

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **20th day of October, 2020** are as follows:

BY Crain, J.:

2020-C-00200

D90 ENERGY, LLC VS. JEFFERSON DAVIS PARISH BOARD OF
REVIEW (Parish of Jefferson Davis)

D90 Energy, LLC seeks review of a court of appeal judgment reversing decisions of the Louisiana Tax Commission. We reverse and reinstate the district court's judgment, which affirms the Commission.

COURT OF APPEAL JUDGMENT REVERSED; DISTRICT COURT
JUDGMENT REINSTATED.

Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.

10/20/20

SUPREME COURT OF LOUISIANA

No. 2020-C-00200

D90 ENERGY, LLC

VS.

JEFFERSON DAVIS PARISH BOARD OF REVIEW

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Jefferson
Davis

CRAIN, J.*

In these consolidated cases, D90 Energy, LLC seeks review of a court of appeal judgment reversing decisions of the Louisiana Tax Commission.¹ We reverse and reinstate the district court’s judgment, which affirms the Commission.

FACTS AND PROCEDURAL HISTORY

This dispute involves ad valorem taxes for the tax years 2013 through 2016. In October 2012, D90 purchased two gas wells and one saltwater disposal well. The wells are subject to ad valorem property taxation in Jefferson Davis Parish. For each tax year 2013 through 2015, D90 provided the following to Jefferson Davis Parish Assessor, Donald Kratzer: (1) the Assignment, Conveyance and Bill of Sale executed October 17, 2012 and effective October 1, 2012, transferring the wells to D90 for “Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged”; (2) a copy of the front and back of D90’s \$100,000.00 check to the seller, Goldking Resources, LLC, dated the same day as the sale; and (3) emails between the broker

* Retired Judge James Boddie Jr., appointed Justice *pro tempore*, sitting for the vacancy in Louisiana Supreme Court District 4.

¹ Three docketed cases representing four separate tax years were consolidated on appeal to the District Court in Jefferson Davis Parish: (1) 2013 and 2014 Appeals (Suit No. C-1-16); (2) 2015 Appeal (Suit No. C-619-16); and (3) 2016 Appeal (Suit No. C-181-17).

for the sale and Daniel Silverman, the president of D90, documenting the negotiated \$100,000.00 purchase price. Relying on a Commission regulation applicable to oil and gas wells, D90 argued that a purchase price in a valid sale is fair market value; therefore, the wells should be valued at \$100,000.00 for each of these tax years. LAC 61:V.907(A)(6)(e). For 2016, D90 provided the Assessor with emails showing the wells were “shut in,” thus warranting a 90 percent reduction in value. LAC 61:V.907(A)(6)(b). For that year, D90 submitted a fair market value of \$10,000.00 for the wells.

For each tax year, the Assessor rejected D90’s documentation of the sale, explaining, in part, that his office never uses the sales price as fair market value for oil and gas wells. Rather, the Assessor used valuation tables provided by the Commission, which take into account age, depth, type, and production of the wells.² Using those tables, the Assessor valued the wells at \$3,347,240 for 2013; \$3,347,240 for 2014; \$3,140,372 for 2015; and \$1,821,213 for 2016, and assessed them accordingly.

D90 paid a total of approximately \$110,000.00 for the 2013 and 2014 taxes, but paid nothing for 2015 and 2016, either under protest or otherwise, because the taxes were unaffordable. It unsuccessfully protested the Assessor’s determinations before the Jefferson Davis Parish Board of Review.

D90 appealed each assessment to the Commission, presenting documentary evidence and live testimony to establish the \$100,000.00 purchase price for the wells and the arms-length nature of the sale. It presented additional evidence to establish that the condition and value of the wells were virtually identical for each tax year. The Commission determined the fair market value of the wells for each of the years 2013, 2014, and 2015 was \$235,000.00, reflecting the \$100,000.00 sale price, plus

² The Assessor used cost tables annually adopted by the Tax Commission. *See* Table 907.A-1.

the assumed responsibility to plug and abandon the wells, which was quantified at \$135,000.00.³ For 2016, the Commission valued the wells at \$145,000.00, allowing the 90 percent reduction for shut-in wells (\$10,000.00), plus plug and abandon costs of \$135,000.00.

