

NO. 04-22-00524-CV

IN THE COURT OF APPEALS
FOURTH COURT OF APPEALS DISTRICT
SAN ANTONIO, TEXAS

ROCKSPRINGS VAL VERDE WIND LLC,

Appellant,

V.

JACKIE CASANOVA, RPA, CCA IN HER CAPACITY AS THE CHIEF
APPRAISER OF THE VAL VERDE COUNTY APPRAISAL DISTRICT,

Appellee.

*On Appeal from the 63rd District Court, Val Verde County, Texas
Honorable Roland C. Andrade, Presiding
Cause No. 34133*

**BRIEF FOR AMICUS CURIAE TEXAS TAXPAYERS AND RESEARCH
ASSOCIATION IN SUPPORT OF APPELLANT ROCKSPRINGS VAL
VERDE WIND, LLC**

Texas Taxpayers and Research Association

Jennifer Rabb

Texas Bar No. 00795469

400 West 15th Street, Suite 400

Austin, Texas 78701

T: 512-472-8838

F: 512-472-2636 jrabb@ttara.org

ATTORNEY FOR AMICUS CURIAE TEXAS TAXPAYERS AND RESEARCH ASSOCIATION

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Texas Taxpayers and Research Association (TTARA) is a non-profit, non-partisan, membership-supported organization of businesses, trade associations, tax practitioners and individuals that endorses and advocates for sound state and local fiscal policy. Our more than 200 member companies come from a broad range of economic sectors and are some of the largest taxpayers in Texas. TTARA member companies have a vital interest in tax policies that are equal, uniform, and predictable so that they may anticipate their tax liability and appropriately plan their finances and business operations.

For more than seventy years, TTARA (including its predecessor organizations the Texas Association of Taxpayers and the Texas Research League) has been recognized as the state's preeminent organization specializing in tax and fiscal policy and, as such, has long worked closely with legislators, executive officials, and state agencies in pursuit of a rational, balanced, and efficient system of taxation. In view of our longtime, intimate, and extensive participation in the formation of Texas tax policy, we believe it is appropriate for us to comment on this critical issue affecting equal and uniform taxation.

This brief has been prepared in the ordinary course of TTARA's operations. No fee has been paid for the preparation or filing of this brief.

SUMMARY OF THE ARGUMENT

The purpose of this brief is to provide guidance on the appropriate treatment of intangible personal property (“IPP”) in an equal and uniform system of ad valorem taxation as mandated by the Texas Constitution and effectuated by the Texas Tax Code.

One of the basic protections for taxpayers mandated by the Texas Constitution is that taxation shall be equal and uniform. Tex. Const. art. VIII, §(a). The Constitution also excludes the taxation of IPP unless provided for by the Legislature. Tex. Const. art. VIII, §(c). The general rules for taxation of IPP were provided by the Legislature in Section 11.02 of the Texas Tax Code. *Dall. Cent. Appraisal Dist. V. Tech Data Corp.*, 930 S.W.2d 119, 123 (Tex. App.—Dallas 1996, writ denied). Section 11.02 states that IPP is not taxable, except for IPP governed by Article 4.01, Insurance Code, or Section 89.003, Finance Code. Tex. Tax Code § 11.02.

Chapter 23 of the Tax Code provides the procedures for appraising **taxable** property, meaning property that is described as taxable in accordance with Section 11.02. *See Dall. Cent. Appraisal Dist.*, 930 S.W.2d at 123; Tex. Tax Code § 23.01(a). Because IPP, with very narrow exceptions, is not taxable, it should not be included in property tax valuations for the same policy reason the Constitution generally

exempts IPP from ad valorem taxation: IPP is subjective by nature and difficult to value fairly.

“Taxes on tangible personal property are a source of tax complexity and nonneutrality.” Garrett Watson, *States Should Continue to Reform Taxes on Tangible Personal Property* 1 (2019). In this case, the Court is being asked to expand the statutory definition of tangible property by including any IPP that could be considered an “interest in tangible property” or intrinsically tied to it. Such an expansion not only violates the constitutional mandate for equal and uniform taxation, but also increases administrative and compliance costs by further complicating an already-complicated property tax system.

ARGUMENT

I. Taxing intangible personal property is inconsistent with the constitutional mandate for equal and uniform taxation.

The taxation of IPP frustrates equal and uniform taxation as required by the Texas Constitution. Equality and Uniformity are achieved “when no person . . . is taxed at a different rate than are other persons in the same district upon the same value or the same thing, and where the objects of taxation are the same by whomsoever owned, or whatever they be.” *Norris v. City of Waco*, 57 Tex. 635, 641, 642, 1882 WL 9558 (1882). Uniformity also requires the value of all property to be ascertained by the

same standard. *Lively v. Missouri, K. & T. Ry. Co. of Texas*, 120 S.W. 852, 856 (Tex.1909).

The subjective nature of intangible assets leads to a lack of equality and uniformity in their valuation. The word “intangible” itself means that something exists but cannot be touched, exactly described, or given an exact value. *Intangible*, CAMBRIDGE ADVANCED LEARNER’S DICTIONARY (4th ed. 2013). The definition of IPP provided by the Legislature includes a nonexclusive list of items such as contracts, copyrights, causes of action, and goodwill. Tex. Tax Code § 1.04(6). Most intangible assets, like those described above, are unique. Often, their value relies on subjective factors such as enforceability and brand perception and must be quantified through indirect measures. The tax code excludes IPP from the market value of real property by chief appraisers. Tex. Tax Code § 23.014.

