

1987

Little America Hotel Corporation and Utah Hotel Company v. Salt Lake City : Brief of Appellant

Utah Supreme Court

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870289

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LITTLE AMERICA HOTEL)
CORPORATION, a Utah)
corporation, and UTAH HOTEL)
COMPANY, a Utah corporation,)

Plaintiffs and)
Appellants,)

Case Nos. 870259
870286

vs.)

SALT LAKE CITY, a municipal)
corporation within the State)
of Utah, et al,)

Category No. 14(b)

Defendants and)
Respondents.)

CONSOLIDATED BRIEF OF APPELLANTS LITTLE AMERICA HOTEL
CORPORATION AND UTAH HOTEL COMPANY

Appeal of Judgment of Third Judicial District Court
in and for Salt Lake County, State of Utah,
Honorable Timothy R. Hanson, District Judge.

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Company

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List of All Parties

Plaintiffs in the various actions which were consolidated for hearing in the case appealed from were Little America Hotel Corporation, Utah Hotel Company, Pearson Enterprises Partnership Company, a Utah limited partnership, Boyer-Gardner Hotel Properties Partnership, Tri-Arc Hotel Associates, and Holiday Inns, Inc. The Defendants were Salt Lake City and Ted Wilson, Salt Lake City Mayor.

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JURISDICTION AND CASE HISTORY

The Utah Supreme Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2(3)(i), as this matter is an appeal from a final judgment and order in a civil action in which the Third District Court granted defendants' motions for summary judgment and motion for protective order.

STATEMENT OF ISSUES

1. Was it error for the district court to enter summary judgment against the Hotels on their claim that the Innkeeper License Tax created an improper tax classification such that its operation is discriminatory, arbitrary and an abuse of taxing power, in violation of Utah Code Ann. § 10-8-80 and Article 1, Section 7 of the Utah Constitution?

2. Was it error for the district court to issue a protective order prohibiting discovery of the amount of taxes paid by Innkeepers to Salt Lake City on the basis that such information is irrelevant to the issues in this case?

3. Was it error for the district court to enter summary judgment against the Hotels on their claim that the Innkeeper License Tax is an illegal sales or income tax?

CONSTITUTIONS, STATUTES & RULES

United States Constitution, Amendment XIV, § 1:

****No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Constitution, Art. I, § 7:

Sect. 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Utah Code Ann. § 10-8-80 (1986):

License fees and taxes.

They may raise revenue by levying and collecting a license fee or tax on any business within the limits of the city, and regulate the same by ordinance; provided, that no Utah city or town shall collect a license fee or tax hereunder from any solicitor or salesman who solicits, obtains orders for or sells goods in such city or town solely for resale; and no enumeration of powers of cities contained in this chapter, shall be deemed to limit or restrict the general grant of authority hereby conferred. All such license fees and taxes shall be uniform in respect to the class upon which they are imposed.

Utah Code Ann. §§ 17-31-1 through 6 (1987)

Utah Code Ann. §§ 59-12-301, 302 (supp. 1987)

See Exhibit 7 of Addendum.

STATEMENT OF THE CASE

This case involves a challenge to Salt Lake City's Innkeeper License Tax (hereinafter "Innkeeper Tax"), adopted in June, 1982, which imposes a license tax of one percent of gross revenues for rental of rooms to persons for less than 30 days. (R. 5-7, 228 and Addendum, Exhibit 1.) The appellants are Little America Hotel Corporation (hereinafter "LAHCO") and Utah Hotel Company ("Hotel Utah") who will be referred to jointly herein as "Hotels". The complaints of the Hotels, which were amended and consolidated by the courts below, allege that the Innkeeper Tax imposes substantial additional tax liability on the Hotels and on the entire class subject to the Innkeeper Tax (hereinafter referred to as "Innkeepers"). It is alleged that the Innkeeper Tax adds a tax burden to Innkeepers in addition to taxes already paid by them, which would be grossly disproportionate to any municipal services and benefits received by them from Salt Lake City (hereinafter "SLC"). Hotels allege the ordinance to be unconstitutional, void, and ultra vires under the United States and Utah Constitutions and in violation of Utah Code Ann. § 10-8-80 for failing to operate uniformly all persons similarly situated. It is alleged that the Innkeeper Tax is arbitrary and discriminatory. Hotel Utah further alleges that the power to impose a gross receipts tax on Innkeepers has been statutorily delegated to the counties,

is beyond the authority of SLC, and that the tax is illegal as being a tax on income, or a sales tax. (R.939-951.) (The various amended complaints and orders of consolidation are found at R. 2-4, 19-21, 878-83, 890-902, 906-912, 939-51, 987-95, 997-98, 1113-24, 1145-57, 1160-61, 1238-52, 1292-95.)

Hotel Utah and SLC filed cross motions for summary judgment. Both SLC and LAHCO filed affidavits with regard to the motion for summary judgment. (R.137-242, R.284-380, R800-834.) Thereafter, the trial court entered its Memorandum Decision. (R.913-917 and Addendum, Exhibit 2.) The court, determining that summary judgment on most issues would be appropriate, stated:

The court finds in favor of the Defendants and against the Plaintiffs on all legal issues raised by the pleadings and Motions, together with those suggested in the supporting Memoranda, with the exception of the issue of "classification" and whether or not such a classification is arbitrary and/or discriminatory. A determination of the issue of the reasonableness of the classification under the circumstances of this case must be based on the facts as they may eventually be found by a trier of fact. (R. 915)

The Court found that the affidavits made clear that issues of fact remain for resolution at trial on the classification issue. (R.915.) Thereafter, the Court entered its Judgment on Motions for Summary Judgment, which stated:

All of the plaintiffs' claims are dismissed with prejudice, excepting only the issue of the legality of tax classification of the city ordinance subject of the within dispute and whether or not such classification is arbitrary and/or discriminatory as applied. (R.924-25.)

In order to obtain information regarding the taxes paid by Innkeepers to SLC, LAHCO subpoenaed the records of UP&L with regard to the utility franchise taxes paid by Innkeepers. It requested summary data according to a group of motels and not information as to any one customer. (R.1080-1081 and Addendum, Exhibit 3.) After a hearing, the Court entered its Memorandum Decision (R.1135-38, and Addendum, Exhibit 4), and stated:

Whether or not the benefits received by the plaintiff from the defendant bears any relationship to the taxes paid is not an issue that remains for determination. The Court's prior ruling on the defendants' Motion for Summary Judgment encompassed such a claim, and by this Memorandum any ambiguity contained in either the Memorandum decision or the subsequent Order signed by the Court is resolved. The only remaining issue is whether or not the tax classification in question is arbitrary and/or discriminatory as applied. (R.1136-37.)