The Assessor appealed the Commission's valuation for each tax year to the district court. The appeals were consolidated. The Assessor also filed an exception of no right of action, arguing D90 could not challenge the 2015 and 2016 assessments because for those years the taxes were not paid under protest. The district court affirmed the Commission's valuations for all four tax years.

The Assessor next appealed to the court of appeal. For 2013 and 2014, the court of appeal found the Commission erred in reviewing evidence not previously provided to the Assessor. Reviewing only what was presented to the Assessor, the court of appeal reversed the district court and reinstated the Assessor's valuation. *D90 Energy, LLC v. Jefferson Davis Par. Bd. of Review*, 2019-0243 (La. App. 3 Cir. 12/30/19), 289 So. 3d 615. The court of appeal also found D90 forfeited the right to challenge the Assessor's 2015 and 2016 assessments because those taxes were not paid under protest. *Id.*

We granted D90's writ application to determine the correctness of the assessments, the proper scope and standard of review, and the legal effect of D90's failure to pay taxes under protest. *D90 Energy, LLC v. Jefferson Davis Par. Bd. of Review*, 2020-0200 (La. 6/22/20), 297 So. 3d 757.

DISCUSSION

The Assessor argues the Constitution grants him the exclusive right to determine fair market value, which cannot be usurped by the Commission. He specifically objects to the Commission accepting evidence not presented to an

³ The \$135,000.00 represents \$45,000.00 per well.

assessor to reverse or modify an assessor's valuations. The Assessor additionally claims the correctness of his valuations, not the Commission's, is subject to judicial review; thus, no deference should be given to Commission valuations. The Commission counters, arguing that while an assessor is vested with authority to assess property, he must do so "in accordance with criteria which shall be established by law." La. Const. Article VII, Sec. 18(D). The argument continues that those criteria, reflected in laws enacted by the legislature and regulations promulgated by the Commission, allow the Commission to receive additional evidence to determine fair market value and then to modify, correct, and reverse valuations pursuant to its constitutional duty to review. The Commission argues its decision is subject to judicial review, as authorized by statute, and the Assessor's valuation is owed no presumptive weight or regard.

Grants of Authority:

To determine whether the Commission erred in its valuations of the wells, we first consider the relevant constitutional grants of authority. Louisiana Constitution Article VII, section 18(D) provides:

Each assessor shall determine the fair market value of all property subject to taxation within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. . . . Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

Louisiana Constitution Article VII, section 18(E) provides:

The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

The plain language of the Constitution empowers an assessor to assess and the Commission to review. Both roles are to be performed according to procedures "established by law." Thus, an assessor must comply with criteria enacted by the

legislature, and his assessments are subject to review as prescribed by the legislature. By this constitutional allowance, the legislature enacted a relevant statutory scheme to both develop the criteria to determine fair market value and to define the review process. Certain rule-making functions are delegated to the Commission by virtue of the legislature “confer[ring] upon the tax commission the responsibility of administering and enforcing all laws related to the state supervision of local property tax assessment.”⁴ La. R.S. 47:1837 and La. R.S. 47:2326. For instance, the Commission is charged with implementing “uniform guidelines, procedures and rules and regulations” for statewide application and adoption of criteria to determine fair market value. La. R.S. 47:2323(A). The laws enacted pursuant to this constitutional grant of authority allow a broader scope of review by the Commission than suggested by the Assessor.

First, the legislature defined “fair market value” as follows:

Fair market value is the price for property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances; it shall be the highest price estimated in terms of money which property will bring if exposed for sale on the open market with reasonable time allowed to find a purchaser who is buying with knowledge of all the uses and purposes to which the property is best adapted and for which it can be legally used.

