

# **Bond Case Briefs**

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## **TAX - LOUISIANA**

### **D90 Energy, LLC v. Jefferson Davis Parish Board of Review**

**Supreme Court of Louisiana - October 20, 2020 - So.3d - 2020 WL 6145158 - 2020-00200 (La. 10/1/20)**

Local tax board sought judicial review of decision by state tax commission, which reversed tax board decision affirming ad valorem property tax assessments against taxpayer and ordered reimbursement of taxes paid under protest.

The District Court affirmed the commission's decision. Tax board appealed. The Third Circuit Court of Appeal reversed and vacated. Taxpayer petitioned for writ of certiorari.

The Supreme Court held that:

- Tax Commission had the authority to receive supplementary evidence to aid in its valuation of taxpayer's wells;
- Tax Commission was not arbitrary and capricious by relying on the purchase price of wells to establish their fair market value;
- The specific provision for valuing oil and gas wells applied rather than the general provision applicable to "all property";
- A preponderance of the evidence existed to support Tax Commission's finding that sale of wells was a valid arms length transaction, and that the fair market value of the wells was \$235,000;
- Sufficient evidence existed to establish shut-in status of two gas wells, as required to entitle tax payer to a 90 percent reduction; and
- Taxpayer was not required to make payment under protest to obtain review of ad valorem tax assessments.

The Tax Commission, on review of taxpayer's unsuccessful protest of ad valorem tax assessments on two gas wells and one salt water disposal well to the board of review, had the authority to receive supplementary evidence to aid in its valuation of the wells; regulation established by the Commission that governed appeals to the Commission expressly contemplated "new" evidence being presented to the Commission, and there was no accompanying prohibition against the receipt of new evidence.

Tax Commission was not arbitrary and capricious by relying on the purchase price of two gas wells and one salt water disposal well to establish their fair market value for purposes of calculating ad valorem tax; the Commission's regulation permitted it to consider the sale in determining fair market value.

On appeal from ad valorem tax appraisal on two gas wells and one salt water disposal well, the specific provision for valuing oil and gas wells applied rather than the general provision applicable to "all property."

A preponderance of the evidence existed to support Tax Commission's finding that sale of two gas wells and one salt water disposal well was a valid arms length transaction, and that the fair market value of the wells for purposes of calculating ad valorem taxes for three tax years was \$235,000; a

\$100,000 cancelled check dated the same day as the sale supported that amount as the purchase price, which was further documented through e-mails, taxpayer's president testified under oath that he paid \$100,000 for the property, that the property had been listed on the open market, and that the sale was fairly negotiated, and the plug and abandon cost of \$45,000 per well was established by uncontroverted testimony.

Sufficient evidence existed to establish shut-in status of two gas wells, as required to entitle tax payer to a 90 percent reduction in ad valorem taxation for the tax year in which the wells were shut-in; taxpayer presented testimony of a production gauger to prove the wells were shut in, and while the assessor claimed he relied on Department of Natural Resources report showing production from the wells for tax year in question, the production gauger explained that resulted from another company introducing gas into taxpayer's pipeline, and not from taxpayer's wells.

Taxpayer was not required to make payment under protest to obtain review of ad valorem tax assessments, and the assessor's judicial challenge to the Tax Commission's valuation did not create an obligation for taxpayer to protest a tax it agreed with.