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In re Appeals of Various Applicants from a Decision of Division of Property Valuation of State for Tax Year 2009 Pursuant to K.S.A. 74-2438

Supreme Court of Kansas - December 6, 2013 - P.3d - 2013 WL 6383034

The question arose of whether natural gas stored in facilities located in Kansas under contract with interstate companies is subject to ad valorem taxation. The Kansas Constitution, Article 11, § 1 (2012 Supp.) exempts merchants' inventory from such taxation, but that exemption does not include tangible personal property owned by a public utility.

The taxpayers claimed they were entitled to the exemption. Taxpayers are 40 business entities that fall into three general categories: out-of-state natural gas marketing companies, out-of-state local distribution companies certified as public utilities in their states, and out-of-state municipalities. Each buys natural gas from producers or other marketers and then delivers it to the pipelines under contracts with the pipeline companies allowing the taxpayer to withdraw equivalent amounts of gas at a later time from out-of-state distribution points.

Taxpayers appealed appraisals and filed requests for ad valorem tax exemption. The Court of Tax Appeals consolidated appeals and, following hearing, denied taxpayers' exemption requests. Taxpayers appealed.

The Supreme Court of Kansas held that:

- Ad valorem tax did not violate the Commerce Clause;
- There were sufficient contacts between natural gas and Kansas to eliminate any due process concerns from ad valorem taxation;
- Taxpayers who were out-of-state marketers and brokers of natural gas were not "public utilities," and, thus, their inventory was exempt from property tax; and
- Inventory of municipally-owned natural gas was exempt from ad valorem property tax.