

## State Taxation Permitted on Product Awaiting Out of State Transportation

*Marathon Ashland Petroleum v. Galveston Central Appraisal Dist.*, NO. 01-06-00531-CV, 2007 Tex. App. LEXIS 5289 (Tex. App.—Houston [1st Dist] July 6, 2007).

**M**arathon owns an oil and gas refinery in Texas City, Texas where it produces petroleum products for both instate and out-of-state customers. Following the refining process, Marathon segregates the petroleum products designated for out-of-state shipping into separate holding tanks where it remains for three to eight days before leaving the refinery.



After Marathon elected to have its inventory appraised for the 2004 tax year, the Galveston Central Appraisal District (GCAD) valued its inventory at \$41,437,170. This figure included \$13,991,393, representing the total value of the petroleum product being held in the tanks awaiting out-of-state transportation.

Marathon argued that by asserting a tax on its out-of-state products, GCAD violated the Commerce Clause of the United States Constitution. The trial court granted GCAD's motion for summary judgment, holding that while the product had been designated for out-of-state transportation, it had not yet entered into the "stream of commerce."

The court of appeals upheld the judgment of the trial court, relying on United States Supreme Court cases involving products that were "intended" for out-of-state transportation. In those cases, the Court held that "because the [goods] had not yet begun a 'final movement for transportation from the state of their origin to that of their destination,' the Constitution provided no immunity from local taxation." The court of appeals contrasted these cases with one where oil loaded onto a ship bound for New Zealand, but had not yet departed, was found to be in the process of exportation, thereby invalidating a local tax on the goods.

The court reasoned that Marathon still retained control over the goods within its tanks, and that control is "an important factor in determining whether the goods have begun the process of exportation" because Marathon could re-designate the destinations of the goods. Intention, or designation, according to the court, were not synonymous with having entered the stream of commerce. As Marathon's product had not yet entered the stream of commerce, the tax assed by GCAD was held to be valid.

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