La. R.S. 47:2321. Then, “[i]n order to promote compliance with the requirements of the constitution and laws of the state,” the legislature authorized the Commission to “issue . . . amend or revise rules and regulations containing minimum standards of assessment and appraisal performance.” La. R.S. 47:1837(D). Fulfilling that obligation, the Commission further refined the definition of fair market value relative to valuing oil and gas wells: “Sales, properly documented, should be

⁴ *Palmer v. Louisiana Forestry Comm'n*, 1997-0244 (La. 10/21/97), 701 So. 2d 1300, 1303 (“When the legislature has declared its will and fixed a “primary standard,” agencies such as the Commissions in the case *sub judice* have the power to “fill up the details.”). *See also* La. R.S. 47:1831 and 47:1837, which acknowledge the Commission as a state agency charged with certain “duties, powers, [and] responsibilities.”

considered by the assessor as fair market value, provided the sale meets all tests relative to it being a valid sale.” LAC 61:V.907(A)(6)(e). The exercise of these constitutional and legislative grants of authority are at the core of the subject dispute.

Application of Authority:

We turn to the application of the laws enacted by the legislature and regulations promulgated by the Commission to determine the authority of the Commission to rely on a regulation defining fair market value for oil and gas wells as the sales price in a valid sale. As part of this determination, we address the Commission’s authority to receive supplementary evidence to aid in its valuation of the wells.

Property taxation begins with the assessor determining the fair market value of property then making his assessment. Here, the Assessor performed that function by relying on the “cost new” value for wells according to tables promulgated by the Commission, rather than the sale of the wells.⁵

D90 challenged the Assessor’s valuation by filing a complaint with the Jefferson Davis Parish Board of Review. La. R.S. 47:1992(C). Louisiana Revised Statutes 47:1992(C), in pertinent part, provides: “The board of review may make a determination to increase or decrease the assessment of immovable or movable property made by the assessor in accordance with the fair market or use valuation *determined by the board.*” (emphasis added). Nevertheless, in this case the Board of Review adopted the fair market value determined by the Assessor.

D90 then appealed to the Commission. Louisiana Revised Statutes 47:1992(D) provides, “Any taxpayer or assessor dissatisfied with the determination of the board of review may appeal to the tax commission in accordance with rules

⁵ Louisiana Administrative Code Title 61, Part V, Chapter 9, Section 907(A) sets forth the cost-new schedules. Section (A)(6) allows for adjustments to be made for economic obsolescence, including inactive/shut-in wells. Pursuant to Section 907(A)(6), properly documented and valid sales are reflective of fair market value for oil and gas wells, because a valid sale, by its nature, takes into account obsolescence and other allowances that affect the wells’ value.

and regulations established by the tax commission.” Louisiana Revised Statutes 47:1989(A) requires the Commission to conduct “public hearings to hear real and personal property appeals of taxpayers . . . or assessors, from the action of the board of review.” Implementing this legislative directive, Louisiana Administrative Code Title 61, Part V, Sec. 3103, which governs appeals to the Commission, expressly requires a hearing.⁶

While the Assessor does not challenge the requirement of a hearing, he does challenge the Commission’s ability to receive and consider evidence not previously submitted to the Assessor. But, that position is undermined by the requirement of an evidentiary hearing alone. If the Commission can only review and consider the evidence submitted to an assessor, a hearing is meaningless. Instead, Section 3103 allows for a full evidentiary hearing.⁷ Section 3103(D)(4), in pertinent part, specifically provides: “The party appealing the decision of the Board of Review *must submit evidence that establishes the fair market value* of their property or other grounds that would constitute reversal of the Board of Review[’]s decision.” (emphasis added). Further, Section 3103(D)(6) expressly contemplates “new” evidence being presented to the Commission, stating: “The taxpayer shall at the time an exhibit is offered state *whether the exhibit contains information not furnished to the assessor* before the end of the period for public exposure of the assessment lists.” (emphasis added). There is no accompanying prohibition against receiving this information as evidence. Thus, we conclude such evidence can be introduced before the Commission, which takes into consideration the fact this evidence is newly submitted.

⁶ This regulation was promulgated in accordance with Louisiana Revised Statutes 47:1837 and 47:2326.

