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Utah State Tax Commission v. E. Ray Christensen : Brief of Plaintiff-Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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

Case No. 15666

BRIEF OF PLAINTIFF-RESPONDENT

APPEAL FROM THE THIRD DISTRICT COURT
STATE OF UTAH
TAX DIVISION

Honorable Stewart M. Hanson, Jr. Presiding.

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E. RAY CHRISTENSEN,)
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vs.) Case No. 15666
UTAH STATE TAX COMMISSION,)
Defendant-Appellant.)

BRIEF OF PLAINTIFF-RESPONDENT

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 a specific statutory exemption from state taxable income.

DISPOSITION IN COURT BELOW

A formal hearing of this matter was held before the State Tax Commission of May 23, 1977. The Commission entered its Findings of Fact, Conclusions of Law and Decision on the 26th day of July, 1977, wherein the Plaintiff-Respondent's retirement income deduction was allowed to the statutory limit of \$4,800.00 but the statutory exemption of State Retirement Tax on the amount of \$2,544.19 was disallowed. The Plaintiff-Respondent has not sought review of the Commission's decision.

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. presiding. Judge Hanson reversed the Commission Decision and concluded that the Respondent's Utah State Retirement income was exempt from state income tax.

The Defendant-Appellant thereafter filed this Appeal.

RELIEF SOUGHT ON APPEAL

The Defendant-Appellant Tax Commission seeks the reversal of the Tax Court Decision and an Order requiring that the Tax Commission decision of deficiency assessment be reinstated.

STATEMENT OF THE FACTS

The Plaintiff-Respondent agrees substantially with the Statement of Facts as set forth in the Defendant-Appellant's Brief, but with the following distinction regarding paragraphs 2 and 3 of the Stipulated Facts. Counsel for the Defendant-Appellant has and continues to use the terms "exempt" and "deduction" interchangeably. Regarding stipulated fact, paragraph 2, the taxpayer deducted the amount of \$4,300.00 (Exhibit 1, line 15); in addition, he claimed the Retirement pay in the amount of \$2,544.49 as exempt by reason of the provisions of 49-1-28 Utah Code Annotated, 1953 (Exhibit 1, line 16). This distinction of fact is significant to the Plaintiff-Respondent's argument. The interest income, otherwise taxable, is deductible under the statute because of the Plaintiff-Respondent's age. The Retirement income from the Public Employee's Retirement System is exempt from state taxation by reason of its source. Except for this

distinction, the Plaintiff-Respondent agrees with the statement of stipulated facts as set out in the Defendant-Appellant's brief.

POINT 1

THE UTAH INDIVIDUAL INCOME TAX ACT OF 1973 LIMITS
THE AMOUNT OF RETIREMENT INCOME FREE FROM TAXATION
TO A MAXIMUM OF \$4,800.00.

The argument of Defendant-Appellant under this point seems to assume that the Utah Individual Income Tax Act of 1973 has completely abandoned all state laws and guidelines and has embraced the federal system of taxation without qualification. It is submitted that such is not the case and that reading of the Declaration of Intent section of the act, 59-14A-2 U.C.A. 1953, indicated that the use of the federal income tax return as a measurement is "subject to certain adjustments" and "which, it is believed" will

"(1)(d) conform to the extent practicable certain of the existing rules of procedure. . . ." and "with a view to reduction of duplication of effort. . . greater consistency between state and federal procedures and administration."

(emphasis added)

In applying the definition found in paragraph 62 IRC, listing the major categories of permitted deductions, Utah State Employees Retirement Income is not listed. Of course, it is not, and for two good and valid reasons. First, the Utah statute provides that State Employees Retirement Income is exempt, not a deduction. Second, because the Federal Government is not concerned, and has no right to be concerned, with how the State of Utah treats its Retirement Income Plan with respect to its own state's taxation.

It is not strange, therefore, that the Internal Revenue Code makes no mention either of exemptions allowed under State law or any other mention of the Utah Employees Retirement Act Income.

At page 11 of its Brief, the Defendant-Appellant makes the interesting statement:

"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."

This argument would apply equally well to the terms "black and white," "up and down," or "profit or loss," since none of these terms are defined in the Income Tax Act as well. The fallacy of the Tax Commission argument is borne out by its own Form TC40, the Utah Individual Tax Return. On line 9 thereof, interest from U.S. obligations is entered and subtracted from Utah state taxable income. This is for the reason that this is exempt income and is not a deduction. Accordingly, under the Tax Commission's own interpretation and the return prepared to implement it, a retiree with \$100,000.00 in Federal Bonds and earning approximately \$8,000.00 interest income from the same, would exempt the \$8,000.00 from his Utah Income for the reason that it is in fact exempt. Assuming that this taxpayer also had \$5,000.00 in dividend income he would then deduct \$4,800.00 of his dividend income as retirement income. This should make clear the difference between exempt income and an allowable deduction.

