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Utah State Tax Commission v. E. Ray Christensen : Brief of Defendant-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

UTAH STATE TAX COMMISSION,)
)
Defendant-Appellant,)
)
vs.)
)
E. RAY CHRISTENSEN,)
)
Plaintiff-Respondent.)

Case No. 15666

BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM THE THIRD DISTRICT COURT

STATE OF UTAH

TAX DIVISION

Honorable Stewart M. Hanson, Jr. Presiding.

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BRIEF OF DEFENDANT-APPELLANT

NATURE OF THE CASE

The Defendant-Appellant, Utah State Tax Commission, appeals from a decision of the Tax Division of the Third Judicial District Court, State of Utah, setting aside the Commission deficiency assessment which resulted from a disallowance of certain deductions from state taxable income.

DISPOSITION IN COURT BELOW

A formal hearing of this matter was held before the State Tax Commission on the 23rd day of May, 1977. The Commission entered its Findings of Fact, Conclusions of Law and Decision on the 26th day of July, 1977 wherein Plaintiff-Respondent's retirement income deduction was limited to \$4,800 and a deduction above that amount of \$2,544.49 was disallowed.

Plaintiff-Respondent, thereafter petitioned for Review of the matter in the Tax Division of the Third District Court, State of Utah. Judge Stewart M. Hanson, Jr. reversed the

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Commission Decision and concluded that all of Respondent's Utah State Retirement income was exempt from any state tax.

Defendant-Appellant thereafter filed this appeal.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the tax court decision and an order requiring the Tax Commission decision of deficiency assessment to be reinstated.

STATEMENT OF THE FACTS

The case below was tried on stipulated facts as follows:

1. The disputed Utah income tax involves the taxable calendar year of 1975.
2. The taxpayer, on his 1975 State of Utah Individual Income Tax Return had interest income of \$5,909.01 plus \$2,544.49 of income from the Utah State Retirement Fund. On his tax return, Mr. Christensen claimed that \$4,800.00 of the interest income was exempt pursuant to Section 59-14A-13(b) (3) (g), Utah Code Annotated, 1953, as amended, and further claimed that the \$2,544.49 of State Retirement was exempt by the provisions of Sections 49-1-28 and 49-10-47, Utah Code Annotated, 1953, as amended.
3. The Auditing Division of the State Tax Commission recomputed the taxpayer's Utah income tax due and increased the tax by \$201.57 after disallowing the \$2,544.49 retirement income deduction claimed by the taxpayer which was in excess

of the \$4800 maximum deduction provided by Utah Code Ann., §59-14A-13(b) (3) (g) .

4. The taxpayer timely petitioned the Commission for a hearing on the petition and a redetermination of the tax due.

5. The taxpayer received an informal hearing based on his petition wherein the Commission sustained the audit of the Auditing Division.

6. The taxpayer timely submitted a request for a formal hearing which was granted and was then heard on the above-mentioned date.

7. At the formal hearing counsel for the taxpayer and the Tax Commission verbally stipulated to the above-stated facts.

POINT I

THE UTAH INDIVIDUAL INCOME TAX ACT OF
1973 LIMITS THE AMOUNT OF RETIREMENT
INCOME FREE FROM TAXATION TO A MAXIMUM
OF \$4,800.

Section 59-14A-11, U.C.A. 1953, defines "state taxable income" in the case of a resident individual as his "federal taxable income (as defined by Section 59-14A-10) with the modifications, subtractions and adjustments provided in Section 59-14A-13 . . . "

Section 59-14A-10 in turn defines "federal taxable income" as "taxable income as defined in subsections (a) and (b), Section 63, Internal Revenue Code."

Turning to Section 63 of the Internal Revenue Code, hereinafter, "I.R.C.", as it read in the tax year applicable in the instant case we find:

Sec. 63. Taxable Income Defined.

a. General Rule.--Except as provided in subsection (b), for purposes of this subtitle the term 'taxable income' means gross income, minus the deductions allowed by this chapter, other than the standard deduction . . .

