

CASE STUDY

Successfully Challenging a Local Tax Scheme

“Richmond is interfering with interstate commerce by exposing Chevron to the possibility of being taxed more than once by other cities or states for the same business activity.”

—The San Francisco Chronicle, summarizing the court’s decision



Client:	Chevron Corporation
Industry:	Energy
Areas of Law:	Constitutional, tax
Venue:	California Superior Court
Result:	Recovered \$20 million in unconstitutional tax levies



Like many California municipalities, the Bay Area city of Richmond has been struggling to balance its books in recent years. But one “tax solution” that Richmond officials came up with posed a dangerous, unconstitutional precedent.

Richmond voters had approved Measure T, which converted the local business license tax from a traditional per-employee assessment into a tax on the value of the raw materials processed by a business. That new tax would have looked to the value of crude oil processed at Chevron’s Richmond refinery, skyrocketing Chevron’s local tax liability from \$60,000 to \$20 million per year, in a single jump.

But the “unequivocal evidence” (in the words of the reviewing judge) that Chevron had been deliberately targeted through this new tax was not sufficient grounds to set it aside. Instead, Pillsbury proved that the tax violated both federal and state law, in two different respects.

First, the scheme ran afoul of the Commerce Clause of the U.S. Constitution, Pillsbury argued, by failing to “fairly apportion” the tax so that there would not be multiple taxation of the same business activity if every jurisdiction adopted the same scheme. Here, the scheme carried a significant risk of multiple taxation.

Second, because the tax was based on the value of the product being used—crude oil in Chevron’s case—it was a type of “use tax” that California lawmakers had reserved for the state itself, and was therefore off-limits to local municipalities like Richmond.

The judge agreed with Chevron on both arguments, invalidating the tax and ordering Richmond to refund the company approximately \$20 million in overpaid taxes. With the early and definitive defeat of this tax scheme, Chevron and Pillsbury also put California municipalities on notice that similar experiments in targeted taxation were equally unlikely to succeed.