

**BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
APPLICATION OF TRANSCANADA
KEYSTONE PIPELINE, L.P. FOR
EXEMPTION FROM AD VALOREM
TAXATION

Docket No. 2010-8538-PVX

ORDER DENYING RECONSIDERATION

NOW the above-captioned matter comes on for consideration and decision by the Court of Tax Appeals of the State of Kansas upon a Petition for Reconsideration filed April 27, 2012, by the Kansas Department of Revenue, Property Valuation Division (PVD) pursuant to K.S.A. 77-529 and K.A.R. 94-5-25. Three grounds for reconsideration are asserted by PVD: (1) that the Court failed to strictly construe the exemption statute as required by Kansas law; (2) that the Court misconstrued the statutory definition of “qualifying pipeline”; and (3) that the Court distorted a key factual predicate of its determination. After having reviewed the petition and responsive papers, and having been fully apprised of the premises, we conclude as follows:

Strict Construction

Contrary to PVD’s assertions, the relevant provisions of the exemption statute were strictly construed in favor of taxation and against exemption, and the burden of establishing the exemption was correctly placed upon and borne by the applicant, Keystone. PVD’s arguments regarding the rational basis test and the doctrine of operative construction are of no moment here. To be clear, the statute in question is susceptible of but one reasonable interpretation, regardless of the construction articulated by the Department of Commerce in K.A.R. 110-16-1(a). We give no deference to the Department of Commerce’s administrative construction of the statute. We nevertheless note, again, that the Commerce regulation is logically consistent with the plain meaning of the exemption statute, an enactment broadly drawn to require refinery access without condition, limitation or restriction.

Definition of “Qualifying Pipeline”

Despite PVD’s assertions to the contrary, this court fully analyzed the term “qualifying pipeline” in accordance with the relevant statutory provisions. Discussion of this subject matter is found on pages 5 through 10 of the original order. No further explanation is required here.

Uncontroverted Facts

On page 4 of the original order, the Court states as follows: “The oil that is moved through the subject pipeline is accessible to refineries in Kansas by means of existing lines that connect to the Cushing Extension at the Cushing market hub in Oklahoma.” PVD asserts this statement—which it characterizes as the linchpin of the Court’s analysis—is materially inaccurate and grounds for reconsideration. For the first time in its Petition for Reconsideration, PVD directs the Court to a website which it claims supports its proffer that existing lines supplying oil to refineries in Kansas actually connect to large storage tanks, not to the Cushing Extension, at the facility in Oklahoma. This appears to be an attempt by PVD to dispute whether even indirect access exists in this case, and this is improper for reconsideration for several reasons. First, the Court notes that PVD has already stipulated that “[a]ll three Kansas refineries . . . will have access to the [Keystone] crude oil by means of existing pipelines that connect with the Cushing terminal.” (Joint Statement of Stipulated Facts, ¶¶ 35 and 36). The Court interprets this stipulation as an admission by PVD that there is, as a factual matter, indirect access, while preserving PVD’s legal argument that direct access is required by the exemption statute. Second, Keystone rightly objects to PVD’s attempt to inject new facts into the record. Finally, even assuming the admissibility and accuracy of the newly proffered facts, this fails to establish a proper basis for reconsideration. The technical mechanics, engineering and logistics of how oil is moved through the apparatus at the Cushing hub and ultimately conveyed to refineries in Kansas is not material to our analysis. On page pages 9 and 10 of the original order, this court concluded that “[t]he statute requires no *direct connection* and no *particular means of access*...” and that “it should be presumed the legislature contemplated that refineries in Kansas would gain access through commercially reasonable and practical means” (emphasis provided).

Pursuant to K.S.A. 77-529 and K.A.R. 94-5-25, we deny PVD’s Petition for Reconsideration in its entirety, finding no grounds for dissolving or modifying the original order and no cause for further proceedings.

This is a final order of the Court of Tax Appeals and constitutes final agency action. Any party choosing to appeal this order must do so by filing a petition for judicial review within 30 days from the date of certification of this order. See K.S.A. 77-613(c). The petition for judicial review shall be filed with the Kansas Court of Appeals. See K.S.A. 2011 Supp. 74-2426(c)(2). The Court of Tax Appeals shall not be a party to the petition for judicial review but shall receive service of a copy of the petition. Pursuant to K.S.A. 2011 Supp. 77-529(c), any party choosing to petition for judicial review of the Court’s decision is hereby notified that the Secretary of the Court of Tax Appeals is to receive service of the petition for judicial review.

IT IS SO ORDERED

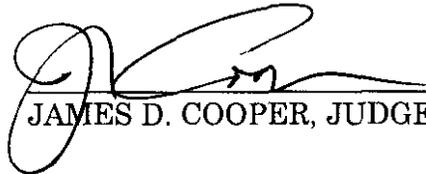
THE KANSAS COURT OF TAX APPEALS



SAM H. SHELDON, CHIEF JUDGE



TREVOR C. WOHLFORD, JUDGE



JAMES D. COOPER, JUDGE



JOELENE R. ALLEN, SECRETARY

CERTIFICATE OF SERVICE

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket No. 2010-8538-PVX and any attachments thereto, was placed in the United States Mail, on this 16th day of May, 2012, addressed to:

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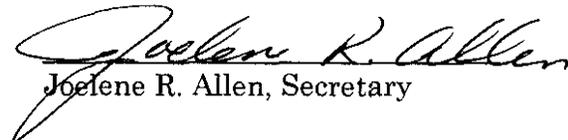
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and a copy was placed in the capitol complex building mail addressed to:

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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joeline R. Allen, Secretary