

**D90 Energy, LLC v. Jefferson Davis Parish Board of Review**  
**Results in Big Property Tax Win for Industry**

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On October 20, 2020, the Louisiana Supreme Court issued a decision in *D90 Energy, LLC v. Jefferson Davis Parish Board of Review*, 2020-C-200 (La. 10/20/2020), an *ad valorem* (property) tax case involving oil and gas wells. The decision is a big victory for independent oil and gas operator, D90 Energy, LLC, and affirms that Assessor may consider recent sales of oil and gas wells as a proper measure of value in determining *ad valorem* taxes.

D90 Energy, a multi-state, independent oil and gas operator, purchased two gas wells and one salt-water disposal well from Goldking Resources, LLC for approximately \$100,000 in October 2012.<sup>1</sup> For each tax year from 2013 through 2015, D90 Energy provided the Jefferson Davis Parish Assessor with the sale documents, a copy of the relevant check accompanying the sale, and emails documenting the negotiated price.<sup>2</sup> However, the Assessor rejected the sales price as the fair market value for the oil and gas wells, and instead used the Louisiana Tax Commission’s valuation tables to determine an assessment of over \$3 million for each year.<sup>3</sup> D90 Energy paid the assessed \$110,000 in taxes under protest—an amount that was more than the price paid for the property—for the first two tax years and appealed the Assessor’s decision.<sup>4</sup>

The Louisiana Tax Commission reduced the assessed value to \$235,000, considering a Tax Commission regulation allowing recent, valid and properly documented sales to be a measure of fair market value.<sup>5</sup> The District Court for Jefferson Davis Parish affirmed the Tax Commission’s correction of the Assessor’s valuation.<sup>6</sup> On appeal, the Louisiana Third Circuit Court of Appeal reviewed only what was presented to the Assessor and reversed, reinstating the Assessor’s valuation.<sup>7</sup> The Third Circuit reasoned that the Tax Commission should have afforded “much discretion” to the Assessor’s determination of value.<sup>8</sup> The Louisiana Supreme Court granted D90 Energy’s application to review the Third Circuit’s decision and determine, *inter alia*, the correctness of the assessments.<sup>9</sup>

In a unanimous decision, the Louisiana Supreme Court reversed the Court of Appeal and reinstated the Tax Commission’s decisions in favor of D90 Energy.<sup>10</sup> The Supreme Court’s opinion written by Justice Will Crain explained that the Tax Commission properly corrected the Assessor’s market value determination by considering the recent arms-length sale from Goldking

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<sup>1</sup> *D90 Energy, LLC v. Jefferson Davis Parish Board of Review*, 2020-C-200, slip op. at 1 (La. 10/20/2020).

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* D90 Energy did not pay under protest for the last two tax years because it prevailed at the Tax Commission for the first two tax years.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *D90 Energy, LLC v. Jefferson Davis Par. Bd. of Review*, 2019-243, p. 24 (La. App. 3 Cir. 12/30/19); 289 So.3d 615, 635.

<sup>9</sup> *D90 Energy, LLC v. Jefferson Davis Parish Board of Review*, 2020-C-200, slip op. at 3 (La. 10/20/2020).

<sup>10</sup> *Id.* at 14.

to D90 Energy.<sup>11</sup> The Court confirmed that the Tax Commission's regulations permit it to consider sales such as the one from Goldking to D90 Energy in determining fair market value, and that a reviewing court should afford considerable weight to an administrative agency's construction and interpretation of its own rules and regulations.<sup>12</sup> The Tax Commission was not limited to reviewing just the information provided to the Assessor but could take evidence, hear testimony, and consider the administrative record established before it in an appeal of an Assessor's determination.<sup>13</sup> The Supreme Court found that the Tax Commission has authority to correct the Assessor's valuation, and the record evidence supported the correction relevant to D90 Energy.<sup>14</sup> The recent sale rather than the regulatory tax tables was the proper measure of value for D90 Energy's wells under the facts.<sup>15</sup>

This key Louisiana tax decision affirms that economic realities should be considered in assessing the fair market value of oil and gas wells for taxation purposes.

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<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Id.* at 7. Additionally, the Supreme Court addressed the effect of a taxpayer's failure to pay under protest when it is successful at a Tax Commission hearing, finding that such payment is not required when the taxpayer prevails before the Tax Commission.

<sup>14</sup> *Id.* at 9, 12.

<sup>15</sup> *See Id.* at 12.