
TAX - NEVADA

Southern California Edison v. State Department of Taxation

Supreme Court of Nevada - July 27, 2017 - P.3d - 2017 WL 3221310

Taxpayer, which was electrical utility company, brought action against Department of Taxation seeking refund of use tax paid on out-of-state coal purchases.

Following bench trial, the District Court entered final judgment finding that taxpayer was not entitled to tax refund. Taxpayer appealed.

The Supreme Court of Nevada held that:

- Taxpayer's out-of-state coal purchases were subject to use tax;
- Taxpayer was not entitled to refund of use taxes as remedy for dormant commerce clause violation; and
- Taxpayer was not entitled to tax credit toward use tax.

Out-of-state purchases of Arizona coal by Nevada taxpayer, which was electrical utility company, were subject to Nevada use tax, even if purchases would have been exempt from sales and use tax if coal had been from Nevada mine, since use tax applied with respect to all personal property acquired out of state in a transaction that would have been taxable if it had occurred within Nevada, determining whether coal sales would have been taxable if they had occurred in Nevada depended on location of sale, not location of mine, Nevada-based sales of Arizona-mined coal were taxable in Nevada, and allowing sales and use tax exemption for proceeds from in-state mines to apply in order to avoid dormant commerce clause violation would allow taxpayer to avoid use, sales, and net proceeds taxation.

Absent any favored competitors that benefited from use tax exemption for proceeds of in-state mines that violated dormant commerce clause, taxpayer, which was electric utility company, was not entitled to refund of use taxes it paid on out-of-state coal purchases as remedy for dormant commerce clause violation, where other coal-based power companies did not use coal mined in state, in that there were not large enough coal deposits in state to justify commercial operations, and energy producers using other in-state input material, such as oil, geothermal, and natural gas, were not substantially similar competitors to taxpayer, despite output of electricity being same.

Arizona transaction privilege tax (TPT) paid by Nevada taxpayer, which was electric utility company, as part of purchase price for coal did not constitute sales tax, and, thus, taxpayer was not entitled to tax credit toward use tax it paid on same out-of-state purchases, since TPT was tax upon privilege or right to engage in business in Arizona, not upon sales, and TPT tax was borne by Arizona seller of coal, despite being passed on to taxpayer as part of purchase price.

Arizona's mining transaction privilege tax (TPT), as a tax levied for the privilege of conducting nonmetalliferous mining business in Arizona, is not rendered a sales tax simply because it uses gross proceeds of sales to determine the value of the tax owed upon severance from the ground.

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