1992

Chevron U.S.A. INC; Amoco Oil Company v. Utah State Tax Commission : Response to Petition for Rehearing

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CHEVRON U.S.A. INC.; AMOCO OIL COMPANY; Petitioners and Appellants, vs. UTAH STATE TAX COMMISSION, Respondent.	RESPONSE TO PETITION FOR REHEARING Case No 89-0802 Court of Appeals No. 92-0546 - CA Priority 15.

APPEAL FROM AN ORDER OF THE UTAH STATE TAX COMMISSION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Cases

Appellant Chevron U.S.A. Inc. ("Chevron"), by and through its undersigned counsel, submits this Response to Respondent Utah State Tax Commission's Petition for Rehearing.

SUMMARY

Rehearing should not be granted here for two reasons:

(1) Even if the Tax Commission's contentions in its Petition for Rehearing are taken as true, the Court of Appeals' January 29, 1993 opinion sets forth an alternative basis for reversal of the Tax Commission decision. In Footnote 9, the Court of Appeals held that the Tax Commission made inadequate findings of fact concerning the elements necessary to apply Utah Code Ann. § 59-2-201(1)(a) to Chevron, and that this failure alone justified reversal. The Tax Commission's Petition for Rehearing does not address this portion of the Court's ruling.

(2) The Court of Appeals correctly held that the Property Tax Division's failure to raise the "county line" issue prior to the formal hearing precluded the Tax Commission from ruling against Chevron on this basis. The "county line" issue was never raised by the Property Tax Division in its decision to assess Chevron's refinery centrally, nor was it raised in the pleadings. Chevron was not given an adequate opportunity to address this issue, and the Court of Appeals correctly reversed

the Tax Commission's decision to rely upon the issue.[1]

FACTS

A. Introduction.

Respondent Utah State Tax Commission (the "Tax Commission") seeks rehearing of the Court of Appeals decision dated January 29, 1993, reversing the Tax Commission's determination that Chevron's North Salt Lake City refinery should be centrally assessed for 1989 property taxes. The Tax Commission does not seek rehearing of the Court of Appeals' decision as it relates to Amoco Oil Company, the other appellant in this action.

This appeal arose from a 1989 decision by the Property Tax Division of the Tax Commission to assess Chevron and Amoco's refineries centrally for property tax purposes, in contrast to the local property tax assessment applicable to other refineries operating in the State of Utah. The basis asserted by the

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[1] Chevron also notes that, if rehearing is granted and central assessment allowed, the Court will have to determine the constitutional issues raised by the non-uniform treatment of Chevron's refinery vis a vis locally-assessed refineries. If Chevron's refinery is subject to central assessment for the 1989 tax year under Utah Code Ann. § 59-2-201(1)(a), the Tax Commission's decision must still be reversed because it unconstitutionally failed to grant Chevron the 20% assessment reduction then available to locally-assessed properties under Utah Code Ann. § 59-2-304 (1989 Supp.).

Property Tax Division for central assessment was that the Chevron and Amoco refineries were "appurtenant" to mines -- e.g. oil wells -- and so should be centrally assessed pursuant to Utah Code Ann. § 59-2-201(1)(d) (1989), which provided for central assessment of property and equipment appurtenant to mines. R. 37-38.[2]

Chevron and Amoco contended that their refineries, which were hundreds of miles away from the multiple wells supplying them with oil, could in no sense be considered or deemed appurtenant to the wells, and that § 59-2-201(1)(d) was therefore inapplicable. Chevron and Amoco further contended that if central assessment were found to be proper, the Tax Commission was required to grant the refineries the 20% reduction in assessed value then available to locally assessed properties under Utah Code Ann. § 59-2-304 (1989 Supp.), pursuant to Utah's statutory and constitutional mandate of uniform taxation. R. 93-104; see also Utah Const. Art. XIII, §3(1); Utah Code Ann. § 59-2-103 (1989 Supp.).

B. The Tax Commission Decision.

In twin decisions dated December 9, 1991, the Tax

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[2] Subsection (d) of Utah Code Ann. § 59-2-201(1) has since been renumbered as (f). See Utah Code Ann. § 59-2-201(1)(f) (1992).