⁷ The hearing entails: acceptance of evidence (Sec. 3103(D)(4)); allowance for pretrial conferences (Sec. 3103(F)); deposition testimony (Sec. 3103(I)); opportunity for an official reporter (Sec. 3103(N)); witness testimony under oath (Sec. 3103(O)); application of the Rules of Evidence (Sec. 3103(P)); receipt of documentary evidence (Sec. 3103 (Q)); and subpoena power (Sec. 3103(X)).

In *Dow Chem. Co. v. Pitre*, 468 So. 2d 747, 754 (La. App. 1 Cir.1985), *writ denied*, 474 So. 2d 1308 (La. 1985), the court warned against a taxpayer manipulating the system by withholding information from the assessor in order to seek a more favorable valuation from the Commission. But, nothing suggests D90 did that here. In fact, for 2013 and 2014, the Commission found D90's "information adequately documenting the sale was timely furnished to the Jefferson Davis Assessor's Office." Even if that initial submission to the Assessor was lacking or needed clarification, the law allows the presentation of evidence before the Commission to "establish[] the fair market value of [the] property." LAC 61:V.3103(D)(4). This statutory scheme within the described constitutional framework for assessment and review guarantees the due process rights of the taxpayer by affording a meaningful opportunity to challenge the assessor's valuations. *Martin v. ANR Pipeline Co.*, 2011-0751 (La. App. 1 Cir. 8/23/11), 76 So. 3d 534, 541. There is no evidence that D90 attempted to usurp the Assessor's authority; rather, before the Commission, it "submit[ted] evidence that [it believed] established fair market value."

D90 submitted evidence before the Commission to support its claim that the wells were over-valued by the Assessor, including substantiation that: the sale price was \$100,000.00; the sale was arms-length; the wells were "marginal" and "incapable of producing gas"; and the wells were "shut-in" in 2016. The Commission properly received and considered this corroborating evidence. After the hearings for 2013 through 2015, the Commission concluded the fair market value was the sale price of \$100,000.00 plus the plug and abandon costs of \$135,000.00 and corrected the valuations accordingly.

The Assessor then instituted suit in the district court contesting the correctness of assessment. La. R.S. 47:1998 and La. Const. Article VII, Sec. 18(E). The scope of judicial review of agency adjudications is governed by Louisiana Revised Statutes

49:964(F) and (G).⁸ Section (F) confines that review to the administrative record established before the Commission. *Williams v. Opportunity Homes Limited Partnership*, 17-0955 (La. 3/13/18), 240 So. 3d 161.⁹ Thus, the Assessor's argument that his valuations are entitled to deferential review is misplaced, as the law provides for judicial review of the administrative record established before the Commission and of the final determinations made by the Commission. Section (G) sets forth the standard for judicial review:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

⁸ Pursuant to Louisiana Revised Statutes 49:967(A), the Administrative Procedure Act applies to proceedings before the Louisiana Tax Commission.

⁹ Although this court in *Dow Chemical Co. v. Pitre*, 421 So. 2d 847, 850 (La. 1982) found that the special provisions of the tax code govern over the general provisions of the Administrative Procedure Act (APA), that holding was made in the context of conflicting venue provisions. In the absence of specific provisions in the tax code relative to the standard of judicial review to be applied by courts in reviewing a decision by the Commission, the general provisions of the APA apply. As recognized in the preceding footnote, this court's holding in *Williams* is supported by Louisiana Revised Statutes 49:967(A), which was passed by the legislature pursuant to its authority under Louisiana Constitution Article VII, Section 18(D) and (E) and clearly states that the "Commission . . . shall continue to be governed by [the APA] in its entirety, unless otherwise specifically provided by law."

Applying these standards, we consider whether the Commission was arbitrary and capricious in relying on the purchase price to establish fair market value.¹⁰ As previously established, Section 907(A)(6)(e) states, “Sales, properly documented, should be considered by the assessor as fair market value, provided the sale meets all tests relative to it being a valid sale.”¹¹ The Assessor argues the use of the word “should” denotes discretion and cannot be construed as “shall.” D90 avers it is compulsory. However, in the context of our review, whether “should” is permissive or mandatory is irrelevant. The Commission’s regulation permits it to consider the sale in determining fair market value. Consequently, relying upon that express directive as a valuation standard cannot be arbitrary and capricious.¹² La. R.S. 49:964(G)(5). A reviewing court should afford considerable weight to an administrative agency’s construction and interpretation of its rules and regulations adopted under a statutory scheme the agency is entrusted to administer, and its construction and interpretation should control unless found to be arbitrary, capricious, or manifestly contrary to its rules and regulations. *Forbes v. Cockerham*, 2008-0762 (La. 1/21/09), 5 So. 3d 839, 859.