The definition of gross income referred to in Section 63, I.R.C. requires reference to Sec. 61 I.R.C. which defines gross income as follows:

Sec. 61. Gross Income Defined.

a. General Definition. --Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items;

* * *

(11) Pensions

* * *

Respondent has not pointed to any "deduction" within "this chapter" (Chapter 1--Normal Taxes and Surtaxes; I.R.C. 1954) which would allow respondent to deduct retirement income from his \$61 gross income because there is no such deduction provided for under the Internal Revenue Code.

Therefore, it can be seen that pensions are included in gross income by the Internal Revenue Code, and Utah's Individual Income Tax Act adopts that same income as income for the Utah Tax Return, and therefore, the only remaining avenue open for respondent to seek removal of his Utah State

Employee's Retirement income under §59.14(a) is any "modification

tions, subtractions and adjustments provided in Section 59-14A-13."

The applicable provision of Section 59-14A-13 is subparagraph 13(b)(3) which reads as follows:

(b) There shall be subtracted from federal taxable income of a resident or non-resident individual:

* * *

(3) amounts received as "retirement income" which, for the purposes of this section, shall mean

(a) pension and annuities, paid from annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2) of the Internal Revenue Code, or the United States, a state thereof or the District of Columbia,

(b) interest
(c) rent
(d) dividends

* * *

(g) for purposes of this subsection the amount of "retirement income" subtracted shall be the lesser of the amount included in federal taxable income or \$4,800 . . ." (Emphasis added).

Under the above statutory scheme, both interest and pensions are "retirement income" and are deductible to the extent that the combination of all items of retirement income does not exceed \$4800.00. The Plaintiff-Respondent in this proceeding improperly deducted in excess of \$4,800.00.

This interpretation is consistent with the apparent legislative intent inherent in permitting a retirement income deduction. The statute shows that the Legislature recognized that after a person retires it may be difficult to live on a fixed income, so some tax benefit is given by way

of the deduction for retirement income up to \$4,800.00. However, that \$4,800.00 limitation also shows that the Legislature did not intend to give an unlimited tax benefit to any person merely by reason of that person's age or employment status.

It should also be remembered that this limitation of \$4,800.00 does not mean that a retired person would pay tax on all income over \$4,800.00. Instead, all "Social Security" payments received would also be "tax free" and the person would still have personal exemptions and either itemized deductions or standard deductions available. This means that even with the Tax Commission's interpretation of the retirement income provisions, a retired married couple could easily have in excess of \$10,000.00 of income before any Utah Income Tax would be charged and even then those taxes would only begin at the lowest tax rates.

Therefore, pursuant to §§59-14A-11, 10, and 13, Utah Code Ann., the permitted subtraction of "retirement income" from gross income is limited to a maximum of \$4,800 and the Commission decision in disallowing the \$2,544.49 above that ceiling amount was mandated by legislative direction. Therefore, the Tax Court's order for redetermination of respondent's taxable income for the calendar year 1975 should be reversed.

POINT II

SECTIONS 49-1-28 and 49-10-47, U.C.A., CONFLICT WITH THE INDIVIDUAL INCOME TAX ACT OF 1973 AND ARE THEREBY EXPRESSLY SUPERSEDED.

Prior to the enactment of the Individual Income Tax Act of 1973, U.C.A., Sections 59-14A-1, et seq., Sections 49-1-28 and 49-10-47, U.C.A. exempted all retirement benefits accrued under the Public Employees' Retirement System from any state tax. Those provisions read as follows:

49-1-28. The retirement benefits accrued or accruing to any person under the provisions of this act, and the moneys and securities in the fund, are hereby exempted from any state, county or municipal tax of the state of Utah, and shall be exempt from execution and attachment and any other legal process, and shall be unassignable.

