

1986

Interwest Aviation, Executive Air Services,
Thompson Beechcraft, Intermountain Piper, Inc., v.
County Board of Equalization of Salt Lake County,
State of Utah : Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT

STATE OF UTAH

INTERWEST AVIATION, EXECUTIVE
AIR SERVICES, THOMPSON BEECH-
CRAFT, INTERMOUNTAIN PIPER,
INC.,

Appellants,

vs.

COUNTY BOARD OF EQUALIZATION
OF SALT LAKE COUNTY, STATE OF
UTAH,

Appellee.

No. 20797

REPLY BRIEF OF APPELLANTS

APPEAL FROM THE ORDER OF THE TAX COMMISSION
OF THE STATE OF UTAH

Mark Buchi, Tax Commission Chairman

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FILED

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STATE OF UTAH

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STATEMENT OF FACT

Appellants have set out their statement of facts in their original Brief. Appellants accept Point 1 of respondent's additional facts and make the following exception to Point 2. Point 2 of respondents' statement of facts refers to subsection 11.5 of appellant Interwest's lease, entitled "Rights Upon Termination by Concessionaire." This section discusses the damages Salt Lake City must pay if it cancels the lease agreement. These liquidated damages are computed by taking the initial cost of the improvement and depreciating it by a straight-line depreciation over the term of the lease. This section also states that the "concessionaire may, at its own option, remove said hangar in lieu of accepting the depreciated value." (Page 31, Addendum "A," Appellant's Brief.)

ARGUMENT

POINT I

APPELLANTS ONLY HAVE A LEASEHOLD INTEREST IN THE IMPROVEMENTS THEY OCCUPY.

Appellants all signed leases with Salt Lake City. These leases are for real property at the airport and require the appellants to each construct various buildings. The leases include a provision discussing cancellation by Salt Lake City before their natural termination.

Section 12 of the lease deals with damage or destruction of the improvements. In the event of either of these occurrences the concessionaires, as lessors, are given

funds reflecting their initial construction investment, less a straight-line depreciation for the expired part of their lease. In the event of destruction Salt Lake City is given the balance of any insurance payments.

These lease sections indicate that the concessionaires are not owners of the improvements, but lease them. If they owned the improvements, upon destruction they should receive the total insurance payment. If the leases were cancelled, they should also be given the full value of the improvements. Instead, in each instance they only receive payments equalling their leasehold interest.

The respondent makes repeated reference to the fact that the leases state that title to the improvements will vest in Salt Lake City at the termination of the lease. Salt Lake City is titleholder to the real property at the airport. The concessionaires have title documents for their automobiles, trucks, other vehicles and aircraft that they own. However, there are no such title documents for the improvements. Therefore, the use of this term in the lease merely reflects the fact that Salt Lake City will have all possessory rights to the improvements at the termination of the lease, and that the appellants will no longer have the right to occupy them.

The case of Salt Lake County v. Tax Commission ex rel Greater Salt Lake Recreational Facilities, 596 P.2d 641 (Utah 1979), is distinguishable from the situation at hand. In that matter, a private alleged charitable organization, the Greater Salt Lake Recreational Facilities ("GRF") used a bond

sponsored by Murray City to purchase the Sports Mall. GRF held title to the realty on which the Sports Mall was located. Murray City had the option to purchase the Sports Mall, sell the Sports Mall if GRF defaulted, and at the termination of the bond transaction take full title to the realty. GRF alleged that Murray City owned the Sports Mall. On review, this court noted that GRF held title to the realty. Therefore, although Murray City had some legal interest in the realty, it did not own it. Because of this, this Court held that the privately-owned realty and improvements affixed thereto were taxable. The majority of the opinion dealt with whether the Sports Mall was a charitable facility, which is not at issue here.

In the case at hand Salt Lake City holds title to the realty. The existing improvements were constructed by each concessionaire on this city-owned realty. Pursuant to the common law, as fixtures they became part of this realty. Therefore no property tax should be applied to these improvements.

The common-law rule of fixtures, as stated in appellants' original Brief, is that fixtures become part of the realty upon which they are affixed. Concessionaires agree with the respondent's statement that an exception to this rule exists if the lessee has the right to remove the building upon termination of the lease.

Section 14 of the lease agreement deals with termination of the lease. It requires the concessionaires to

remove all their personal property from the realty and fixtures. Salt Lake City also has the option of requiring the concessionaires to raze or remove the building at their own expense. However, the concessionaires are not given the right or option to remove or otherwise occupy these buildings at the termination of the lease. Therefore, they do not come within the above exception, and the buildings are part of the realty owned by Salt Lake City.

The case of Great Salt Lake Minerals and Chemicals Corp. v. State Tax Commission, 573 P.2d 337 (Utah 1977), is also distinguishable from the case at hand. In that matter the tax commission sought to tax improvements the Great Salt Lake Minerals and Chemicals Corp. ("GCL") had constructed on state-owned land. The trial court held that the improvements were taxable. On appeal, this court noted that the improvements were not owned by the State because GCL had complete freedom to construct, alter or destroy them. The court then held that even if the state owned the improvements, that the operations of GCL should still be taxed under the privilege tax statute, U.C.A. §59-13-73. The court noted that the Utah Legislature had enacted this section to fill a tax gap, and provide a tax for businesses that operate on state-owned, tax-exempt land.

The concessionaires are relying on U.C.A. §59-13-73 as the basis for their claims that they are exempt from taxation. That statute includes a specific tax exemption for concessions that are located on public airports. Therefore,

although the legislature filled the tax gap for business operations on state-owned property, it did not intend that the appellants should be so taxed. Salt Lake County has attempted to avoid this legislative mandate by taxing the improvements the concessionaires occupy. This is improper and should be struck down by this Court.

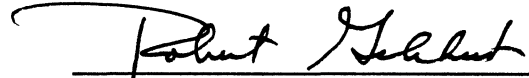
The respondents' Brief raises, for the first time, the disposition of the lease previously held by Executive Air Services, an appellant herein. The disposition of this lease was not part of the record below, as it was not reviewed by the State Tax Commission. Therefore, it is not appropriate to raise it now in this appeal. However, without waiving this objection, the concessionaires note that the Trustee's report states that the entire airport facility of Executive Air Services was sold, which included the leasehold interest and improvements. However, there is no breakdown as to the elements of the sale, including the amount paid solely for the leasehold rights. Therefore, this document does not reflect the true ownership status of the involved buildings.

CONCLUSION

Appellants request a ruling from this Court that Salt Lake County was in error in taxing the improvements they were required to construct at the Salt Lake International Airport, and that this matter be remanded to the State Tax Commission for the issuance of an order that no ad valorem or property taxes will be assessed against the improvements.

DATED this 4th day of March, 1986.

RICHARDS, BRANDT, MILLER
& NELSON



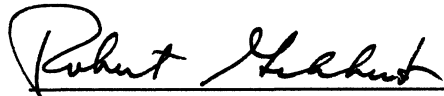
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MAILING CERTIFICATE

I HEREBY CERTIFY that ⁽⁴⁾~~x~~ true and correct copy of the foregoing instrument was mailed, first class, postage prepaid on this 4th day of March, 1986, to the following counsel of record:

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