

PUBLICATION

Spotlight on Louisiana: Louisiana Court of Appeals Rules Louisiana Ad Valorem Tax Scheme Unconstitutional

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On August 10, 2009, the Louisiana First Circuit Court of Appeal in *Transcontinental Gas Pipe Line Corp. v. Louisiana Tax Commission*, ruled that Louisiana's ad valorem tax scheme facially discriminates against natural gas pipeline transportation companies operating in interstate commerce, which violates the Commerce Clause of the United States Constitution.

Transcontinental Gas Pipe Line Corporation, Texas Eastern Transmission Corporation, Florida Gas Transmission Company, Gulf South Pipeline Company, L.P., Centerpoint Energy Gas Transmission Company f/k/a Reliant Energy Gas Transmission and Centerpoint Energy Mississippi River Transmission Corporation f/k/a Mississippi River Transmission Corporation (collectively the "Taxpayers") are owners of natural gas pipelines located within and without the territorial boundaries of Louisiana. Taxpayers are considered "pipeline companies" as that term is defined in La. Rev. Stat. §47:1851K, that own and owe ad valorem tax on "public service property" as that term is defined in La. Rev. Stat. §47:1851M.

Under Louisiana's *ad valorem* tax scheme, the assessed value of "public service property" is 25% of fair market value, as determined by the Louisiana Tax Commission, while the assessed value of property of other similarly situated pipeline companies that operate in intrastate commerce is 15% of fair market value, as determined by local assessors. Pipeline companies that operate solely in intrastate commerce do not meet Louisiana's definition of "pipeline companies," so they are not considered as owning "public service property." With limited exceptions, only pipeline companies that operate in interstate commerce are classified as "pipeline companies" as defined in La. Rev. Stat. §47:1851K and only property owned by "pipeline companies" are considered "public service property." In other words, property of interstate pipeline companies are assessed at 25% of fair market value, and property of intrastate pipeline companies are assessed at 15% of fair market value.

The Taxpayers each paid their 2005 *ad valorem* tax assessment under protest and filed suit asserting that "the Louisiana *ad valorem* tax scheme is unconstitutional, in violation of the Commerce Clause of the United States Constitution, in that it imposes an impermissible burden on interstate commerce by imposing a greater tax burden on interstate natural gas pipeline companies than it does upon intrastate natural gas pipelines companies." The Taxpayers maintained that the assessment of their properties at 25% of fair market value, as opposed to 15% of fair market value, was in violation of the Commerce Clause of the United States Constitution.

The district court remanded the case to the Louisiana Tax Commission with instructions that the local assessor determine the fair market value of the Taxpayers' properties for each year at issue and calculate the *ad valorem* taxes based on 15% of those assessments. The district court did not rule on the constitutionality of La. Rev. Stat. §47:1851 in reaching its decision because it determined that the remedy granted to the Taxpayers avoided a violation of the Commerce Clause of the United States Constitution.

None of the parties were completely satisfied by the remedy granted by the district court. The Taxpayers, assessors and the Louisiana Tax Commission wanted a clear, definitive answer on whether the Louisiana *ad valorem* tax scheme as it applies to property of interstate pipeline companies is unconstitutional or otherwise

illegal. Accordingly, the Taxpayers appealed to both the Louisiana Supreme Court and the Louisiana First Circuit Court of Appeal and the assessors appealed to the Louisiana First Circuit Court of Appeal. The Louisiana Supreme Court dismissed the Taxpayers' appeal, noting that it did not have jurisdiction over the matter because the district court did not rule on the constitutionality of the statute.

The Louisiana First Circuit Court of Appeal, in addressing the constitutionality issue, held that Louisiana's *ad valorem* tax scheme facially discriminates against natural gas pipeline transportation companies operating in interstate commerce in violation of the Commerce Clause of the United States Constitution. In an attempt to remedy the violation, the court held that La. Rev. Stat. §47:1851K, which defines "pipeline companies," must be stricken in its entirety and the reference to "pipeline companies" in the definition of "public service properties" in La. Rev. Stat. §47:1851M, must also be stricken. As to the aggrieved parties' proper remedy, the court held that remanding the case to the Louisiana Tax Commission so that it can allow local assessors to assess the value of the properties for the year at issue and to calculate taxes based on 15% of those assessments is a "just and equitable" remedy.

As a result of the removal of the aforementioned unconstitutional provisions, properties owned by all natural gas pipeline companies, those operating interstate and intrastate, will be classified as "other properties" and will be assessed at 15% of fair market value as determined by the local assessors. It is expected that the Louisiana Tax Commission and the various assessors involved in the lawsuit will appeal the First Circuit's decision to the Louisiana Supreme Court.