Having determined the Commission did not err in considering the sale, we review the record under a preponderance of the evidence standard to determine the sale’s validity, the arms-length nature of the transaction, and the value of the wells.

¹⁰ The Assessor did not challenge the constitutionality of any statutes, rules, or regulations. Nor did the Assessor establish the Commission exceeded the scope of its statutory authority, violated established procedure, or committed legal error. Accordingly, we review the Commission’s exercise of discretion in using the sale to set fair market value under an arbitrary and capricious standard. La. R.S. 49:964(G)(5).

¹¹ The Assessor objected to using sales to determine fair market value in light of a provision that prohibits “sales chasing” and “sales listing chasing.” LAC 61:V.213(D). However, the specific provision for valuing oil and gas wells (LAC 61:V.907(A)(6)(e)) applies rather than the general provision applicable to “all property” (LAC 61:V.213(D)).

¹² See also *Warren Energy Resources, Inc. v. Louisiana Tax Commission*, 2002-0115 (La. App. 3 Cir. 8/28/02), 825 So. 2d 572 (*Disregard of sales price of pipelines in determining fair market value was found to be arbitrary and capricious*).

La. R.S. 49:964(G)(6). “Sale is a contract whereby a person transfers ownership of a thing to another for price in money. The thing, the price, and the consent of the parties are requirements for the perfection of a sale.” La. C.C. art. 2439. Here, the thing sold was three wells for \$100,000.00. Consent was given by Silverman, the president of D90, and the seller, Goldking. The Assessor argued the “\$10.00” consideration set forth in the sale refuted a valid sale. However, the \$100,000.00 cancelled check dated the same day as the sale supported that amount as the actual purchase price, and the negotiation was further documented through emails. Although this evidence did not persuade the Assessor, the Commission properly considered evidence at the hearing that clarified the purchase price and corroborated D90’s valuation of the wells. This evidence included testimony about the custom in the oil and gas industry of using the phrase “other good and valuable consideration” in recorded sales to protect the confidentiality of the purchase price for competitive leasing purposes. Silverman testified he provided a copy of the \$100,000.00 check to prove the “other good and valuable consideration” so the Assessor “would have some backup as to what the real transaction price was.” He testified under oath “he paid \$100,000 for this property.” This evidence was uncontroverted, and the Commission found it credible. “Due regard” must be given to that credibility determination. La. R.S. 49:964(G)(6). We find a preponderance of the evidence supports this was a valid sale.

The Assessor testified the sale was not arms-length. But, the only evidence offered established the sale was a fair transaction where both parties agreed to an even exchange. Silverman testified he had no previous relationship with Goldking, the property was listed on the open market by a broker, and the sale was fairly negotiated. A preponderance of the evidence supports the conclusion that the sale was arms-length.

Finding the sale valid in all respects, the Commission properly relied on it. The fully developed record further establishes the fair market value of the wells for 2013, 2014, and 2015 is \$235,000.00, as determined by the Commission.¹³ Much evidence was presented regarding the wells being “marginal,” “low producers,” and “incapable of producing gas.” The assessed value is consistent with the statutory definition of fair market value in Louisiana Revised Statutes 47:2321, which envisions a sale to “a purchaser who is buying with knowledge of all the uses and purposes to which the property is best adapted and for which it can be legally used.” Silverman testified D90 knew the seller was beginning the process of plugging the wells and “took that liability from Goldking [thereby] add[ing] value to the transaction.” The plug and abandon cost of \$45,000.00 per well was established by uncontroverted testimony. A preponderance of the evidence supports the Commission’s valuation of the wells for 2013 through 2015.

