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TAX - TEXAS

Hegar v. Sirius XM Radio, Inc.

Court of Appeals of Texas, Austin - November 10, 2022 - S.W.3d - 2022 WL 16858017

Taxpayer, a provider of subscription-based satellite radio programming, filed action against Comptroller of Public Accounts to recover state franchise taxes paid under protest.

Following a bench trial, the District Court signed judgment in favor of taxpayer. Comptroller appealed and taxpayer cross-appealed, and the Austin Court of Appeals reversed and rendered. Taxpayer petitioned for review, and the Supreme CourtPhrase "fair value," as used in former Comptroller's rule providing that if services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas, means monetary worth of services at issue, based on objectively reasonable assessment. reversed and remanded.

On remand, the Court of Appeals held that:

- Phrase "fair value," as used in former Comptroller's rule means monetary worth of services at issue, based on objectively reasonable assessment;
- Former Comptroller's rule does not, as a matter of law, prohibit taxpayers from relying on cost-o--performance data to apportion its receipts for services performed in Texas; and
- Expert testimony was legally sufficient to support the trial court's judgment.

Phrase "fair value," as used in former Comptroller's rule providing that if services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas, means monetary worth of services at issue, based on objectively reasonable assessment.

Former Comptroller's rule providing that if services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas does not, as a matter of law, prohibit taxpayers from relying on cost-of-performance data to apportion its receipts for services performed in Texas.

Expert testimony as to comparative cost of performance and opinion of the fair value of services performed in Texas by taxpayer, a provider of subscription-based satellite radio programming, relative to its services performed everywhere was probative evidence as to apportionment of taxpayer's business, and thus was legally sufficient to support the trial court's judgment for taxpayer, in action against Comptroller of Public Accounts to recover state franchise taxes paid under protest, where Comptroller did not object to the admission of the expert testimony at trial, and because challenge would require an evaluation of the foundational data and underlying methodology that expert relied on to draw his opinions, the Comptroller could not bring challenge on appeal.

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