Retirement income was declared exempt from state taxation by the provision of 49-1-28, Public Employees Act, which provided:

"the retirement benefits accrued or accruing under the provisions of this act, . . . are hereby exempted from any state, county or municipal tax of the State of Utah," (emphasis added)

This provision was reasserted in the Utah State Retirement Act of 1967 by Section 49-10-47 U.C.A. 1953 providing:

"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." (emphasis added)

It is significant that attempts to repeal the express exemption of Retirement Income from State Income Taxation have been decisively defeated. In the 1971 session of the Utah State Legislature, a Bill very similar to the present chapter 14A, the Individual Income Tax Act of 1973, being then Senate Bill 108, was passed, and an attempt was made in the Utah State Senate to pass corresponding acts as part of the same "Utah Individual Income Tax Package" (Exhibit 6 & 7), being Senate Bill 111 and Senate Bill 113, which would have removed the exemption accorded State Retirement Income. Both of these Bills were defeated in the Senate which led to the veto of House Bill 108 by then Governor Rampton (Exhibits 4 & 5). It would seem most significant that when a Bill had been passed by the Legislature, substantially identical to the present Utah Individual Income Tax Act that it was, nevertheless, felt necessary to attempt

to clarify the status of Retirement Income paid under the Utah State Retirement Act, which attempt led to the express retention of this exemption by the defeat of Senate Bill 111 and 113.

It would appear obvious that it was and is the legislative intent to give special consideration and inducement to qualified persons seeking careers of public service by exempting retirement income paid by the state and its subdivisions and that such treatment is not inconsistent with the general rule accorded retirement income in its general sense. The passage of Section 49-10-47 U.C.A. 1953, was intended to and did give and continues to give a preference to persons covered by the State Retirement Act.

Defendant-Appellant in its Brief at page 6 states:

"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 a person would still have personal exemptions and either itemized deductions or standard deductions available."

While it is not clear exactly what is contended for by this statement, it would seem to mean that the government of the United States has more to say about the imposition of Utah State Income Tax than does our own Legislature. It is submitted that this is not the case. In fact, historically it will be remembered that the original Social Security Act did not cover state and municipal employees, and retirement programs such as the Public Employees Retirement Act of Utah, were established to give comparable coverage with comparable exemptions to state

and municipal employees. In approximately 1952, state and municipal employees elected to be covered under the Social Security system on a voluntary basis which is the situation at the present time. However, it is common knowledge that many such groups have become disaffected with the Social Security coverage because of its rising costs and have or may elect to withdraw from its coverage. In any event, the Social Security benefits payable are exempt and for the same reason and purpose as State Retirement pay is exempt, i.e., by legislative act.

POINT II

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

The Individual Income Tax Act of 1973 U.C.A. contains an omnibus repeal provision by Section 59-14A-3 reading as follows:

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

Defendant Tax Commission takes the position that this sweeping generalization rewrites or modifies the entire Utah Code by its general reference, which might be construed to be "in conflict" even though 49-1-28 and 49-10-47 (each supra) are in express terms, have been reasserted by the Legislature, and have successfully resisted attempts at repeal. Taking the argument of the Tax Commission one step further, if this omnibus repealer has the effect claimed for it by Defendant-Appellant, does it also repeal that part of 11-14-14 U.C.A. 1953, that Utah Municipal Bond Act, which states, inter alia:

"All bonds, notes, or other evidences of indebtness issued hereunder or under any other law authorizing the issuance of such bonds, notes, or indebtedness by any county, city, town, school district, public transit district, improvement district, special service district, metropolitan water district, water conservancy district, or any other political subdivision now existing or hereafter created under the laws of Utah, and the interest thereon shall be exempt from taxation in this state, including taxation under the Individual Income Tax Laws and the corporate franchise laws of this state "

To this writer's knowledge, no attempt has been made by the Defendant Tax Commission since the passage of the Individual Income Tax Act of 1973 to tax the interest income paid on obligations of the State of Utah or its political subdivisions. This being the case, why does the repealer clause apply to retirement income but not to bond or indebtness income? Interest income payable by the state or its political subdivisions are not mentioned as deductions in the Internal Revenue Code which seems to be the criterion of the Tax Commission argument. Again, the reason is obvious: the taxation or exemption from taxation of interest income on state and municipal obligations is not a matter of Federal concern anymore than the taxation of state retirement income by the State of Utah is a Federal concern.

