

2000

# William W. Hammett v. The Utah State Tax Commission : Brief of Appellant

Utah Supreme Court

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Unknown.

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IN THE SUPREME COURT OF THE STATE OF UTAH

William W. Hemmett,  
Plaintiff,

vs

CASE No. 14067

The Utah State Tax  
Commission, Defendant.

PLAINTIFFS BRIEF

Appeal from the decision of the Utah State Tax Commission

Michael L. Deamer  
Attorney for Defendant

FILED

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

William W. Hammett, :  
Plaintiff,

vs :

CASE no 14067

The Utah State Tax :  
Commission, Defendant.

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PLAINTIFFS BRIEF

Appeal from the decision of the Utah State Tax Commission.

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## STATEMENT OF THE NATURE OF THE CASE

The State Tax Commission has ruled that the business operated by plaintiff and his wife is not a partnership "under Utah law" and because of that ruling denied plaintiff's wife the right to claim her fair share of the profits of that business for tax reporting purposes.

The Commission has rejected the fact that Mrs. Hammett did, in fact, earn her share of the income and is entitled to claim such income regardless of whether a partnership did or did not exist.

RELIEF SOUGHT ON APPEAL

It is respectively requested that Utah State Tax Commission Decision 289 as decreed that plaintiff pay "assessed deficiencies of \$39.90 for 1970, \$120.09 for 1971, and \$120.45 for 1972", be voided and that the State Tax Commission be directed to return to plaintiff the above indicated amount of money along with other penalties and assessments as may have been collected.

### STATEMENT OF FACTS

1. Barbara R. and William W. Hammett operate a business known as Hammetts Agency. Both parties work full time in such business. Although the Tax Commission agrees that Mrs. Hammett performs work in the business, it will not permit her to claim any part of the income therefrom.
2. The Tax Commission in sitting in judgement on this case was placed in a situation of possible conflict as they are also supervisors of the Department.
3. Evidence favorable to the plaintiff was simply rejected.
4. A majority of the Tax Commissioners were not present for the entire hearing.

## ARGUMENT

POINT I. Mrs. Barbara R. Hammett did in fact perform work within the business known as Hammetts Agency. That she is a citizen of the United States and is entitled to compensation for work performed. That marriage is not a condition of servitude, as implied by one Commissioner (page 24), but rather, in this case, a basis for a voluntary business association. State Tax Commission Decision 289 (page 77) states that "business conducted by himself and wife" implies that the Commission agreed that Mrs. Hammett participated in the business. This is further noted on page 27 where Commissioner Taylor states "we can grant that they worked together. I think that is plain" and on page 59 where the Assistant Attorney General states that possibly there should be some allowance made as a wage to Mrs. Hammett.

POINT II. The dual interest of the Commission is evidenced by Mr. Fordham's defensive questioning of Mr. Christensen on pages 11 and 12.

POINT III. Evidence presented to substantiate plaintiff's case rejected. Example of this was statement based on personnel records of a county agency (page 21) indicating that Mrs. Hammett resigned from previous job to work in own business. Also reference Mr. Taylor's comment on page 22, line 20.

POINT IV. Commissioner Yorgason arrived late at the hearing (noted on page 13) and Mr. Taylor departed shortly after indicating that he was not interested in hearing evidence (page 26). Mr. Taylor's departure was not recorded but he did leave the room.



## CONCLUSION

It is respectfully submitted that Decision 289 of the Utah State Tax Commission is inconsistent with the facts and should be overruled.