SUPREME COURT OF TEXAS

In re Allcat Claims Service, L.P. and John Weakly

356 S.W.3d 455 (Tex. 2011) · No. No. 11-0589 · Decided November 28, 2011

SUMMARY

The Texas Supreme Court considers a mandamus petition challenging Texas franchise taxes paid by a limited partnership and attributable to income allocated but not distributed to natural-person partners. The Court holds that the franchise tax is not facially a tax on the net incomes of individual partners under Article VIII, Section 24 of the Texas Constitution, and that it lacks jurisdiction over the equal-and-uniform taxation challenge.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Phil Johnson; Chief Justice Jefferson; Justice Hecht; Justice Wainwright; Justice Medina; Justice Green; Justice Guzman
JURISDICTION	Texas
DECIDED	November 28, 2011
DOCKET	No. 11-0589
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding on a petition for writ of mandamus seeking a refund of franchise taxes and declaratory and injunctive relief.
STANDARD OF REVIEW	De novo review of constitutional and statutory interpretation issues; jurisdiction is determined from constitutional and statutory grants of authority.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Allcat Claims Service, L.P., John Weakly v. Texas Comptroller of Public Accounts, Texas Attorney General

TOPICS

partnership tax · tax court procedure · appellate jurisdiction · constitutional law · statutory interpretation

PRACTICE AREAS

taxation · partnership law · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Texas had original jurisdiction over Allcat's facial challenge to the constitutionality of the franchise-tax amendments.
2. Whether the Texas franchise tax, as applied to a limited partnership's income retained by the partnership, is a tax on the net incomes of the partnership's natural-person partners under Article VIII, Section 24 of the Texas Constitution.
3. Whether the Supreme Court of Texas had original jurisdiction over Allcat's as-applied challenge alleging unequal and nonuniform taxation based on the Comptroller's interpretation and enforcement of the franchise-tax statutes.
4. Whether the Supreme Court had jurisdiction to award attorney's fees under the Declaratory Judgments Act.

HOLDINGS

1. Section 24 of the 2006 franchise-tax Act validly conferred limited original and exclusive jurisdiction on the Supreme Court of Texas to consider a constitutional challenge to the Act in determining whether mandamus relief should issue.
2. The Texas franchise tax is imposed on the limited partnership as an entity, not on the net income of its natural-person partners, and therefore does not facially violate Article VIII, Section 24 of the Texas Constitution.
3. The Supreme Court of Texas lacked original jurisdiction over Allcat's as-applied challenge to the Comptroller's assessment, enforcement, and collection of the franchise tax.
4. The Supreme Court lacked jurisdiction over Allcat's claim for attorney's fees under the Declaratory Judgments Act.

KEY QUOTATIONS

> "*We conclude that the franchise tax constitutes a tax on Allcat as an entity; it does not constitute a tax on the net income of Allcat's natural-person limited partners within the meaning of the Bullock Amendment.*" (356 S.W.3d at 470)

> "*We hold that we do not have original jurisdiction over Allcat's as-applied challenge.*" (356 S.W.3d at 471)

> "*We conclude that we do not have jurisdiction over the claim for attorney's fees.*" (356 S.W.3d at 472)

FACTUAL BACKGROUND

Allcat Claims Service, L.P. is a Texas limited partnership providing property-insurance adjusting services. For tax years 2008 and 2009, it paid franchise taxes under protest, including amounts attributable to income allocated but not distributed to its natural-person partners. Allcat sought a refund and argued that the franchise tax violated the Texas Constitution's prohibition on an unapproved tax on the net incomes of natural persons and, alternatively, that the Comptroller's application of the tax violated the constitutional requirement of equal and uniform taxation.

PROCEDURAL HISTORY

Allcat paid Texas franchise taxes under protest for tax years 2008 and 2009 and filed this original proceeding in the Supreme Court of Texas, along with a refund suit in the 201st District Court of Travis County. The Supreme Court exercised original jurisdiction over the facial constitutional challenge, but held that the as-applied equal-and-uniform challenge and attorney-fee claim fell within the jurisdiction of the Travis County district court. The Court denied relief on the facial challenge and dismissed the remaining claims for lack of jurisdiction.

