

Lynne Liberato in Law360: Texas High Court Told To Nix Taxes On \$162M In Stored Gas

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PRACTICES Appellate, Midstream, Litigation

An Energy Transfer Partners LP subsidiary told the Texas Supreme Court in oral arguments Tuesday that a lower court's ruling holding it to county level taxes on \$162 million in stored natural gas must be overturned because the gas is part of interstate commerce and not under local government purview.

The Texas Supreme Court in September agreed to hear the challenge from ETC Marketing Ltd., which is seeking to upend a ruling from the state's First Court of Appeals upholding the trial court's ruling that it must pay a steep ad valorem tax bill Harris County slapped it with in 2010. [Lynne Liberato](#), who is representing ETC Marketing Ltd., told the court that state law is straightforward in stating if the gas is in the state for a "temporary period" then it's not taxable.

And ETC is not attempting to "escape taxation" she told the court, because it pays millions in taxes on facilities and gas not in the pipeline, called "cushion gas." But the problem with the tax Harris County has applied to it is that it interferes with interstate transit "in a way that discriminates against interstate commerce."

"In Kansas and Oklahoma, those courts have decided adverse to the position we're taking here. But what I would say is, this is Texas and we are blessed to have courts of appeal who have examined this, and we have judges who understand that gas is different," she argued. "So, they've just flat got it wrong. ... Natural gas, because of its nature, is in transit and stays in transit despite temporary storage, and it remains until used by the consumer. We ask the court to reverse and render its decision in favor of ETC."

Excerpted from Law360. To read the full article, please [click here](#) (subscription required).