Commission upheld the Property Tax Division's decision to centrally assess the two refineries, holding that the refineries were appurtenant to the oil wells that supplied them, and thus subject to central assessment under § 59-2-201(d). The Tax Commission also found an independent basis for assessing Chevron's refinery centrally. Utah Code Ann. § 59-2-201(1)(a) provides for central assessment of:

> (a) all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state.

The Property Tax Division had not raised this issue prior to the hearing; in its determinations as to whether the Chevron refinery would be centrally assessed, it looked solely to the appurtenance issue. **Chevron Transcript at 10-14.** Similarly, counsel for the Property Tax Division never raised the issue in its pleadings. See **R. 38-39.** At the formal hearing before the Tax Commission, however, Chevron witness Christopher Chambers indicated that a small portion of the property lay in Salt Lake County, with the great majority of the property in Davis County. In response to questioning from counsel for the Property Tax Division, Tax Commission employee John Stewart testified similarly.

In its final decision, the Tax Commission relied upon Utah Code Ann. § 59-2-201(1)(a) in determining that the Chevron

refinery was subject to central assessment. The Commission found that the property crossed the Salt Lake - Davis County line, and held:

> At the outset, the Commission finds that the Petitioner's refinery is properly centrally assessed on the grounds that it operates as a unit across county lines as mandated by Utah Code Ann. § 59-2-201(1)(a). The facts are not in dispute that a portion, albeit a small portion, of the refinery crosses into Davis County from Salt Lake County. Given that fact, and the fact that § 59-2-201(1)(a) makes no distinction regarding the degree to which a property crosses a county line, the conditions for central assessment are clearly met. R. 7-8.

C. The Court of Appeals Decision.

In its opinion dated January 29, 1993, this Court reversed the Tax Commission's conclusions that the refineries were appurtenant to mining properties for property tax purposes. The Court further found that it was unnecessary to reach the constitutional issues concerning uniform taxation raised by Chevron and Amoco, because of its determination that central assessment was not proper under the circumstances. With regard to Chevron, the Court also found that Chevron was not subject to central assessment under the "crossing county lines" provisions of Utah Code Ann. § 59-2-201(1)(a) for two reasons. First, because the issue had not been expressly or impliedly raised by the Property Tax Division, the Tax Commission's decision to

require central assessment on that basis was outside the issues presented for adjudication, and a nullity. **Slip Op. at 6.** Second, the Court found that the Tax Commission had made no findings of fact concerning the other required elements of § 59-2-201(1)(a): that the refinery operated as a unit across county lines, and that apportionment of values was necessary among counties. **Slip Op. at 6-7, n. 9.** The Court of Appeals therefore reversed the Tax Commission's decision on the county lines issue.

ARGUMENT

I. THE TAX COMMISSION'S FAILURE TO MAKE FINDINGS OF FACT ON THE REQUIRED ELEMENTS OF § 59-2-201(1)(A) IS A SEPARATE BASIS FOR REVERSAL.

In its Petition for rehearing, the Tax Commission argues that there is additional evidence in the record showing that the "crossing county lines" issue was properly considered by the Tax Commission. However, counsel fails to mention that the Court of Appeals found another deficiency in the Tax Commission's decision that alone justifies reversal, and that therefore requires denial of the Petition for Rehearing.

Utah Code Ann. § 59-2-201(1)(a) requires three elements in order for central assessment of a property to be proper under its authority. First, property must be located in more than one county. Second, it must operate as a unit across

county lines. Third, it must be necessary to apportion values of the unit among more than one county or state. Id. Courts in other states have held that the third requirement -- apportionment -- implies more than simply determining the value of property in a given geographic area; apportionment is instead the process of dividing an indivisible unit value among geographic areas. Southern Pacific Trans. Co. v. Department of Revenue, 732 P. 2d 18, 23 (Oregon 1987).[3]

The Tax Commission made no findings of fact concerning the necessity of apportionment of values, nor did it make any finding that the property operated as a unit across county lines.[4] There was no evidence whatsoever in the record on these issues. In its opinion, the Court noted that the Tax Commission's failure to make findings of fact concerning these issues alone justified reversal. Slip Op. at 6-7, n. 9. The

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[3] The typical factual circumstance in which apportionment is necessary is an indivisible operation such as a railroad or pipeline, for which local assessments of an indivisible whole are impractical. Southern Pacific, supra. In Chevron's situation, there is no need for apportionment of values among more than one county. The small portion of the property in Salt Lake County is a discrete parcel which had easily been assessed by the Salt Lake County Assessor for years.

