

# POPP, GRAY & HUTCHESON, LLP

## *The Property Tax Firm of Texas*

### Texas Supreme Court Declines to Hear Interstate Commerce Tax Cases

On March 12, 2010, the Texas Supreme Court denied the petitions for review in both *Peoples Gas, Light & Coke Co. v. Harrison Central Appraisal Dist.*, 270 S.W.3d 208 (Tex. App. – Texarkana 2009, pet. filed January 21, 2009; denied March 12, 2010); and *Midland Central Appraisal Dist. v. BP America Production Co.*, 282 S.W.3d 215 (Tex. App. – Eastland, pet. filed May 20, 2009; denied March 12, 2010).

In both *Peoples* and *BP America*, the tax payer prevailed at the court of appeals, which invalidated the ad valorem tax on grounds that it violated the interstate commerce clause. Because the Texas Supreme Court denied the petition for review, both *Peoples* and *BP America* are essentially final within the Texas state system.

There will likely be filed in both cases a motion for rehearing of the denial of the petitions for review. They likely will be denied. Either case could now be appealed to the United States Supreme Court seeking a writ of certiorari. A petition seeking a writ of certiorari must be filed within ninety (90) days of entry of judgment by the Texas Supreme Court. Judgment can be entered before or after filing of a motion for rehearing.

Recall that on Monday, March 1, 2010, the United States Supreme Court denied Missouri Gas Energy's petition for certiorari filed May 22, 2009, of the Oklahoma Supreme Court's decision in *In re Assessment of Personal Property Taxes Against Missouri Gas Energy*, \_\_\_P.3d\_\_\_, No.103,355, 2008 WL 4648330 (Okla. October 21, 2008). The denial was without any comment by the Court. *Missouri Gas Energy v. Schmidt*, \_\_\_S.Ct.\_\_\_, 2010 WL 680250 (U.S.Okla. March 1, 2010) (No. 08-1458).

In *Missouri Gas*, the Oklahoma Supreme Court reversed the trial court's determination that a property tax levied against natural gas violated the interstate commerce clause, and upheld the tax against all challenges. The United States Supreme Court's denial of certiorari means the Oklahoma Supreme Court's decision is final and the tax is upheld.

Though the *Missouri Gas* denial of certiorari was without comment, some scholars have opined that because the two Texas cases were not yet final, that the United States Supreme Court was not faced with conflicting final decisions from two different states (*i.e.*, Oklahoma and Texas). Because *Peoples* and *BP America* are now final because of the Texas Supreme Court's denial of the petitions for review, one could argue that the United State Supreme Court might treat a petition for a writ certiorari as to these two Texas cases differently. However, it is difficult to predict what the United States Supreme Court will do in this or any other case.

PGH will continue to monitor these cases and will provide updates as warranted.