Following the Memorandum Decision, the Court entered its Order Clarifying Partial Summary Judgment and Granting Protective Order, which granted a protective order against the information sought from UP&L and clarified the earlier partial

Summary Judgment ruling as stated in the Court's Memorandum decision. (R.1141-43.) Thereafter, LAHCO admitted in answers to interrogatories that it had "no evidence that the ordinance has been arbitrarily applied or discriminatorily applied, with the understanding that those terms mean that the ordinance was applied to LAHCO and not other members of the class subject to the tax imposed by the ordinance," i.e., other Innkeepers. (R.1208.) Thereafter, SLC again made Motion for Summary Judgment on all remaining issues, which was granted by the Court on July 7, 1987. (R.1296-98.)

In addition to the preceding procedural history, the following are the relevant facts as shown by the record in the court below:

1. In June, 1982, the Salt Lake City Council passed an ordinance imposing a special license tax on Innkeepers (the "Innkeeper Tax") in the amount of one percent of the gross revenue derived from rental of rooms for less than 30 days. Section 20-3-15, Salt Lake City Ordinances. (R 5-7, 228 and Addendum, Exhibit 1.) The Innkeeper Tax was first proposed at a rate of 3% of such revenues. (R.469.) License taxes for all other businesses in Salt Lake City, except public utilities, are charged at the rate of \$50.00 per place of business, plus \$5.00 per employee. (Section 20-3-2, Salt Lake City

Ordinances, R.221). All license taxes are imposed for general revenue purposes of the City. (Salt Lake City Ordinances, Section 20-3-12.3, R.224.)

2. If LAHCO were subject to the license tax rate applied to other businesses in SLC, it would pay a yearly tax of \$5,107. If the Innkeeper Tax had been imposed in 1981, it would have imposed a total tax on LAHCO of more than \$119,000. This represents a 2,300 percent increase in the license tax over the amount that would otherwise be paid by LAHCO. Had it been in effect in 1981, the Innkeeper Tax would have increased taxes paid by LAHCO to SLC for the Little America Hotel by 42% overall. (Affidavit of Merrill Norman, R.810-834, at 818 and Addendum, Exhibit 5.) The Innkeeper Tax is collected in addition to sales tax, property tax, utility franchise tax, and the 3% transient room tax already imposed by county government and paid by Innkeepers and their guests. (Id., R.817, 824.)

3. In considering the impact of the Innkeeper Tax, SLC administrative personnel compared the sales, property and franchise taxes paid by residents to sales taxes paid by visitors to the City. (Exhibit 2-J to Defendant's answers to LAHCO's First Set of Interrogatories, R.444.) However, since the purpose of the comparison is to determine the fairness of the tax on Innkeepers by considering the effect of such a tax when passed through to their guests, the taxes paid by

Innkeepers relating to these visitors' Salt Lake City residences (the Hotels and Motels) should also be considered. (Norman Affidavit, Paragraph 21, R.817.) When these figures are also included, it is apparent that taxes paid by enough LAHCO guests to account for a total of one year in the city by one person (a resident equivalent) is \$317.00, compared to \$130.00 per resident, without considering the additional taxes raised by the Innkeeper Tax. The Innkeeper Tax adds an additional \$139.00 to that tax burden. (Id.) These figures do not include the transient room tax imposed by Salt Lake County pursuant to statutory authority, which adds an additional \$418.00 per resident equivalent to the tax burden. SLC taxed Innkeepers and their guests more heavily than other businesses and residents even before the imposition of the Innkeeper Tax. (Id.)

4. As justification for the Innkeeper Tax, SLC attempted to establish that Innkeepers taxed by the ordinance (a) received the benefit of more city services and expenditures, or (b) cost the city more money than other businesses, residents, or property owners. (Affidavit of Lewis E. Miller, R.189-191; Affidavit of E.L. "Bud" Willoughby, R.199-201; and Affidavit of Peter O. Pederson, R.195-98.) SLC made no attempt to relate these factors to the amount of tax imposed. There is also evidence in the record contradictory to the statements in these affidavits.

5. In his affidavit, Police Chief Bud Willoughby expressed the opinion that the transient nature of hotel and motel guests renders them susceptible to a high degree of criminal activity. (R.200.) LAHCO, however, provides its own security force at an annual expense of nearly \$100,000, which performs police functions on the premises. (Affidavit of Glen Robbins, R.800-802.) In 1981, the police were called to LAHCO 191 times, while the total calls to the Salt Lake Police Department in 1981 were 114,380. When averaged over the total resident and work force population of LAHCO and SLC, the number of calls to police from LAHCO were fewer than that of SLC in general, per capita. (Norman Affidavit, paragraph 12 and Exhibit 1, R.814-821.)

6. The affidavit of Fire Chief Peter O. Pederson stated that the unique nature of hotels and motels imposes unusual costs on the City because they commonly are multiple-story structures and consist of high density residential accommodations. (R.196-197.) Yet the Innkeeper Tax is imposed on all Innkeepers regardless of building height. Of the total number of units subject to the tax, 59% are structures of six floors or less. (Affidavit of Sue Wolley, R.803-809, at 809.) Also, hotels in Salt Lake City account for only 11.5% of the total floor space of high-rise buildings in Salt Lake City (higher than 5 floors) and there are many more high-rise

residential apartments and condominiums than hotels. (Norman Affidavit, paragraph 8 and Exhibit 6, R.816, 826-27.) Based on population and taxes paid, LAHCO and its guests already pay for more than a proportionate share of the costs of fire protection without considering the Innkeeper Tax. (Norman Affidavit, paragraph 20, and Exhibit 7, R. 816-17, 828.)

7. In addition to the security protection it provides for itself, LAHCO also provides other services, such as garbage service, street and sidewalk cleaning which normally are performed by SLC for city residents. LAHCO has purchased garbage trucks costing more than \$90,000, has paid more than \$14,000 per year for employees to run the trucks and haul garbage, and has paid more than \$14,000 per year in landfill fees, plus \$200 per month for operating the trucks. (Affidavit of Glen Robbins, R. 800-02.)

8. SLC also opines that the Salt Lake City Airport with its recent \$80 million expansion "uniquely benefits" Innkeepers (Affidavit of Louis Miller, R. 190.) The ordinance at issue in this case, however, raises taxes for the city's general fund. The Salt Lake City Airport is run under a separate Enterprise Fund, and no money passes from the general fund (including revenues of the Innkeeper Tax) to the airport. None of the \$80 million airport expansion came from the SLC general funds. (Norman Affidavit, Paragraphs 5-10, R. 812-813.)

LAHCO was prevented from expanding the information contained in the Affidavit of Merrill Norman from LAHCO itself to encompass all Innkeepers because of the trial court's protective order ruling that any information about taxes paid or their comparison to benefits received is not a relevant factual issue.

SUMMARY OF ARGUMENT

1. A Utah city's license taxes are subject to the statutory requirement of Utah Code Ann. § 10-8-80 that they be "uniform in respect to the class upon which they are imposed" and are also subject to the equal protection requirements of the Utah Constitution's due process clause of Article I, Section 7. Prior Utah Supreme Court cases regarding the legality of license taxes subject to these requirements establish that the test of legality of a license tax is whether the class subject to the tax includes all persons similarly situated and whether the class bears a reasonable relation to the purposes to be accomplished by the tax. The application of this test requires a court to consider all circumstances under which the ordinance was enacted and would operate.