49-10-47. The benefits accrued or paid to any beneficiary of this system and the accumulated contributions and securities in the fund created by this act are hereby exempt from any state, county or municipal tax of the state of Utah.

However, when the legislature enacted the 1973 Income Tax Act it specifically repealed any conflicting provisions of the then present laws of Utah when it enacted Section 59-14A-3 which reads as follows:

"This act supersedes all conflicting provisions of Utah law in effect on the effective date hereof, to the extent of such conflict . . . "
(Emphasis added)

With the passage of Section 59-14A-13(b)(3)(g) a limit on the amount exempted under Sections 49-1-28 and 49-10-47 or Section 59-14A-13(b)(3) was placed at the lesser of \$4800

or the amount included in federal taxable income.

In characterizing the Individual Income Tax Act of 1973 as a mere palliative effort on the part of the Legislature to ease tax preparation burdens rather than as the major tax reform that this legislation imposed, the Tax Court chose to place little, if any, weight on the first objective set forth by the legislature in an effort to specify their legislative intent in passing this complete tax package. The first objective set forth by the legislature reads as follows:

The intent of the legislature in the enactment of this act, is to establish the following objectives:

(a) To impose on each resident individual, estate or trust for each taxable year a tax measured by the amount of his "taxable income" for such year, as determined for federal income tax purposes, subject to certain adjustments; . . .
U.C.A., §59-14A-2(a)

The Tax Court chose to emphasize subparagraph (c) of Section 2 wherein the palliative effect of the legislation was set forth. However, the Tax Court's observation that "the act of 1973 was purposed neither on invalidating old rights or on establishing new" flies in the face of the language of Section (a) "to impose . . . a tax measured by . . . 'taxable income' . . . for federal income tax purposes, subject to certain adjustments;" which demonstrates that the effect of this enactment was to bring about an entirely different tax scheme than that previously used. The

setting off of "taxable income" in quotations within subsection 2(a) emphasizes that taxable income after the tax years 1973 and those thereafter shall mean that income as defined within this taxing act. This is borne out by referring to Section 59-14A-4, the definitional section, subparagraph (m) which defines taxable income by directing the reader to Sections 59-14A-10 and 11, referred to above.

The foregoing observations are made by way of emphasizing that the Individual Income Tax Act of 1973 was a major tax reform designed to be a comprehensive tax package and Section 59-14A-3's repealer provisions were meant to repeal all prior enactments which would result in different tax consequences than those set forth in the 1973 act.

Because the Individual Income Tax Act of 1973 was a major tax reform intended to impose an entirely new taxing scheme on personal income, it is submitted that Section 59-14A-13(b) (3) (g) was intended to become the new taxing provision governing retirement income. As already discussed in Point I above, for tax years 1973 forward an individual resident of the State of Utah has imposed upon him a tax on his income as figured in accordance with the 1973 act. As noted, state taxable income means federal taxable income, with the modifications, subtractions and adjustments provided in Section 59-14A-13. Subparagraph (b) thereof provides for subtractions allowed from federal taxable income which has the effect of reducing income subject to state

taxation. Nowhere in the 1973 act is there any indication that taxable income as defined by the act is to be other than that already discussed.

The Tax Court concluded that Sections 49-1-28 and 49-10-47 do not contradict the provisions of Section 59-14A-13(b)(3)(g) since they are exemptions from income tax, whereas Section 59-14A-13(b)(3)(g) is a deduction, and therefore, the Tax Court said, there is no conflict. However, in this particular case, the practical effect of the deduction from gross income or an exemption from gross income has no effect or impact on taxation. A quick hypothetical will demonstrate this fact. Assume an individual has \$2,000 total income, \$1,000 of which is exempted from income. Assuming no other deductions, etc. the individual looks up the taxable amount on \$1,000 of income and pays a tax thereon. Individual B, who has \$2,000 of total income which he reports and then immediately subtracts \$1,000 of the income as an allowed deduction, leaves him with \$1,000 of income that he looks up in the tax tables and pays a tax thereon. Thus, the amount subjected to tax in each case whether an exemption or a deduction was allowed was the same regardless of the fact that an additional step was needed in reaching taxable income in the deduction hypothetical.