If the argument of the Appellant Tax Commission is carried to its logical conclusions, the state individual income tax return TC40 could consist of one line:

" _____ percent of Federal Income Tax = State Income Tax"

It is submitted that the "irreconcilable conflict" perceived by the Defendant Tax Commission in the express provisions, provisions of 49-1-28 and 49-10-47 on the one hand and the general omnibus repealer provision of 59-14A-3 on the other (each supra), simply does not exist.

It is submitted that the provisions of these acts are not in conflict and that an attempt by the Legislature to give special consideration and inducement to persons seeking careers of public service by exempting retirement income paid by the State and its subdivisions is not inconsistent with the general rule accorded retirement income in its general sense. The passage of Section 49-10-47 U.C.A. 1953 was intended to and did give and continue a preference to persons covered by the State Retirement Act. There is nothing inconsistent in an interpretation that there was no intention to remove that preference simply because all taxpayers were accorded a preferential treatment on other types of retirement income. On the contrary, a careful examination of the legislative history indicates clearly that an obvious intention to maintain the preference is the only reasonable conclusion that can be drawn from their actions.

The Utah Supreme Court has stated in *Glenn vs Ferrell*, 304 Pac 2nd 380 at page 383:

"Proper statutory construction requires that the Statutes be harmonized wherever possible, and also that significance be accorded every part of the statute."

And further, at page 383:

"Repeal by implication is not favored in the law. In order for a later enactment to take precedence over a prior one,

without expressly repealing it, there must be irreconcilable conflict which, as above indicated, does not exist here."
(emphasis added)

See also Moss vs. Board of Commissioners of Salt Lake City 261 Pac 2nd 961 at page 965 where the rule is stated:

"It is elementary that the repeal or over-riding of an existing law by implication is not favored and only occurs if the later statute is wholly irreconcilable with the former. Wherever two such statutes can stand separately, both should be given effect."

Citing therein, Sutherland Statutory Construction 3rd Edition, Sections 1913 and 5201.

The failure of the Utah Senate to pass Senate Bills 111 and 113 (removing the exemption for state retirement pay) after passing Senate Bill 108 would seem to indicate a clear intent on the part of the Legislature to retain those exemptions of retirement from state income tax. Legislative rejection of a proposed enactment or amendment, in this case Senate Bills 111 and 113, is persuasive of Legislative intent. See 73 Am Jur 2nd "Statutes" par 171, where it is stated:

"In the interpretation of a statute of doubtful import, the fact that a provision originally in a bill (in this instance a 'package') is omitted from the act as finally passed by the Legislature has been regarded as a significant factor. Thus, the rejection by the Legislature of a specific provision contained in an act as originally reported has been held most persuasive to the conclusion that the act should be

so construed as in effect to exclude that provision. . . ."

It should be noted that the retirement credit provided by 59-14A-13 (b) (3) (g) is a subtraction or deduction and is not an exemption. However, the provisions of 49-10-47 relating to retirement payments expressly exempt these amounts from taxable income. As stated above, it is the contention of Plaintiff that the exemption of retirement income by the state legislature was designed and intended to induce and encourage qualified and capable individuals to enter into governmental employment as a career. Why would it be necessary for the Legislature to pass a statute permitting a deduction of something that wasn't included or includable in the first instance? Such an interpretation verges on the preposterous. See Mertens, Law of Federal Income Taxation par 309 where it is stated:

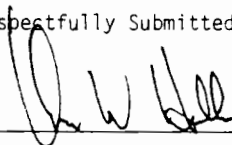
"It is frequently said that relief or remedial provisions must be liberally construed to effectuate the objectives sought. Thus the statute intended to relieve persons of hardships should be construed in favor of those who are the intended beneficiaries. One relief provision should not be construed in derogation of another relief provision in the absence of a clear congressional intent."

59-14A-3, cited above and relied upon by the State Tax Commission of Utah, makes no specific reference to exemptions of taxation and accordingly any such repeal of a specific exemption as herein provided would be by implication, which as cited above is not favored by the courts, and specifically the Supreme Court of Utah.

CONCLUSION

It is submitted that the exemption provisions of 49-10-47, exempting State Retirement Income, are not in conflict with the Individual Income Tax Act of 1973, much less "irreconcilable conflict." Further, the Senate of the Utah Legislature has indicated a strong legislative intent to retain and continue these exemptions by the defeat of Senate Bills 111 and 113 in 1971. Further, the position of the Tax Commission is clearly inconsistent in applying the omnibus repealer to State Retirement pay while not applying it to interest paid on state and municipal obligation. Accordingly, if the position of the Tax Commission has merit and is in fact the intent of the Legislature, it should be left to the Legislature to repeal the exemption by statute, and such statutory construction should not be the proper function of an appointive Tax Commission.

Respectfully Submitted



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