2. Facts in the record through affidavits and discovery created a genuine issue of material fact respecting whether transient visitors to SLC impose greater burdens on city

government than city residents or whether they pay less tax to SLC per resident equivalent than do SLC residents--the grounds on which SLC justified singling out Innkeepers for taxation. Despite this factual dispute, the trial court erred in granting summary judgment and ruling that the question of legality of the classification is a matter of law to be determined without regard to the factual circumstances, and that SLC may legally tax Innkeepers separately, on a different basis -- and at a much higher rate -- than other businesses, regardless of the factual circumstances involved, merely because Innkeepers can be described as a separate class.

3. The district court erred in its ruling that evidence of other taxes paid by Innkeepers to SLC is irrelevant to the issue of legality of the Innkeeper Tax, and in prohibiting discovery of that information. Because the Innkeeper Tax raises general operating revenues for SLC, the test of legality of the tax requires a consideration of whether factual circumstances show a reasonable relation between the choice to levy a special tax only on Innkeepers and the general revenue needs of SLC.

4. Although SLC characterized the Innkeeper Tax as a "license tax", it bears no functional resemblance to typical municipal license taxes. Rather than being a fixed charge assessed against someone operating a business as a precondition

to engaging in that particular business, it is measured by and assessed against particular transactions between the business and its customers--very similar in operation to a sales tax. Like an income tax, it is periodically assessed against the receipts or income of the business as distinguished from the business itself, and is collected apart from business license fees. SLC has exhausted its power to impose sales taxes through its imposition of other pre-existing levies; and SLC, like all other Utah municipalities, is not lawfully empowered to impose and collect an income tax.

ARGUMENT

I. IT WAS ERROR TO GRANT SUMMARY JUDGMENT BECAUSE OF FACTUAL ISSUES ABOUT THE REASONABLENESS OF THE SPECIAL TAX AGAINST INNKEEPERS FOR GENERAL REVENUE PURPOSES

A. The Innkeeper Tax is Illegally Discriminatory if it Unreasonably Limits the Class Taxed to Innkeepers Only. The Tax is Unreasonable if it Fails to Include Others Similarly Situated and the Class Taxed Bears no Reasonable Relation to Raising Revenue.

The most recent Utah case on point with the issues raised in this case is Continental Bank & Trust Co. v. Farmington City, 599 P.2d 1242 (Utah 1979)(hereinafter "Farmington"). In that case, this Court held that a Farmington City license tax on "amusements," which would only apply to Lagoon and possibly to the Oakridge Country Club, was invalid as being in violation of the requirements and protections of

Article I, Sections 1 and 7 of the Utah Constitution, Utah Code Ann. § 10-8-80, and the 14th Amendment to the United States Constitution. Article I, Section 7 of the Utah Constitution provides that:

No person shall be deprived of life,
liberty, or property without due process of
law.

Utah Code Ann. § 10-8-80 is the legislative grant of power to the cities to enact license tax ordinances for the purposes of regulating or raising revenue. That statute requires that:

All such license fees and taxes shall be
uniform in respect to the class upon which
they are imposed.

In Farmington, the tax imposed was 2 percent of gross revenues. Its only purpose was to produce revenue. In interpreting the above constitutional and statutory provisions, the Court noted that legislative judgment and discretion in municipal taxation is entitled to great deference. Yet the Court went on as follows:

Such deference, however, does not allow unfettered discretion. U.C.A., 1953, 10-8-80 requires that 'all such license fees and taxes shall be uniform in respect to the class upon which they are imposed.' Nor is the municipal corporation at liberty to arbitrarily define a 'class' for taxation and then claim to tax it uniformly; such an approach would not only totally emasculate the effect of the uniformity provision, but would fall wide of the constitutional requirements of equal protection and due

process. A valid classification, for statutory and constitutional purposes, must include all persons similarly situated, and must bear a reasonable relation to the purposes to be accomplished by the act.

Where some persons or transactions excluded from the operation of the law are, as to its subject matter, in no differentiable class from those included in its operation, the law is discriminatory in the sense of being arbitrary and unconstitutional.

Id., at 1245 (emphasis added).

In Farmington, this Court construed the due process protections of Article I, Section 7 of the Utah Constitution as having an equal protection aspect which prohibits arbitrary classification for tax purposes. At least this is true for taxes which are also subject to the uniformity requirements imposed by Utah Code Ann. § 10-8-80. In applying that standard to the Farmington amusement tax, this Court stated: "Whenever a class is singled out for taxation, the amount of which is unduly burdensome, the question of abuse of taxing power is raised." Id., at 1246.

Previous Utah cases have held ordinances to be unconstitutional which levied taxes on one class of taxpayers even though its members were numerous. In Weber Basin Home Builders' Association v. Roy City, 26 Utah 2d 215, 487 P.2d 866 (1971), Roy City had imposed an increase from \$12.00 to \$112.00 for a building permit fee for a single family dwelling, and argued that Utah Code Ann. § 10-8-80 authorized such a fee. In

that case, as in this one, the purpose of the ordinance was to raise revenue for the city's general fund. The Court specifically stated that the fee must be analyzed as a tax. Id., 26 Utah 2d at 217, 487 P.2d at 86. The Court stated that a license tax "cannot be imposed in any such manner as to violate constitutional principles, which include equal and nondiscriminatory treatment and protection under the law." Id., 26 Utah 2d at 218, 487 P.2d at 86.

The test to be applied was described as follows:

The critical question here is whether the ordinance in its practical operation results in an unjust discrimination by imposing a greater burden of the cost of city government on one class of persons as compared to another without any proper basis for such differentiation and classification.

Id.

Orem City v. Pyne, 16 Utah 2d 355, 401 P.2d 181 (1965), involved a criminal complaint for failure to pay Orem's business license tax, authority for which was claimed to be Utah Code Ann. § 10-8-80. The district court had found that tax to be unreasonable and discriminatory and had dismissed the complaint. This Court affirmed, referring to and adopting the opinion of the district judge, Judge Harding. The license tax in that case, just as SLC has done with its license tax on other businesses and on Innkeepers, placed some businesses on a

flat fee basis and others on a percentage of gross revenues basis. A copy of Judge Harding's decision is Exhibit 6 to the Addendum. It states at page 4:

To establish by Section 3 of the ordinance a reasonable classification of businesses generally for taxation and fix a tax rate therefore based on gross sales with certain minimum and maximum amounts, and by another section of the same ordinance exclude from the operation of Section 3, certain businesses naturally falling within its classification, and apply to such excluded businesses a tax rate on a flat annual basis that can not possibly be more than the minimum for the unexcluded businesses is unreasonable, arbitrary, and discriminatory. Such exclusion assures to the excluded businesses a concession not accorded to other businesses similarly situated.