For 2016, D90 sought a 90 percent reduction for shut-in wells. LAC 61:V.907(A)(6)(b). It submitted an annual reporting form to the Assessor showing the \$100,000.00 sale price and the well status as “shut-in 12/31/15.” D90 presented the testimony of a production gauger, Shannon Bertrand, to prove the wells were shut in. The Assessor claimed he relied on a Department of Natural Resources report showing production existed in 2016 after the shut-in. However, Bertrand explained this resulted from another company’s pipeline introducing gas into D90’s pipeline, not gas from the D90 wells. The gas fluctuation appeared to be production from the D90 wells until the other company, which D90 does not control, conducted a quarterly meter analysis, shut the gas valve, and brought the gas production reading

¹³ Silverman testified the wells “were producing almost the same amount of gas” for 2013, 2014, and 2015 and were shut-in by 2016. The use of a sale to determine fair market value necessarily envisions a recent sale reflecting market conditions for a snap-shot in time. Thus, the testimony that the condition of the wells for subsequent tax years was essentially the same as the year of the sale is crucial to our holding, along with the record evidence that the wells continued to be low-producing and unprofitable during all relevant tax years.

to zero. The Commission found this explanation credible. Giving “due regard” to that credibility determination, the shut-in status of the wells is established by a preponderance of the evidence. D90 is entitled to the 90 percent reduction for 2016.

Payment under Protest:

Last, we address the effect of a taxpayer’s failure to pay under protest when it is successful at the Commission hearing. The Assessor’s no right of action exception asserts D90 failed to pay the 2015 and 2016 taxes under protest. D90 paid approximately \$55,000.00 in both 2013 and 2014, or roughly \$110,000.00 in taxes on wells it bought for \$100,000.00. Silverman said D90 simply could not pay the 2015 and 2016 taxes. He testified, “It’s a burden that we cannot meet with \$110,000.00 of our money sitting with the Parish right now, even though we’ve prevailed both times.” Discussing the 2016 taxes, the Commission observed:

However, the Tax Commission is mindful that this is the fourth year in a row where this Taxpayer has appealed the value and assessment of the [wells] to the Commission. Further, La. R.S 47:2134 neither expressly precludes a taxpayer’s right to challenge the correctness of an assessment, nor does it contemplate a situation where a taxpayer has appealed the same assessment four years in a row. On each of these appeals, the Commission has corrected the Assessor’s valuation and assessment.

Although the Commission considered these facts, it is the statutory law that ultimately governs. Louisiana Revised Statutes 47:2134(B)(1), in pertinent part, provides: “A taxpayer challenging the correctness of an assessment under . . . R.S. 47:1998 shall timely pay the disputed amount of tax due under protest to the officer or officers designated by law for the collection of this tax.” Louisiana Revised Statutes 47:1998, in relevant part, provides:

A. (1)(a) Any taxpayer or bona fide representative of an affected tax-recipient body in the state dissatisfied with the final determination of the Louisiana Tax Commission . . . shall have the right to institute suit . . . in the district court . . . contesting the correctness of assessment.

. . .

- (2) Any taxpayer who has filed suit under this provision and whose taxes have become due shall pay such taxes under protest . . .

Reading these statutes together, payment under protest is required before institution of suit, not for taxpayers who are successful before the Commission. Here, the Assessor, not D90, filed suit in district court to challenge the Commission's valuation. Payment under protest is tethered to judicial review of the Commission's decision, and there is no corresponding statute or commission rule requiring such payment to receive Board or Commission review. The Assessor's judicial challenge under Louisiana Revised Statutes 47:1998 did not create an obligation for D90 to protest a tax it agreed with. If the legislature intended for the taxpayer to pay under protest to obtain review of an assessment at each level of review, it could say that. It has not. We reverse the court of appeal's grant of the exception of no right of action for tax years 2015 and 2016.

CONCLUSION

We reverse the judgment of the court of appeal and reinstate the district court's judgment affirming the decisions of the Commission.

COURT OF APPEAL JUDGMENT REVERSED; DISTRICT COURT JUDGMENT REINSTATED.