tobacco products. The court reverses the contrary judgment of the court of appeals and remands for consideration of the taxpayer's equal-and-uniform constitutional challenge. The court declines to separately analyze the taxpayer's vagueness challenge after concluding that the statute unambiguously applies.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Brett Busby; Chief Justice Blacklock; Justice Devine; Justice Bland; Justice Huddle; Justice Young; Justice Sullivan; Justice Lehrmann; Justice Hawkins
JURISDICTION	Supreme Court of Texas
DECIDED	May 8, 2026
DOCKET	24-0052
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review from the Texas Court of Appeals for the Third District. The Texas Supreme Court reviewed the determination whether oral nicotine pouches are taxable tobacco products and remanded an unresolved constitutional challenge.
STANDARD OF REVIEW	De novo review of questions of statutory construction.
PRECEDENTIAL VALUE	Published and precedential opinion of the Supreme Court of Texas.
PARTIES	Kelly Hancock, Acting Comptroller of Public Accounts of the State of Texas, The Office of the Comptroller of Public Accounts of the State

of Texas, Ken Paxton, Attorney General of the State of Texas v. RJR Vapor Co., LLC

TOPICS

sales and use tax · tax refunds · tax · statutory interpretation · appellate procedure

PRACTICE AREAS

state and local tax · tax refunds · statutory interpretation · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether VELO oral nicotine pouches are an article or product made of tobacco or a tobacco substitute under Texas Tax Code section 155.001(15)(E).
2. Whether nicotine alone constitutes a tobacco substitute under the statute.
3. Whether the court of appeals properly treated RJR's constitutional challenges as moot after holding that VELO pouches were not taxable.
4. Whether RJR's void-for-vagueness challenge required separate analysis after the court held that the statute unambiguously applied to VELO pouches.
5. Whether RJR's challenge under the Texas Constitution's equal-and-uniform taxation requirement should be remanded to the court of appeals for consideration in the first instance.

HOLDINGS

1. VELO pouches are made of a tobacco substitute and are taxable tobacco products under Texas Tax Code section 155.001(15)(E).
2. Nicotine isolate alone is not a tobacco substitute under section 155.001(15)(E).
3. The purpose for which a substitute is used does not determine taxability under the statute, and recreational nicotine use alone does not make nicotine a tobacco substitute.
4. RJR's constitutional challenges were not moot merely because the court of appeals had ruled that VELO pouches were not taxable; they were alternative claims that must be considered after the Supreme Court held the pouches taxable.
5. No separate vagueness analysis was necessary because the statute unambiguously applied to VELO pouches and RJR's vagueness arguments substantially overlapped with the existing pro-taxpayer ambiguity and equal-and-uniform doctrines.
6. RJR's equal-and-uniform challenge must be remanded to the court of appeals for consideration in the first instance.

KEY QUOTATIONS

> *"A VELO pouch is essentially a type of snus—a porous pouch that is filled with cellulose and nicotine isolate instead of pulverized tobacco."* (at 14)

> *"In sum, we hold that VELO pouches are "made of . . . a tobacco substitute" because the primary ingredient in VELO pouches is a blend of powdered non-tobacco plant matter and nicotine, which together take the place and function of taxable pulverized tobacco."* (at 15)

> *"We hold that the VELO pouches sold by RJR Vapor are "made of . . . a tobacco substitute" because they are made of a blend of plant matter and nicotine that takes the place and function of pulverized tobacco plant matter in expressly taxed tobacco products like snus or moist snuff."* (at 20)

FACTUAL BACKGROUND

RJR Vapor sells VELO oral nicotine pouches in Texas. The pouches consist primarily of powdered microcrystalline cellulose, a non-tobacco plant material, infused with nicotine isolate extracted from tobacco leaves, along with water, flavorings, and preservatives. Users place the pouches between the cheek and gum, where they function similarly to snus or other pulverized-tobacco products. RJR paid the applicable tax under protest and sought a refund and a declaration that the pouches were not taxable tobacco products.

PROCEDURAL HISTORY

RJR paid taxes on VELO oral nicotine pouches under protest and sued for a refund, declaratory relief, and constitutional relief. The trial court granted RJR summary judgment on taxability, later awarded a refund, and held the statutory phrase unconstitutional facially and as applied. The court of appeals affirmed in part, holding that VELO pouches were not taxable and treating RJR's constitutional challenges as moot. The Texas Supreme Court reversed the taxability ruling, rendered judgment that the pouches are taxable, rejected the vagueness challenge as duplicative, and remanded the equal-and-uniform challenge to the court of appeals.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The court of appeals must address RJR's equal-and-uniform challenge to the Tax under article VIII, section 1(a) of the Texas Constitution. The Supreme Court rendered judgment that VELO pouches are taxable tobacco products under Texas Tax Code section 155.001(15)(E).

CASES CITED

- Colorado County v. Staff, 510 S.W.3d 435, 444 (Tex. 2017)
- Hegar v. Am. Multi-Cinema, Inc., 605 S.W.3d 35, 40-43 (Tex. 2020)
- State v. $1,760.00 in U.S. Currency, 406 S.W.3d 177, 180 (Tex. 2013)
- Hilco Elec. Coop. v. Midlothian Butane Gas Co., 111 S.W.3d 75, 81 (Tex. 2003)
- Pub. Util. Comm'n v. Luminant Energy Co., 691 S.W.3d 448, 460 (Tex. 2024)
- State v. Hollins, 620 S.W.3d 400, 407 (Tex. 2020)
- Tarr v. Timberwood Park Owners Ass'n, 556 S.W.3d 274, 283 n.6 (Tex. 2018)
- S.A. Gen. Drivers, Helpers Loc. No. 657 v. Thornton, 299 S.W.2d 911, 915 (Tex. 1957)

- Tex. Dep't of Ins. v. Stonewater Roofing, Ltd., 696 S.W.3d 646, 660 & n.61 (Tex. 2024)
- TracFone Wireless, Inc. v. Comm'n on State Emergency Communications, 397 S.W.3d 173, 182 (Tex. 2013)
- In re Nestle USA, Inc., 387 S.W.3d 610, 622 (Tex. 2012)
- In re Troy S. Poe Tr., 646 S.W.3d 771, 780-81 (Tex. 2022)
- Am. Inst. for Int'l Steel, Inc. v. United States, 376 F. Supp. 3d 1335, 1345 n.1 (Ct. Int'l Trade 2019)
- Radio Corp. of Am. v. United States, 341 U.S. 412, 421-27 (1951)
- United States v. Fluitt, 99 F.4th 753, 765-66 (5th Cir. 2024)
- United States v. Croft, 87 F.4th 644, 649-52 (5th Cir. 2023)
- Sanchez Rosales v. Barr, 980 F.3d 716, 721-23 (9th Cir. 2020)
- Zadeh v. Robinson, 902 F.3d 483, 498-500 (5th Cir. 2018)
- Castro v. U.S. Dep't Homeland Sec., 835 F.3d 422, 450-51 (3d Cir. 2016)
- United States v. Jeffries, 692 F.3d 473, 483-86 (6th Cir. 2012)
- Beckett v. Air Line Pilots Ass'n, 59 F.3d 1276, 1280-81 (D.C. Cir. 1995)
- Nat'l Solid Wastes Mgmt. Ass'n v. Killian, 918 F.2d 671, 685-88 (7th Cir. 1990)
- Dellums v. U.S. Nuclear Regul. Comm'n, 863 F.2d 968, 980-82 (D.C. Cir. 1988)
- Feldman v. Allegheny Airlines, Inc., 524 F.2d 384, 390-93 (2d Cir. 1975)