Utah's watershed case in this field is Cache County v. Jensen, 21 Utah 207, 61 P. 303 (1900), in which a county ordinance set a license fee on those engaged in the business of sheepherding. The purpose of the ordinance was to raise revenue, not to regulate the sheep industry. Commenting that "The law abhors inequality and lack of uniformity in taxation, whether the burden be imposed by license or by levy and assessment," id., 21 Utah at 224, 61 P. at 307, this Court held the license tax on sheepherders to be illegal. The legislature had not granted counties the power to levy license taxes for revenue purposes. Further, a tax only on sheepherders was so

unequal and oppressive as to be prohibited by the Utah and United States Constitutions. On the latter issue, this Court stated:

When it is considered that such a power of taxation would be in the hands of but a few men in each county, whose actions might proceed from prejudice towards a particular business, from favoritism or animosity, or from other improper motives or influences, easy of concealment and difficult of detection, it becomes unnecessary to suggest the injustice which might be done under the cover of the power, because that becomes apparent upon a moment's reflection. Under such a power, as is contended for by counsel for the respondent, the sheep industry, or one particular industry, in some of the counties of this commonwealth, might be taxed for more than the cost of maintaining the government, to the practical exemption of all other kinds of business from contributing their share of the burden. Private rights cannot thus be arbitrarily invaded or annihilated, under the mere guise of a license. One class of citizens cannot thus be compelled to bear the burden of government, to the advantage of all other classes. The law, as we have seen, will not permit it. Neither the constitution nor the statute authorizes boards of county commissioners to enact ordinances, as in this instance, to tax the citizens arbitrarily and unjustly by license which confers no privilege that was not previously enjoyed, and which has no view to regulation.

Id., 21 Utah at 227, 61 P. at 308 (emphasis added).

These Utah cases establish that the test of the constitutionality and legality of the Innkeeper Tax at issue here, as regards the discrimination issues, is whether the

classification of Innkeepers as the only taxpayers includes all persons similarly situated, and bears a reasonable relation to the general revenue raising purposes to be accomplished by the tax.

B. The Issue of Reasonableness of Classification Involves Controverted Questions of Fact.

In Farmington, supra, the amusement license tax imposed on Lagoon was found to be unconstitutional and illegal after a trial of the facts, which brought out evidence of the history of Farmington's taxation of Lagoon, of the services provided to that business by the city, of the services and improvements Lagoon provided for itself, and of the city's needs. On appeal, "Farmington does not challenge the trial court's findings of fact. It requests that we reverse the finding of unconstitutionality and illegality 'as a matter of law'". Id., at 1244.

After setting out the test for compliance with the statutory and constitutional provisions (quoted supra at page 15), this Court stated:

The issue in the present case, then, may be reduced to an inquiry whether or not the licensing ordinance passed by Farmington and assessed against Lagoon represents such an improper classification that, its operation becomes discriminatory, arbitrary, and an abuse of the taxing power. Such an inquiry must necessarily take into consideration all circumstances under which the ordinance was enacted and under which it would operate,

since reasonableness of classification cannot be determined by reference to a few well-chosen legal generalities, and a classification which is perfectly reasonable in one context and may be patently unreasonable in another.

Id., at 1245 (emphasis added).

This Court rejected Farmington City's suggestion that the case should have been decided as a matter of law.

The holding in Farmington that the issue of reasonableness of classification involves issues of fact is supported by other Utah Supreme Court cases. In Weber Basin Home Builders Association vs. Roy City, supra, invalidating a \$100.00 increase in building permit fees, this Court looked to the facts to test the reasonableness of the classification:

Under the undisputed facts as presented to the trial court: where the basic flat-fee charge for a building permit was increased in one jump from \$12 to \$112, which increase admittedly had no relationship to increased costs of the service rendered; and more importantly, where the declared purpose was to raise general revenue for the City, it was his opinion that the increase placed a disproportionate and unfair burden on new households in Roy City, as compared to the old ones, in the maintenance of the City government; and that consequently it was discriminatory and unconstitutionally impermissible. We are not disposed to disagree with that conclusion.

Id., 26 Utah 2d at 219, 487 P.2d at 869.

This Court has also imposed a factual test of reasonableness in a similar situation. When a City imposes

connection fees for city services or subdivision fees, the test of the validity of these fees is one of reasonableness, whether the fees require newly developed properties to bear more than their equitable share of the capital costs in relation to the benefits conferred. In Banberry Development Corp. v. South Jordan City, 631 P.2d 899 (Utah 1981), this Court held that "[t]he reasonableness of the dedication or cash requirement in a particular case was a question of fact that must be resolved at trial." Id., at 901, citing Call v. City of West Jordan, 614 P.2d 1257 (Utah 1980).

It is apparent that when Utah courts apply the state constitution and statutory provisions regarding uniformity and non-discrimination to a city's revenue-raising license taxes, the issue of the reasonableness of classification is one of fact to be decided by reference to all surrounding circumstances.

It is appropriate as a policy matter, for the state constitution and law to require a reasonable basis in fact for classification, rather than asking if facts could be conceived which would justify the classification (which is the test for compliance with the 14th amendment of the U.S. Constitution). When the Utah Legislature granted power to cities to raise revenues by license taxes, it determined to protect those who

could be taxed and expressed a policy of fairness and equality in taxation. This is expressed by the uniformity requirement of Utah Code Ann. § 10-8-80. The equal protection elements of the Utah Constitution also express that policy. This Court has recognized this policy in striking down discriminatory license taxes in the cases cited above. In Farmington, the city conceived a set of facts which would justify the tax. But because no such facts could be shown to exist, the ordinance failed.

These cases are in the tradition of Utah law expressing and imposing a policy of equality and fairness in municipal taxation, well expressed in Salt Lake City v. Utah Light & Railway, 45 Utah 50, 142 P. 1067 (1914):

Uniformity and equality, so far as those elements can be attained, are always to be the aim and guide of those upon whom is conferred the authority to impose or assess taxes. When once inequality is permitted, and it is established that the burden of taxation may be unequally distributed under governmental authority, the government permitting it becomes a farce and is entirely unworthy of either our respect or support. So long as the burdens of taxation are distributed equally, they cannot well become oppressive, since they are imposed upon those constituting the community at large, and the community as a whole always possesses the power to relieve itself in one way or another. When, however, the burdens are imposed upon only a part less than the majority or a smaller fraction, the burden may easily become destructive, and, if not destructive, at least unjustly oppressive.

Equality, therefore, becomes a safeguard against, if not an absolute prevention of, excessive and oppressive taxation.

Id., 45 Utah at 63, 142 P. at 1071.

Since this is an appeal of a Summary Judgment against the Hotels, this Court will consider the record in the light most favorable to the Hotels' position, resolving all doubts in favor of the Hotels. Reagan Outdoor Advertising, Inc. v. Lundgren, 692 P.2d 776 (Utah 1984).

