FOCUS: ENERGY

HOUSTON BUSINESS JOURNAL

Tax lawyer dishes on differing Louisiana-Texas policies

Jay Adams
Partner
Jones Walker LLP
jadams@joneswalker.com

Q&A

Many Houston-based energy companies have operations in Louisiana, which has a complicated bifurcated system of state and local tax requirements. In addition, the state has recently gotten aggressive in collection and policy setting with regard to audits, largely because they are big moneymakers for the state. A partner in the tax and estates group at Jones Walker LLP's New Orleans office, Jay Adams presented a seminar recently on Louisina and Texas tax issues. He talked with Houston Business Journal about pressing issues.

What are the primary tax differences that challenge oil and gas companies operating in Texas and Louisiana?

Some of the primary differences for sales tax purposes relate to the fact that Texas taxes many oilfield services that Louisiana has not historically taxed.

Texas imposes a sales tax on all oil and gas and related well services, except for labor to start or stimulate production. There are a number of services performed in the well bore that start or stimulate production that are not taxable, including fracturing a well formation.

Louisiana typically does not tax services, and therefore, for the most part this would not be an issue that an energy company would have to consider.

What are the most prevalent concerns for those companies, and why?

Most energy companies have a good staff of tax professionals that understand the requirements of the sales and use tax laws in Louisiana and Texas.

However, with the significant need for additional revenue by state and local jurisdictions throughout the country, many jurisdictions are more aggressive in their interpretation of the law and their auditing of oil companies. Energy companies are certainly caught up in those audits.

I have found that many clients expect to pay the taxes that are required of them under the relevant statutes and regulations. However, when they have been operating the same way for many years and there has been no change in the law and yet a jurisdiction assesses tax on transactions that have previously been considered non-taxable, that raises significant issues for the company.

One of the things I found my clients handle poorly in the tax arena is surprise. There is also always concern for energy companies that they will be the target of any increased taxes or changes in policy that result in an increase in taxes.

How do the two states differ on tax policy for pollution-control equipment?

Both Louisiana and Texas provide opportunities for energy companies to potentially avoid sales and use taxes on pollution-control equipment. The real issue is whether or not casing, blowout preventers and other items that are required by the Department of Environmental Quality or, in Texas, the Railroad Commission, qualify under the relevant statutes.

The issue is in play in Louisiana as some energy companies have sought refunds for casing and other required equipment. However, there has been no judicial decisions on the issue.

In Texas, the issue is in litigation and a decision is pending from the Court of Appeal in Austin. In Texas, property used in manufacturing that is necessary and essential to a pollution-control process is exempt from sales and use tax. The issue of whether casing and other related equipment fall within that exemption will be considered and decided soon. Another issue in that case is whether casing and related equipment are manufacturing equipment and thus are exempt.

The result of that case will be significant to any energy company with operations in Texas.

Are the tax differences between the two states enough to push a company to operate in one state more than the other?

Louisiana and Texas are both fairly hospitable to energy companies in terms of their sales and use tax liabilities. There are certainly some differences that might counsel a company to choose one state over the other. However, it is likely that those differences are not significant enough to factor into the decision. It is likely more important that the resources are available to allow the company to succeed in its operations. Both Texas and Louisiana do a good job of providing those resources to energy companies.

With respect to the decision-making process for corporate leadership regarding where to operate and/or headquarter, I think those issues need to be considered separately. With respect to operations, I would suspect that decisions are made based upon the opportunity to successfully find resources that meet the company's objectives.

Another significant, and relatively new, consideration is the incentive packages that states can offer to companies as an incentive to relocate their headquarters.