DISPOSITION

other

CASES CITED

- Chenault v. Phillips, 914 S.W.2d 140 (Tex. 1996) (per curiam)
- Love v. Wilcox, 28 S.W.2d 515 (Tex. 1930)
- Lane v. Ross, 249 S.W.2d 591 (Tex. 1952)
- LeCroy v. Hanlon, 713 S.W.2d 335 (Tex. 1986)
- Cramer v. Sheppard, 167 S.W.2d 147 (Tex. 1942)
- Neeley v. West Orange-Cove Consol. Indep. Sch. Dist., 176 S.W.3d 746 (Tex. 2005)
- Haney v. Fenley, Bate, Deaton & Porter, 618 S.W.2d 541 (Tex. 1981) (per curiam)
- Lawler v. Dallas Statler-Hilton Joint Venture, 793 S.W.2d 27 (Tex. App.—Dallas 1990, writ denied)
- Reid Road Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd., 337 S.W.3d 846 (Tex. 2011)
- Kao Holdings, L.P. v. Young, 261 S.W.3d 60 (Tex. 2008)
- Frank v. Tatum, 25 S.W. 409 (Tex. 1894)
- M Sys. Stores, Inc. v. Johnston, 76 S.W.2d 503 (Tex. 1934)
- Destec Energy, Inc. v. Houston Lighting & Power Co., 966 S.W.2d 792 (Tex. App.—Austin 1998, no pet.)
- Smith v. Grayson, No. 03-10-00238-CV, 2011 WL 4924073 (Tex. App.—Austin Oct. 12, 2011, no pet. h.)
- Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 WL 4978099 (Tex. App.—San Antonio Dec. 8, 2010, no pet.)
- Simmons, Jannace & Stagg, L.L.P. v. Buzbee Law Firm, 324 S.W.3d 833 (Tex. App.—Houston [14th Dist.] 2010, no pet.)
- Alice Leasing Corp. v. Castillo, 53 S.W.3d 433 (Tex. App.—San Antonio 2001, pet. denied)
- Cleaver v. Cleaver, 935 S.W.2d 491 (Tex. App.—Tyler 1996, no writ)
- City of Beaumont v. Bouillion, 896 S.W.2d 143 (Tex. 1995)
- Jones v. Ross, 173 S.W.2d 1022 (Tex. 1943)
- Wilson v. Galveston Cnty. Cent. Appraisal Dist., 713 S.W.2d 98 (Tex. 1986)
- Gragg v. Cayuga Indep. Sch. Dist., 539 S.W.2d 861 (Tex. 1976)
- Harris Cnty. Hosp. Dist. v. Tomball Hosp. Auth., 283 S.W.3d 838 (Tex. 2009)
- Stringer v. Cendant Mortg. Corp., 23 S.W.3d 353 (Tex. 2000)

- Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P., 343 S.W.3d 112 (Tex. 2011)
- Molinet v. Kimbrell, 356 S.W.3d 407 (Tex. 2011)
- AT&T Commc'ns of Tex., L.P. v. Sw. Bell Tel. Co., 186 S.W.3d 517 (Tex. 2006)
- Proctor v. Andrews, 972 S.W.2d 729 (Tex. 1998)
- Brady v. Fourteenth Court of Appeals, 795 S.W.2d 712 (Tex. 1990)
- Tex. Lottery Comm'n v. First State Bank of DeQueen, 325 S.W.3d 628 (Tex. 2010)
- In re Smith, 333 S.W.3d 582 (Tex. 2011)
- A&T Consultants, Inc. v. Sharp, 904 S.W.2d 668 (Tex. 1995)
- Valley Baptist Med. Ctr. v. Gonzalez, 33 S.W.3d 821 (Tex. 2000)
- Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440 (Tex. 1993)
- In re Leal, 360 B.R. 231 (Bankr. S.D. Tex. 2007)
- State v. Birch, 675 P.2d 246 (Wash. Ct. App. 1984)