The Utah cases establish that the test for legality of license classification is whether there exists a reasonable basis in fact for the classification of those taxed which is related to the purpose of the tax and whether the tax applies to all those similarly situated. If this test is not met, the license tax is arbitrary and discriminatory, and therefore illegal and unconstitutional. What factual circumstances could provide a reasonable basis for levying a tax on Innkeepers only? SLC understood this issue. It introduced affidavits stating opinions that Innkeepers place unusual burdens on the city, that they do not pay enough in taxes to cover the cost of city services and the benefits provided them. With regard to classifying Innkeepers as the only taxpaying entities, however, Hotels submit that no other ground could exist which could have a reasonable relation to the object of raising revenue.

There is, at the very least, a factual question as to whether such conditions exist. The analyses performed by Merrill Norman, LAHCO's expert accountant, show that Innkeepers and their guests pay more than their fair share of the cost of city government even without paying the Innkeeper Tax. The taxes paid for each resident-equivalent of LAHCO guests amount to \$317.00 compared to the \$130.00 paid by residents. That is without including the additional burden imposed by the Innkeeper Tax in the amount of \$139 per resident equivalent per year. In addition, LAHCO and its guests draw on city services less than residents, while paying for a security force, providing garbage collection services, and street and sidewalk cleaning and maintenance, at a substantial cost. There are clearly issues of fact as to whether circumstances exist which might justify the imposition of a revenue-raising tax only on Innkeepers. The city's conclusory opinion evidence was not sufficient to preclude an investigation into these factual questions, in view of the significant countervailing evidence presented by the affidavits filed by LAHCO.

II. THE PROTECTIVE ORDER PREVENTING DISCOVERY OF TAXES PAID BY INNKEEPERS WAS AN ABUSE OF DISCRETION BECAUSE THE INFORMATION SOUGHT WAS RELEVANT TO THE ISSUE OF THE REASONABLENESS OF TAXING ONLY INNKEEPERS.

LAHCO sought by subpoena to obtain information about taxes paid by other Innkeepers to Salt Lake City. This included a subpoena to Utah Power & Light ("UP&L") for information regarding utility franchise taxes paid by Innkeepers. (Addendum, Exhibit 3) The trial court granted a protective order prohibiting LAHCO from obtaining such information, and issued its Order Clarifying Summary Judgment and Granting Protective Order, which stated that the issues remaining for determination do not include any comparison of taxes paid to benefits received. Under the test for reasonableness adopted by this Court in other cases, one issue is whether the class subject to the tax is similarly situated to those not taxed with regard to the purposes of the ordinance. The other issue is whether the class subject to the tax is related to the purpose of the ordinance. LAHCO submits that with regard to a revenue-raising tax, these issues really become one: Does the choice to tax only Innkeepers have a reasonable relation under the actual circumstances to the revenue-raising object of the ordinance? If there is a reasonable basis for taxing only Innkeepers for raising revenues, the ordinance would be valid. If there is no such reasonable basis, the ordinance is invalid.

One reason which might justify taxing only Innkeepers would be if they and their guests didn't already pay their fair share of taxes to SLC. Since other taxes paid for general revenue purposes are one of the circumstances in which the Innkeeper Tax would operate, the amount of taxes paid by the Innkeepers to SLC is relevant to determining whether, under the circumstances, the choice of taxing only Innkeepers is reasonably related to the revenue producing objective of the ordinance. This is why LAHCO and Hotel Utah believe that it was error for the district court to grant a protective order and to rule that such information is irrelevant.

A court will overturn a trial court's protective order upon a showing of abuse of discretion. Bigler v. Bigler, 482 P.2d 996 (Colo. App. 1971). The trial court's Protective Order in this case was based on a finding of irrelevancy. As this Court has held on prior occasions, "[i]n considering what is the 'subject-matter' of a lawsuit we keep in mind that the ultimate objective of any lawsuit is a determination of the dispute between the parties; . . . Whatever helps attain that objective is 'relevant' to the lawsuit" within the meaning of Rule 26, Utah Rules of Civil Procedure. Ellis v. Gilbert, 19 Utah 2d 189, 191, 429 P.2d 39, 40 (1967). Because factual issues about the reasonableness of taxing only Innkeepers exist, the amount

of taxes paid by Innkeepers is relevant and discoverable, and it was an abuse of discretion to hold that data respecting other taxes paid by Innkeepers to SLC are irrelevant.

III. CASES UPHOLDING TOURIST PROMOTION TAXES ON INNKEEPERS AND TAXES ON UTILITIES ARE DISTINGUISHABLE.

This court has previously upheld the imposition by Salt Lake County of a transient room tax on Innkeepers. See Menlove v. Salt Lake County, 18 Utah 2d 203, 418 P.2d 227 (1966) (hereinafter "Menlove"). However, Menlove and the tax upheld therein are readily distinguishable from this case.

First, the tax was expressly authorized by statute, Utah Code Ann. § 17-31-1, et seq. (1987). The proceeds of the transient room tax reviewed in Menlove were required to be used only for the purposes of establishing, financing and promoting recreational, tourist and convention bureaus. This Court noted that fact. Id., 18 Utah 2d at 205, 418 P.2d at 228. The class taxed by each enactment may be the same, but the tax imposed is very much different. For one thing, proceeds of SLC's Innkeeper Tax are not designated for a special purpose, but are used for the City's general fund. This distinction is crucial.

Part of the plaintiff's argument in Menlove was that the ordinance is invalid because the tax is levied only on a

particular group for the benefit of all businesses generally.

This court stated that this argument

is well answered in New York Rapid Transit Corporation v. City of New York. The City of New York levied an excise tax on every utility doing business in the city. The law specified that all revenues from the tax should be used solely and exclusively for the purpose of relieving the people of the city from the hardship and suffering caused by unemployment. The local law . . . was assailed under the U.S. Constitution as violative of the equal protection and due process clauses of the 14th amendment.

Id., 18 Utah 2d at 207, 418 P.2d at 229.

This Court in Menlove then included a protracted quote from New York Rapid Transit Corporation v. City of New York, 303 U.S. 573 (1937) (hereinafter "New York Rapid Transit"). This Court made no specific statement with regard to the application of the quoted provisions of New York Rapid Transit to the facts in Menlove.

But an examination of New York Rapid Transit discloses only one applicable basis for the Menlove Court's reliance on it, and that relates to the use of the tax money. In New York Rapid Transit, the ordinance was challenged on equal protection grounds. The first section of Mr. Justice Reed's opinion is devoted to showing that the classification of utilities for the purpose of applying a special tax only to utilities is

unassailable on equal protection grounds because of the unique characteristics of utilities. The heart of this section is as follows:

Since the carriers or other utilities with the right of eminent domain, the use of public property, special franchises or public contracts, have many points of distinction from other business, including relative freedom from competition, especially significant with increasing density of population and municipal expansion, these public service organizations have no valid ground by virtue of the equal protection clause to object to separate treatment related to such distinctions.

Id., at 579.

Then, in Section III, the U.S. Supreme Court addressed the Rapid Transit Corporation's assertion that the city could not adopt a tax statute for the purpose of relieving the burdens of unemployment which put the entire burden of the tax on one particular class of business. The section quoted in Menlove is this section III. The Court agreed that a classification must have a fair and substantial relation to the object of the legislation (Id., at 584) and stated that

The 'object' as used in the rule and cases referred to by the corporation is the object of the taxpaying provisions, i.e., the raising of the money. If the designation of the utilities as the only taxpayers under the legislation in question does not deny to them the equal protection of the laws, the fact that an appropriation of the funds for

relief is a part of the legislation is not significant.