When the Texas Constitution was amended in 1978 to exclude most IPP from property tax rolls, the reasons recorded by the Texas Legislative Council for the amendment were that: (1) “[i]ntangible properties are almost impossible to assess and tax fairly;” and (2) “[r]emoving them from the mandatory tax base would eliminate a major obstacle to achieving equitable property tax administration and public school finance.” Texas Legislative Council, *9 Proposed Constitutional Amendments Analyzed* 22 (1978). Even the arguments *against* the inclusion of the provision in the Constitution acknowledged the difficulties in assessing and taxing

intangible assets. *Id.* These difficulties make the taxation of intangible assets a barrier to equal and uniform taxation. The attempted valuation of contracts or other IPP would lead to disparate results for similar types of properties.

II. Expanding the definition of tangible personal property (“TPP”) to include intangibles is bad for Texas.

The inclusion in TPP of intangibles like contracts or tax credits, premised on the mischaracterization of their nature as “interests in” or intrinsic to TPP, not only disregards the fact that the intangibles fall squarely within the Section 1.04(6) definition of IPP, but also serves to further complicate the tax system, causing increased administrative and compliance costs, while decreasing economic activity in the state. Contracts are expressly excluded, and tax credits are benefits that do not convey an interest in any property.

Any movement toward taxation of intangible assets, due to their extreme valuation complexities, could cause companies to reassess their investment decisions and investigate diverting their capital going forward. *Watson, supra*, at 2. Equal and uniform taxation allows taxpayers to fully anticipate and plan for their tax liability; the inclusion of IPP in the tax base would greatly complicate this process. Additionally, taxes on TPP act to discourage borrowed-money investment and punish investors when investments are more successful. *Id.* at 7. The expansion of TPP to include some IPP would only exacerbate this effect.

Not only do taxes distort investment decisions and act as a direct levy on capital investment, but they also create high compliance and administrative costs. Watson, *supra*, at 2; Jared Walczak, *Personal Property De Minimis Exemptions Slash Compliance Burdens at Trivial Cost 2* (2023). Expanding the definition of TPP can act to slow economic growth in the state and create barriers to entry for new businesses.

CONCLUSION

The reason intangible personal property is generally excluded from ad valorem taxation is to prevent the kind of taxability and valuation disputes before the Court in this case. Because intangible property cannot be perceived by the senses, it is difficult to value and tax equally and uniformly. The equality and uniformity of our tax system is sufficiently stressed and challenged by the valuation of real property and tangible property that we *can* see, feel, weigh and measure. We respectfully request that the Court not extend those difficulties to property that we *cannot* see, feel, weigh or measure.

CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word for PC, this brief contains 1,684 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

By / s / Jennifer Rabb

Jennifer Rabb

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served as indicated on all counsel of record in accordance with the Texas Rules of Civil Procedure 21a on this 13th day of December 2023 by serving the following:

William T. Sullivan *via e-filing*
Norton Rose Fulbright US LLP
111 S. Houston Street, Suite 1800
San Antonio, Texas 78205

Hayley Ellison *via e-filing*
Davis & Santos, PLLC
719 S. Flores Street
San Antonio, Texas 78204

Nissa M. Dunn *via e-filing*
4040 Broadway, Suite 515
San Antonio, Texas 78209

Matthew Tepper *via e-filing*
Tyler McCarty
Sharon Coffee Baxter
Nicholas E. Goettsche
McCreary, Veselka, Bragg & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

Elizabeth Conry Davidson *via e-filing*
Attorney at Law
100 N.E. Loop 410, Suite 615
San Antonio, Texas 78216

Attorney for Amicus Curiae Texas Taxpayers and Research Association

By /s/ Jennifer Rabb
Jennifer Rabb

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Helen Brantley on behalf of Jennifer Rabb

Bar No. 795469

hbrantley@ttara.org

Envelope ID: 82550020

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Associated Case Party: Jackie Casanova

Name	BarNumber	Email	TimestampSubmitted	Status
Matthew Tepper	24029008	mmtepper@mvalaw.com	12/13/2023 4:11:43 PM	SENT
Sharon Coffee Baxter	24001139	sbaxter@mvalaw.com	12/13/2023 4:11:43 PM	SENT
Nicholas Goettsche	24086725	ngoettsche@mvalaw.com	12/13/2023 4:11:43 PM	SENT
Conry Davidson		conrydavidson@gmail.com	12/13/2023 4:11:43 PM	SENT

Associated Case Party: Rocksprings Val Verde Wind LLC

Name	BarNumber	Email	TimestampSubmitted	Status
William T. Sullivan	19492300	bill.sullivan@nortonrosefulbright.com	12/13/2023 4:11:43 PM	SENT
Hayley Ellison	24074175	hayley.ellison@gmail.com	12/13/2023 4:11:43 PM	SENT
Nissa M. Dunn	14766450	nissa@hdappeals.com	12/13/2023 4:11:43 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rebecca Marr		rebecca.marr@nortonrosefulbright.com	12/13/2023 4:11:43 PM	SENT
Catherine Hebert		catherine.hebert@nortonrosefulbright.com	12/13/2023 4:11:43 PM	SENT