SUPREME COURT OF TEXAS

ETC Marketing, Ltd. v. Harris County Appraisal District

528 S.W.3d 70 (Tex. 2017) · Decided April 28, 2017

SUMMARY

The Texas Supreme Court held that ad valorem taxation of natural gas stored in Texas while awaiting future resale and shipment to consumers does not violate the dormant Commerce Clause. Applying the Complete Auto framework, the court concluded that the gas was in interstate commerce but had a substantial nexus with Texas and that the tax was constitutionally permissible. The court also held that ETC waived its separate argument under the Texas Tax Code's temporary-period taxable-situs provisions.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Devine; Justice Green; Justice Johnson; Justice Willett; Justice Lehrmann; Justice Boyd; Justice Brown; Chief Justice Hecht; Justice Guzman
JURISDICTION	Texas
DECIDED	April 28, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	ETC challenged Harris County Appraisal District’s ad valorem taxation of natural gas stored in Texas and sought summary judgment based on the Commerce Clause and Texas law. The trial court granted HCAD’s summary-judgment motion, the court of appeals affirmed, and the Supreme Court of Texas granted ETC’s petition for review.
STANDARD OF REVIEW	De novo review of summary judgment and constitutional questions; preservation of error governed by Texas Rule of Appellate Procedure 33.1(a)(1)(A) and summary-judgment grounds by Texas Rule of Civil Procedure 166a(c).
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential.
PARTIES	ETC Marketing, Ltd. v. Harris County Appraisal District

TOPICS

property tax · dormant commerce clause · preservation of error · appellate procedure · state and local tax

PRACTICE AREAS

state and local taxation | constitutional law | appellate procedure

QUESTIONS PRESENTED

1. Whether ETC preserved its argument that the Texas Tax Code's temporary-period and taxable-situs provisions independently barred taxation of the stored gas.
2. Whether natural gas stored in Texas while awaiting ETC's future resale and shipment remained in interstate commerce for purposes of the dormant Commerce Clause.
3. Whether the ad valorem tax on ETC's stored gas satisfied all four prongs of the Complete Auto Transit test.
4. Whether the tax violated Section 11.12 of the Texas Tax Code because it allegedly taxed property exempt from taxation under federal law.

HOLDINGS

1. ETC waived its appellate arguments under Texas Tax Code sections 11.01(c)(1) and 21.02(a)(1) because its summary-judgment motion did not present those statutory grounds with sufficient specificity.
2. The gas entered interstate commerce because it was placed in a Texas pipeline system connected to interstate pipelines and was eventually conveyed to out-of-state customers; the circumstances of storage did not defeat that threshold determination.
3. The stored gas had a substantial nexus with Texas because ETC's seasonal storage was a business-driven stoppage for future resale and market timing, rather than a temporary interruption necessary to continue a predetermined interstate journey.
4. The ad valorem tax was fairly apportioned because its geographic and temporal limits ensured that the property would be taxed only once per year under identical taxing schemes.
5. The tax did not discriminate against interstate commerce because it applied evenhandedly to all qualifying personal property without regard to the gas's intended destination.
6. The tax was reasonably related to state-provided services because Texas protected the stored gas and ETC benefited from the opportunities and protections associated with storage.
7. Because the tax did not violate the Commerce Clause, it did not violate Texas Tax Code section 11.12, which exempts property from ad valorem taxation when federal law prohibits taxation.

KEY QUOTATIONS

> *"a nondiscriminatory tax on surplus gas held for future resale does not violate the Commerce Clause."* (at 70)

> *"ETC's gas, unlike the oil in Carson Petroleum, is not paused in anticipation of the return of its only means of transportation."* (at 81)

> *"ETC stores gas to avoid transportation for the time being—the antithesis of continuity."* (at 84)

> *"This scenario—nondiscriminatory taxation of surplus gas held without a destination for future resale—is just not one of them."* (at 89)

FACTUAL BACKGROUND

ETC Marketing purchased natural gas at the Katy marketing hub in Texas and entrusted it to affiliate Houston Pipe Line Company for storage and transportation. HPL stored ETC's excess gas in the Bammel reservoir in Harris County, where the gas remained until ETC ordered shipment to downstream customers. ETC generally accumulated gas during the spring and sold the accumulated gas by the end of the winter season, but retained discretion to sell the gas inside or outside Texas or not at all. HCAD assessed ad valorem taxes on approximately 33 billion cubic feet of the stored gas for the 2010 tax year.

PROCEDURAL HISTORY

HCAD appraised approximately 33 billion cubic feet of ETC's natural gas stored in the Bammel reservoir and assessed ad valorem taxes for the 2010 tax year. After the appraisal review board denied ETC's protest, ETC appealed to the district court, where both parties moved for summary judgment. The district court ruled for HCAD, and the court of appeals affirmed, assuming the gas was in interstate commerce but concluding that the tax satisfied Complete Auto Transit. The Texas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279, 287-88 (1977)
- Maryland v. Louisiana, 451 U.S. 725, 754-55 (1981)
- Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989)
- Allied-Signal, Inc. v. Dir., Div. of Taxation, 504 U.S. 768, 777 (1992)
- Minnesota v. Blasius, 290 U.S. 1, 9-12 (1933)
- Federal Compress & Warehouse Co. v. McLean, 291 U.S. 17, 19-22 (1934)
- Carson Petroleum Co. v. Vial, 279 U.S. 95, 98-109 (1929)
- Bacon v. Illinois, 227 U.S. 504, 515-17 (1913)
- Calvert v. Zanes-Ewalt Warehouse, Inc., 502 S.W.2d 689, 693 (Tex. 1973)
- Va. Indonesia Co. v. Harris County Appraisal District, 910 S.W.2d 905, 912-14 (Tex. 1995)
- Diamond Shamrock Refining & Marketing Co. v. Nueces County Appraisal District, 876 S.W.2d 298, 301-02 (Tex. 1994)
- In re Assessment of Personal Prop. Taxes Against Mo. Gas Energy, a Div. of S. Union Co. for Tax Years 1998, 1999, and 2000, 234 P.3d 938, 953-55, 958-59, 965 (Okla. 2008)
- In re Appeals of Various Applicants From a Div. of Prop. Valuation of Kan. for Tax Year 2009 Pursuant to K.S.A. 74-2438, 298 Kan. 439, 313 P.3d 789, 796-99 (2013)

- Peoples Gas, Light, & Coke Co. v. Harrison Central Appraisal District, 270 S.W.3d 208, 218-19 (Tex. App.—Texarkana 2008, pet. denied)
- D.R. Horton-Tex., Ltd. v. Markel Int'l Ins. Co., Ltd., 300 S.W.3d 740, 743 (Tex. 2009)
- In re B.L.D., 113 S.W.3d 340, 349 (Tex. 2003)
- Okla. Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 179, 183, 199-200 (1995)
- Quill Corp. v. North Dakota, 504 U.S. 298, 313, 315 (1992)
- National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753, 757 (1967)
- Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon, 511 U.S. 93, 99 (1994)
- Goldberg v. Sweet, 488 U.S. 252, 261, 267 (1989)
- Commonwealth Edison Co. v. Montana, 453 U.S. 609, 618, 626 (1981)

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