Id., at 585.

The use of tax funds is irrelevant when the classification of those paying taxes is based upon a difference having a fair and substantial relation to the revenue-raising object of the tax. "There need be no relation between the class of taxpayers and the purpose of the appropriation." Id., at 585.

Does the reasoning used by the Court in New York Rapid Transit apply to Innkeepers? New York Rapid Transit is based first on the premise that utilities may be specially taxed, even for general revenues, without violating equal protection principles. In Menlove, the Utah Supreme Court doesn't discuss whether Innkeepers are subject to special taxes for general revenue purposes. That is the question in this case. But Innkeepers are very much like every other business that operates in the city, and in striking contrast to public utilities. Hotels and motels are not granted monopolies and public franchises, or the right of eminent domain. There is nothing in Menlove to suggest that Innkeepers, like public utilities, may always be separately classified and taxed for general revenues, because of the nature of their business.

In fact, this Court has specifically stated that utilities may be subject to special taxes, but only to the extent of

their monopoly. In Mountain States Telephone & Telegraph Co. vs. Salt Lake City, 596 P.2d 649, 652 (Utah 1979), a case involving a tax question, this Court stated:

At the time this Court decided Mountain States Telephone & Telegraph v. Ogden City, utility companies had no competition and therefore could be treated as a distinct class. To the limited extent that competition in the area of manufacture and sale of telephones is now permitted, plaintiff is not a 'distinct class' and cannot be treated differently from other manufacturers or suppliers of equipment.

The opinion in Menlove makes no investigation of whether there is a reasonable relation between the classification of Innkeepers and the object of raising revenues, as the U.S. Supreme Court did in New York Rapid Transit. In the absence of any discussion justifying special treatment of Innkeepers or equating Innkeepers with public utilities, it would be a gross distortion of New York Rapid Transit to say it supports a tax on Innkeepers regardless of the use of the tax.

In fact, portions of New York Rapid Transit which were quoted in Menlove continue and provided a clearly appropriate basis for upholding the tax in Menlove. After holding that "there need be no relation between the class of taxpayers and the purpose of the appropriation" (New York Rapid Transit at 585), the Court goes on to state as follows:

In some cases, the classification of taxpayers may be upheld as having a fair and substantial relation to a constitutional non-fiscal object [cites], but it is not constitutionally necessary that the classification be related to the appropriation. Id., at 587.

A reasonable relation between the entities taxed and the use of funds raised is a sufficient, but not a necessary ground for upholding a tax against the claim of violation of the 14th Amendment equal protection guarantees.

This indicates a two-step inquiry to determine whether a particular statute violates equal protection: First, look at the taxpayers singled out under the taxing statute. Is the inclusion of only those taxpayers in the class being taxed rationally related to the purpose of gathering revenue? This is a question of whether there is something economically unique about the class being taxed which is rationally related to the revenue-producing purpose. If there is no reason as a general matter to treat the class being taxed separately and uniquely, then the second question is, does the particular use of the revenues produced by the tax have some rational relation to the class of taxpayers being taxed? In New York Rapid Transit, the answer to the first question was "yes," and since utilities may

be subject to special taxes, there was no need to address the second question.

Applying this test to Menlove, the answer to the first question is "no"--there is nothing unique about Innkeepers as a general matter (especially in the absence of any evidence) which would justify taxing them separately. This would require that the second question be asked and answered to determine constitutionality. And in Menlove the answer to the second question is "yes"--there is a rational relation between Innkeepers, whose businesses derive in large part from tourists, and the use of funds to promote tourism. Although Menlove does not describe its application of the language quoted from New York Rapid Transit, an application of that test shows that New York Rapid Transit supports the Menlove decision only if the Menlove court was justifying the transient room tax because of the relation of the Innkeepers being taxed to the use of the tax money to promote recreation and tourism.

This analysis of Menlove is bolstered by the fact that it did not address any of the previous Utah cases which indicate that there must be some justification for singling out a particular business as a source for raising revenue. See Farmington, supra, Orem City v. Pyne, supra; Weber Basin Home Builders v. Roy City, supra, and discussion at pages 14-19, supra. These cases make strong statements in favor of equality

and fairness in taxation. Menlove should not be read other than to hold that there must be a reasonable basis for burdening one particular business or industry with a disproportionate amount of the costs of government.

Other states' courts, when confronted with a tax similar to the one at issue in Menlove, have upheld the tax because of a rational relation between Innkeepers and the promotion of tourism. The Kentucky Court of Appeals has overturned a local revenue tax on Innkeepers even though a prior Kentucky case had held a tax on Innkeepers for tourist promotion to be valid. In City of Lexington v. Motel Developers, Inc., 465 S.W.2d 253 (Ky. Ct. App. 1971) a 5% license tax was imposed on hotels and motels. The Kentucky Constitution, like the Utah Statute involved in this case, contains a requirement that taxes "shall be uniform." Id., at 256. The court noted that a legislature may discriminate between classes in the imposition of license taxes, but that discrimination which does not have a reasonable basis is obviously arbitrary and violates the principle of equality and uniformity set forth in the Kentucky Constitution. Id., at 257. The court further stated as follows:

Running through the foregoing cases (finding classification unreasonable) is the principle that a legislative body may not, without some rational basis, select a certain type of business enterprise and

impose upon it a substantially heavier tax than that imposed upon other businesses which fall within the same general classification. Id., at 257. (emphasis added)

The Kentucky Court could find no reasonable basis which would justify the tax in that case, although the city contended that extra services might be required by hotels. In that case, the City imposing the tax relied on a prior case upholding a transient room tax upon Innkeepers, for the purpose of financing the activities of tourist and convention commissions. The court said

The principal ground upon which we sustained the classification was that the limited purpose of the tax accorded this particular tax payer a special benefit from the utilization of the revenue realized. No such distinguishing feature appears here.

Id., at 259.

See also Dicks v. Naff, 500 S.W.2d 350, 354 (Ark. 1973).

An examination of the Menlove case and the New York Rapid Transit case on which it relied shows that those cases provide no support for SLC's position here for the reason that the tax in Menlove was upheld because of the rational relation of the transient room tax to the use of the funds for promoting convention, recreation, and tourist bureaus. Menlove is also distinguishable because it involved a question of

constitutionality under the 14th Amendment only, while the present case also raises issues under the Utah Constitution and Utah Code Ann. § 10-8-80.