The Individual Income Tax Act of 1973 defines state taxable income as federal taxable income which would in the instant case include all of respondent's state retire-

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ment income. The 1973 Act uses the federal taxable income tax figures as a starting point for reaching state taxable income and continues by modifying that figure with certain enumerated modifications, subtractions and adjustments but nowhere is there any mention of a modification of the figure obtained by computing federal taxable income by any income exemptions. The only modification allowed by the legislature applicable to the respondent's claim of "tax-free" income is the deduction contained in Section 13(b)(3)(g) which as discussed above, has the same impact as an exemption on the taxability of the income involved.

It is also submitted that while the statutes do use two different words, i.e., exempt and deduction, the legislature intended them to be interchanged and did not intend for there to be any distinction in those words. This is borne out by the absence of a definition of either of those words in the Individual Income Tax Act of 1973.

The Tax Court concluded that a local public policy exists to give special treatment to public employees' retirement income which would be subverted by the Tax Commission's assertion of the repeal of the exemption statute, but the Commission submits that this same public policy, if it does exist, is promoted to the full extent intended by the legislature by the deduction from federal taxable income of up to \$4800 of retirement income. What the legislature has done is to modify its previous desire of subjecting

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none of public employees' retirement income to taxation to that of only taxing that retirement income above a certain amount.

The particular controversy does involve conflicting statutes because the 1973 act defined and set forth that a tax was to be imposed on income figured in accordance with the provisions of the act. Since the prior legislation, Sections 49-1-28 and 49-10-47, would allow an individual to compute his taxes in a manner contrary to the provisions of the 1973 act, the two provisions are in direct conflict and resort to Section 59-14A-3, *supra*, and to this state's rules of statutory construction is needed to determine the taxability of respondent's retirement income.

This court has adhered to the general rule of statutory construction that where there is a conflict between two legislative acts the latest enactment would ordinarily prevail. State v. Shondel, 22 Utah 2d 343, 453 P. 2d 146 (1969). Moreover, this becomes a firm rule when the legislature has a clearly-expressed intention to that effect State v. Shondel, *supra*. Section 59-14A-3 is such a legislatively expressed intention to have the provisions found in the 1973 income tax act supersede all prior inconsistent laws then in effect at the time the 1973 act became effective.

Another related rule of statutory construction forces us to the same result in the instant case. In

Thiokol Chemical Corporation v. Peterson, 15 Utah 2d 355,

393 P. 2d 391 (1964) the Utah Supreme Court noted that a later enactment takes precedence over a prior existing statute insofar as they are plainly inconsistent. (See also Bateman v. Board of Examiners, 7 Utah 2d 221, 322 P. 2d 381 (1958)). Applying either rule of statutory construction to the statutes in point results in the conclusion that Section 59-14A-13 modified the taxing scheme originally set forth in Sections 49-1-28 and 49-10-47 regarding the taxation of retirement income. This requires the Commission to disallow subtractions above the \$4800 limit set forth in Section 59-14A-13(b)(3)(g) in figuring a person's state taxable income.

In concluding that there is no discernible area of conflict between Sections 49-1-28 and 49-10-47 and §59-14A-13(b)(3)(g) the Tax Court made several observations. The Court observed that, "If one were to seek to simplify the preparation of the state tax return by adopting the Federal measure of 'taxable income' and at the same time exempt certain income as a matter of local public policy, which is not exempt under Federal law, one would do precisely what the legislature did here." But the Commission would make this same conclusion in support of its position that the legislature adopted this public policy rationale in §13 but saw fit to place a limit upon the amount of retirement income that was to be free from state taxation. Since the Legislature adopted §13's retirement income deduction as the

vehicle for implementing this public policy, if it had desired to treat the retirement income received under the Utah State Retirement Act in a different way, the legislature would have provided for this exemption from the definition of taxable income in the 1973 income tax act; its failure to do so can only support the conclusion that it sought to treat all retirement income in the same manner.