[4] The Tax Commission, in the opinion portion of its decision, did state that the refinery operated as a unit across county lines, but there was no corresponding factual finding, nor was there reference to any portion of the record to this effect.

Court cited Adams v. Board of Review of Industrial Comm'n, 821 P. 2d 1, 5-6 (Utah App. 1991) for the proposition that administrative conclusions as to ultimate issues, without supporting findings, are arbitrary, and cannot be sustained on review. Id.

Therefore, even if the Court of Appeals chooses to accept the arguments made by the Tax Commission in its Petition for Rehearing, there is an independent basis for reversing the Tax Commission decision, and denying rehearing. The Tax Commission's December 9, 1991 decision failed to make adequate findings concerning the requirements of Utah Code Ann. § 59-2-201(1)(a), and there is no evidence in the record to support any such findings. The "crossing county lines" statute cannot be applied here to require central assessment of Chevron's refinery.

II. THE COURT OF APPEALS' OPINION CORRECTLY DETERMINED THAT THE COUNTY LINES ISSUE WAS NOT PROPERLY RAISED BELOW.

In its Petition for Rehearing, the Tax Commission does not dispute that the county lines issue was not the basis for the Property Tax Division's decision to assess the Chevron refinery centrally. The Chevron refinery had been locally assessed by Davis and Salt Lake Counties for years, with no suggestion that the "county lines" statute was applicable. When

the Property Tax Division did decide to seek central assessment, as Mr. Chambers' testimony made clear, it based its central assessment claims solely on the "appurtenance" language of § 59-2-201(1)(d). When Chevron appealed the Property Tax Division's decision to the Tax Commission, the Division's counsel did not raise the "county lines" issue in its pleadings, even though the Petition for Redetermination clearly indicated that the refinery property was located in both counties. R. 111. Instead, counsel for the Property Tax Division raised the issue for the first time at the formal hearing, after Chevron witness Christopher Chambers mentioned in an aside that the property overlapped the county line. R. 10.

The Tax Commission asserts that rehearing should be granted because Property Tax Division employee John Stewart also stated that a county line overlap existed, and there was some minimal discussion by counsel concerning the issue. Chevron does not dispute that these statements are in the record, and that the issue was at least minimally argued at the formal hearing. Rather, Chevron believes that the Court of Appeals should sustain its original decision because the Court's basic holding was correct -- the county line issue was not an express or implied part of the Division's case, and so should not have been considered by the Tax Commission.

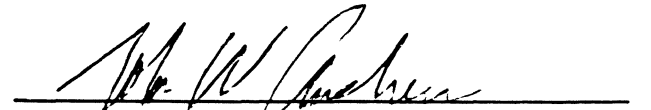
In National Farmer's Union Prop. & Cas. Co. v. Thompson, 286 P. 2d 249 (Utah 1955), the Court stated:

> Notwithstanding all our efforts to eliminate technicalities and liberalize procedure, we must not lose sight of the cardinal principle that under our system of justice, if an issue is to be tried and a party's rights concluded with respect thereto, he must have notice thereof and an opportunity to meet it.

286 P. 2d at 253. This "cardinal principle" should apply here as well. The Property Tax Division did not view the county line issue as justifying central assessment, even though it was clearly aware of the property's location. Neither it nor its counsel raised the issue in their pleadings. Only at trial did its counsel raise the issue, after it was to late for Chevron to effectively rebut the claim. The Court of Appeals should not condone trial by ambush. The Court's original decision reversing the Tax Commission's application of the "county lines" statute should be upheld, and rehearing denied.

DATED this 24 day of March, 1993.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By 

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CERTIFICATE OF MAILING

I hereby certify that I caused four true and correct copies of the within and foregoing RESPONSE TO PETITION FOR REHEARING to be mailed, postage prepaid, this 24 day of March, 1993, to the following:

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