IV. THE INNKEEPER TAX IS AN ILLEGAL SALES OR INCOME TAX.

At a level even more basic than the question of whether Innkeeper Tax is addressed to a legally or constitutionally inappropriate class, this tax also fails for the reason that it operates as a kind of tax that lies beyond the power of Utah municipalities to impose. Although SLC characterized the Innkeeper Tax as a "license tax", it bears no functional resemblance to typical municipal license taxes. Rather than being a fixed charge assessed against someone operating a business as a precondition to engaging in that particular business, it is measured by and assessed against particular transactions between the business and its customers--very similar in operation to a sales tax. Like an income tax, it is periodically assessed against the receipts or income of the business as distinguished from the business itself.

In 1982, SLC had already exhausted its power to impose sales taxes through its imposition of other pre-existing sales tax levies. Further, SLC--like all other Utah municipalities--is not lawfully empowered to impose and collect

an income tax. Existing transient room taxes imposed by Salt Lake County pursuant to its express authority under Utah Code Ann. § 17-31-2 (1987), now codified at § 59-12-301 (Supp. 1987). argue against any inference that the power to collect such a tax may be imputed to SLC in the absence of express legislation.

A. Measured by its Incidents, the Innkeeper Tax is an Unlawful Sales Tax, Not a License Tax.

In Utah and elsewhere, municipalities possess only the taxing powers that they have clearly and expressly been invested with by act of the state legislature. See e.g., Mountain States Telephone & Telegraph Co. v. Ogden City, 26 Utah 2d 190, 192, 487 P.2d 849, 850 (1971); Pacific First Federal Savings & Loan Ass'n v. Pierce City, 27 Wash. 2d 347, 178 P.2d 351, 354 (1947). To meet the challenge that a municipal tax ordinance is beyond the city's delegated powers, the city must demonstrate that state law expressly authorizes such taxes without ambiguity:

[O]nly a legislative act plainly and unmistakably delegating the specific power of taxation claimed will be recognized as conferring the power upon a local government entity . . . [A]ll doubts and ambiguities will be resolved against the existence of the power.

2A C. Antieau, Municipal Corporation Law § 21.01 (1982). When previously called upon to determine the extent of a city's

power to collect a specific municipal tax, this Court has given repeated expression to the principle that "statutes imposing taxes and prescribing tax procedures should generally be construed favorably to the taxpayer and strictly against the taxing authority." Builders Components Supply Co. v. Cockayne, 22 Utah 2d 172, 175, 450 P.2d 97, 99 (1969); W.F. Jensen Candy Company v. State Tax Commission, 90 Utah 359, 365, 61 P.2d 629, 632 (1936). In somewhat different context, the United States Supreme Court has similarly found it to be "elementary" that taxing measures "are to be interpreted liberally in favor of taxpayers and that words defining things to be taxed may not be extended beyond their clear import. Doubts must be resolved against the Government and in favor of taxpayers." Miller v. Standard Nut Margarine Co., 284 U.S. 498, 508 (1931)(citations omitted)(contruing federal law).

The Utah Legislature has delegated to municipalities the power to "raise revenue by levying and collecting a license fee or tax on any business within the limits of the city." Utah Code Ann. § 10-8-80 (1986). Yet a tax cannot be instantly legitimized regardless of its form by the simple device of labelling it a "license tax". As Justice Brandeis has explained for the Court in Dawson v. Kentucky Distilleries & Warehouse Co., 255 U.S. 288, 292 (1920), "the name by which the tax is described in the statute is, of course, immaterial."

Remembering that "statutes granting authority to municipalities to impose an occupation or privilege tax must be strictly construed," Coos Bay v. Aerie No. 58, Fraternal Order of Eagles, 179 Or. 83, 170 P.2d 389, 399 (1946), courts instead must independently determine the true nature of a tax from its incidents. See e.g., P. Lorillard Co. v. Seattle, 83 Wash. 2d 586, 521 P.2d 208, 210 (1974); Eugene Theatre Co. v. Eugene, 194 Or. 603, 243 P.2d 1060, 1074 (1952); Ingels v. Ley, 5 Cal. 2d 154, 53 P.2d 939, 942 (1936); Independent School Dist., Cassia County v. Pfof, 51 Idaho 240, 4 P.2d 893, 895 (1931). In determining whether a municipal tax is an authorized tax, rules of statutory construction dictate that, "where there is doubt as to whether a tax comes within such statutory designation, the doubt is to be resolved against the tax." Shulick-Taylor Co. v. Wheeling, 43 S.E.2d 54, 56 (W. Va. 1947). See Eugene Theatre Co. v. City of Eugene, 243 P.2d at 1072.

The tests to be employed to determine the true nature of a tax, as opposed to its characterization, have been variously described. The court in P. Lorrillard Co. v. Seattle, 83 Wash. 586, 521 P.2d 208 (1974), summarized the tests employed by courts in this manner:

It has been said that the incidence of a tax embraces the subject matter and the measure that is the base or yardstick by which the

tax is applied. Other cases suggest that the guideline is the "true operation and effect of the law . . . on the basis of the practical results which follow its operation," or its "incidents, and . . . the natural and legal effect of the language employed in the statute."

Id., 521 P.2d at 210 (citations omitted). Employing these standards in this case it is manifest that the so-called license tax imposed by SLC is in its legal effect, in its incident, and in reality, a sales tax promulgated and imposed in excess of the city's statutory authority. It is a license tax in name only.

Municipalities impose a license tax only if that tax possesses those attributes commonly associated with license or occupation taxes: "A license tax strictly speaking is a tax that must be paid by the party or dealer as a condition precedent to legally engaging in business and is usually incident to regulation under the police powers of the state." New Orleans v. Christian, 87 So.2d 6, 7 (La. 1956); Eugene Theatre Co. v. Eugene, 243 P.2d at 1074; Independent School Dist., Cassia County v. Pfof, 4 P.2d at 896; Cache County v. Jensen, 21 Utah 207, 218, 61 P. 303, 305 (1900) ("A mere tax imposed upon a business or occupation . . . is not a license, unless the levy confers a right or privilege as to the business which would not otherwise exist"). Similarly, an occupation tax is a tax on "the owners of businesses for the privilege of

conducting various classes of business within the boundaries of the city." Minturn v. Foster Lumber Co., Inc., 548 P.2d 1276, 1277 (Colo. 1976).

A license or occupation tax is further characterized by the fact that:

This tax is generally measured by a flat rate or by such bases as capital stock, capital surplus, number of units or capacity. Usually excluded are taxes measured directly by transactions, gross or net income, or value or property except to those to which only nominal rates apply.

Lexington v. Motel Developers, Inc., 465 S.W.2d 253, 260 (Ky. App. 1971)(Osborne, J., concurring). "[W]here a tax has all of the attributes of either a sales tax or an income tax and no real earmarks of the ancient license tax, it cannot be reasonably called a license tax. To do so only confuses the law and confounds those who must operate under it." Id. at 264.

The Innkeeper Tax possesses none of the attributes of a license tax. Hotel operators have long been subject to licensing requirements under section 15-13-1 of Salt Lake City's Ordinances. The so-called license tax imposed by the Innkeeper Tax ordinance neither replaces those prior license requirements, nor confers any new privilege on licensees. Further, this license tax does not operate as a condition precedent to engaging in the operation of a hotel or motel.

