



CAPITAL

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Texas Supreme Court Upholds Constitutionality of Margin Tax



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On October 19, 2012, the Texas Supreme Court in a 6-2 decision upheld the Texas franchise tax, or margin tax, that was adopted in 2006. Nestle USA filed the case challenging the tax, saying that it violated the Equal and Uniform clause of the Texas Constitution, as well as several provisions of the US Constitution. Nestle argued that the margin tax did not relate to the value of the privilege of doing business in Texas, is not uniform and applies differently to companies doing business outside the state of Texas. Nestle pays over \$8 million in franchise or margin taxes to the State of Texas for both the wholesale and the retail business it undertakes here. The Texas tax charges a lower rate for businesses engaged primarily in the wholesale trade (0.5%) as opposed to the retail trade (1%). Nestle is charged at the 1% retail rate because it has affiliated manufacturing operations in other states and the Texas tax is a unitary tax that applies to all operations of the taxpayer and its affiliates. The Court upheld the tax and the unitary feature of it, and held that it did not violate the Equal and Uniform clause of the Texas Constitution, nor did it violate the Equal Protection, Due Process or Commerce Clauses of the United States Constitution. The Court found that the tax only needed to be uniform among similar classifications of taxpayers; different classifications of taxpayers are permitted and they can be treated differently.