Further, the Tax Court, without presentation of evidence or argument on the point concluded that it was a matter of local public policy to provide special retirement income treatment for public employee retirement income in order to balance the disparity between state government and the private sector in seeking employees in the marketplace. Such an observation is not properly the subject of judicial notice because it does not meet the definition adopted by this Court regarding what may properly be the subject of judicial notice. This court in Brough v. Ute Stampede Association, Inc., 105 Utah 446, 142 P. 2d 670 (1943), upheld the trial court's taking of judicial notice of carnival noise by reciting the general rule as follows:

" . . . Courts should take notice of whatever is or ought to be generally known within the limits of their jurisdiction, for justice does not require that the courts profess to be more ignorant than the rest of mankind."

See also Rozelle v. Barnard, 72 New Mexico 182, 382 P. 2d 186 (1963). The basic premise for the Tax Court's conclusion that

Utah State Retirement Act income should be treated differently than other income is that those benefits could not of economic necessity be comparable in amount to those paid by private industry or even by the Federal Government, since the income base upon which such benefits are gauged is lower than that generally found in private or Federal employment. Appellant submits that even assuming that this policy statement was in fact true at one point in time it has ceased to be the case. It is this writer's observation that many, if not most of the state jobs covered by this Utah Retirement Act have become very appealing to potential employees due to the present pay scale, working conditions, and fringe benefits including, but not limited to the retirement benefits. In any event, if the Tax Court felt this substantive policy was dispositive in resolving the conflict between the two statutes it should have apprised counsel of both parties of this fact and allowed the introduction of evidence and/or argument that would enable the court to make a rational, factual determination as to whether in fact this premise remained true.

As another observation of the Tax Court supporting its finding of no conflict between the two retirement act provisions, the Tax Court pointed to a 1971 amendment to the judges' retirement act wherein retirement income therefrom was exempted from any state tax as being supportive of the fact that §59-14A-13(b)(3)(g) was not meant to preempt these prior income exemptions. The fact remains, however, that

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the individual income tax act of 1973 was passed two years
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after this recent exempting statute and, therefore, that statutory rules of construction noted above, coupled with Section 59-14A-3's repealer, also renders this unsupportive of the conclusion that the two retirement statutes in controversy do not conflict.

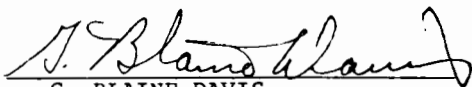
CONCLUSION

The Legislature set up a comprehensive taxing scheme in passing the Individual Income Tax Act of 1973 which set forth a new way of computing income subject to state taxation. This act sought to modify the state's previous policy of exempting all Utah state retirement income from state taxation by placing a \$4800 limit on the amount which could escape taxation. Because there were several prior exemption-type statutes on the books at the passage of the 1973 act, the legislature chose the means of having an omnibus repealer clause repealing any statute which did not cause taxation in the manner set forth within the 1973 act, rather than the cumbersome means of expressly repealing each provision in the various retirement acts which had previously exempted all retirement income. The language contained in the Individual Income Tax Act of 1973 is clear and unambiguous as to the means of computing state taxable income which may only be reduced by a maximum of \$4800 in retirement income. Sections 49-1-28 and 49-10-47 were expressly repealed by Section 59-14A-3 insofar as it conflicts with Section 59-14A-13 in that only \$4,800

of retirement income is now free from state taxation.

The Commission correctly determined respondent's Utah state taxable income by following the statutory directives found in the Individual Income Tax Act of 1973 and the Tax Court's reversal of the Tax Commission Decision should be overturned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "G. Blaine Davis", is written over a horizontal line.

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