

Bond Case Briefs

Municipal Finance Law Since 1971

TAX - TEXAS

In re Occidental Chemical Corporation

Supreme Court of Texas - October 12, 2018 - S.W.3d - 2018 WL 4939073

Owners of commercial piers that crossed county boundary petitioned for writ of mandamus to determine which county was authorized to assess ad valorem taxes.

The Supreme Court of Texas held that:

- Resolving issue was not dependent upon determination of questions of fact, as would have precluded original jurisdiction;
- Mandamus relief was necessary, and thus original jurisdiction was not precluded;
- Issue gave strong and special reason for exercise of original jurisdiction;
- Statute providing original jurisdiction to resolve issue did not violate prohibition on retroactive laws;
- As a matter of first impression, taxes were owed to county from which piers extended; and Owners were entitled to mandamus relief.

Determining counties' legal authority to assess ad valorem taxes on piers that crossed county boundary was not dependent upon determination of any doubtful question of fact, and thus Supreme Court was not precluded from exercising original jurisdiction over mandamus action; even if there were fact issues regarding how much tax was owed by pier owners, those issues were not required to be resolved and did not preclude Court from deciding to which county taxes were owed.

Mandamus relief was necessary as the only reasonably effective relief from double taxation imposed on owners of piers that crossed county boundary, and thus Supreme Court was not precluded from exercising original jurisdiction over owners' action to determine which county had authority to assess ad valorem taxes; owners had no remedy to double taxation except to pay under protest and wait for one county to obtain judgment that other must refund taxes, which neither county had shown pressing interest in achieving, as boundary dispute litigation had lasted for 46 years.

Issue of which county was authorized to assess ad valorem taxes on owners of piers that crossed county boundary presented questions of general public interest and called for speedy determination, which gave strong and special reason for Supreme Court's exercise of extraordinary original jurisdiction, and thus Supreme Court had jurisdiction over owners' mandamus action; even though issues involved only two counties and handful of taxpayers, counties litigated boundary dispute for 46 years and had been double taxing owners for ten years, owners were unable to join counties' action against each other regarding boundary dispute, and counties' blatant double taxation was unprecedented.

Statute providing Supreme Court with original jurisdiction to resolve which county had authority to assess ad valorem taxes on piers that crossed county boundary did not violate state constitution's prohibition on retroactive laws, despite contention that county had vested right to continue litigating boundary dispute in district court; vested-rights test was no longer proper test, statute was jurisdictional, which did not take away substantive rights, and substituting original proceeding in

Supreme Court for later review on appeal was not unconstitutionally retroactive.

Ad valorem taxes owed by owners of commercial piers, which extended from land of one county into waters of another county, were due to land county, rather than water county; water county could not practically render services such as fire and police protection to piers, while land county could easily access piers from land, water county could do little, if anything, to improve value of piers or provide public conveniences, as land county could, and right to construct piers sprung from ownership of land bordering shore, rather than submerged lands.

Owners of piers that were subject to double taxation from two counties assessing ad valorem taxes were entitled to mandamus relief, despite contention that county that was not entitled to assess taxes acted in reliance on valid statutes requiring assessment of taxes, which allegedly made taxation a mistake, rather than an ultra vires act correctable by mandamus; tax statutes did not provide county legal authority to assess and retain taxes on piers.