Instead, it levies a quarterly fee, assessed after the fact, against particular transactions between the businesses and their customers.

Perhaps the most striking attribute of the Innkeeper Tax which marks it as a sales tax rather than a license tax is the fact that the tax is levied not as a fixed fee but as a percentage of certain gross receipts of hotels and motels in the same fashion as a sales tax. Courts in a number of jurisdictions have held so-called license taxes, similar to the present tax in their legal effect and incidents, to be sales taxes. In Columbus v. Atlanta Cigar Co., Inc., 143 S.E.2d 416 (Ga. App. 1965), the court held that a "license tax" of 2¢ on each pack of cigarettes sold was in actuality a sales tax. The Court noted:

It is thus clear that the tax imposed by this ordinance is not a fixed license or occupation tax imposed upon one for the privilege of engaging in a business or occupation but is a sales and use tax imposed upon the individual transactions of selling, storing, or delivering cigarettes.

Id. at 418. See also Birdsong Motors, Inc. v. Tampa, 235 So.2d 318, 319 (Fla. App. 1970) (a license tax based on gross sales imposed on retail merchants was in fact a sales tax); Suzy's Bar & Grill, Inc. v. Kansas City, 580 S.W.2d 259 (Mo. 1979) (a license tax of 1% of the gross receipts of cafes was in fact a sales tax).

The Supreme Court of Alaska recently held a so-called license tax imposed upon hotel and motel rentals assessed as a percentage of the gross receipts of those businesses to be in fact a sales tax. City of Homer v. Gangl, 650 P.2d 396 (Alaska, 1982). The tax imposed by the city in Gangl was very similar to the Innkeeper Tax. In concluding that the hotel tax levied by the City of Homer was in fact a sales tax, the Alaska Supreme Court noted that:

One of the hallmarks of a sales tax is that it taxes the actual transaction involved; i.e., it is not until the sale, rental, or provision of services takes place that the tax is imposed. This distinguishes a sales tax from a license or privilege tax, which is a sum exacted for the privilege of carrying on an occupation in general, rather than any particular exercise of this privilege.

Id. at 7 (citing 2A C. Antieau, Municipal Corporation Law § 21.80).

The tax at issue in the present case does not replace prior licenses and taxes imposed on hotels and motels in Salt Lake City. SLC continues to require that hotels be licensed pursuant to section 15-13-1 of its Ordinances. This new ordinance provides only that fees paid under license tax ordinances shall be credited against fees due under this ordinance. SLC thus attempts to impose dual licensing requirements on plaintiffs. In the context of non-profit

social clubs, the Utah Supreme Court has held that Utah statutes allow a city to license and regulate business enterprises, "but it may do so only once." Salt Lake City v. Towne House Athletic Club, 18 Utah 2d 417, 421, 424 P.2d 442, 445 (1967).

It is plainly apparent that the Innkeeper Tax is a license tax in name only. Just as with a sales tax, it is imposed against certain transactions and gross receipts of businesses and, rather than being a flat fee as is common for license taxes, it varies depending on the revenues generated by those businesses. It does not supercede prior licensing ordinances of SLC because in reality the tax imposed by the ordinance is a sales tax.

Utah law allows cities to impose a sales tax of as much as 1%. Utah Code Ann. § 59-12-204 (Supp. 1987). Salt Lake City currently imposes that maximum allowable sales tax. As to plaintiffs, then, Salt Lake City by adopting this so-called license tax has in effect unlawfully more than doubled the municipal sales tax burden imposed on plaintiffs. By thinly disguising what is really a sales tax through the device of calling the imposition a license tax, Salt Lake City has attempted to evade the limitation on municipal sales taxes established by the Utah Legislature.

B. The Ordinance Creates an Impermissible Income Tax

Like an income tax, the Innkeepers Tax is imposed directly on the revenues of the business rather than on the operator of the business, as would be expected of a license tax. See Eugene Theatre Co. v. Eugene, 243 P.2d at 1071. Like an income tax, the revenue produced by the Salt Lake City tax fluctuates with the income of the taxpayer. The fact that this tax may be assessed only against some of the sources of income of the businesses taxed is irrelevant for the purposes of characterizing the tax as an income tax. While Davis v. Ogden City, 117 Utah 315, 215 P.2d 616 (1950), comments that "[a]n occupation tax does not become an income tax because the amount levied is based upon gross income," (215 P.2d at 624), that case involved an ordinance requiring that "any person who engages in business" in Ogden "must obtain a 'Business License,'" the fee for which was graduated according to gross receipts of the business--i.e., a bona fide business license ordinance. The SLC Innkeeper Tax ordinance requires no license, it simply assesses a tax computed upon the income of a particular class of business--a discrimination considered unacceptable by the Davis court. Id., 117 Utah at 326-27, 215 P.2d at 621-22.

More recent cases from courts considering the question have abandoned such artificial distinctions. The Colorado Supreme Court has noted, in finding a so-called license tax to be in reality an income tax, "that gross income and net income taxes are both 'income taxes' and that 'their difference is a matter of degree.'" Minturn v. Foster Lumber Co., Inc., 548 P.2d 1276, 1278 (Colo. 1976).

In concluding that a 2% fee levied against the gross revenues of construction and building materials businesses was an income tax, the court in Minturn reasoned:

The clear inference is that an income tax, whether net or gross, bears a direct relation to the income or receipts of a business. An occupation tax bears no such relationship. The latter is a tax upon the very privilege of doing business, and does not fluctuate from month to month depending upon the financial success or sales of the enterprise.

Id. at 1278. This conclusion was subsequently reaffirmed by the Colorado court in Mountain States Telephone & Telegraph Co. v. Colorado Springs, 572 P.2d 834, 835 (Colo. 1977), which held that a municipal tax of 3% of utilities' gross revenues "not a tax on the privilege of doing business, but rather is an income tax." To maintain that this tax is a license tax which SLC is authorized to impose exalts form over substance by ignoring the actual effect of the tax.

C. Specific Legislative Treatment of Transient Room Tax
Issues Defeats Any Inference of Municipal Power to Tax.

Any inference that SLC has been granted the power to impose the Innkeeper Tax by the general language of statutes such as Utah Code Ann. § 10-8-80 is dispelled upon further consideration of other Utah statutes specifically addressing the transient room tax issue. Where the Utah Legislature has perceived a purpose that may properly be served by imposition of a local transient room tax upon Innkeepers, it has expressly granted the power to do so. Utah Code Ann. § 59-12-301 (Supp. 1987) unequivocally grants to county commissioners the power to "raise revenue by the imposition of a transient room tax." This tax may not exceed

3% of the rent for every occupancy of a suite, room, or rooms on all persons, companies, corporations, or other like and similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like and similar public accommodations.

Plainly, this statute authorizes a tax like the Innkeeper Tax, but does so only as to county governments. The statute further limits expenditure of revenues thus raised to specific visitor-related projects. See Utah Code Ann. § 17-31-1 through -6 (1987)(Addendum, Exhibit 7).

In field where the Legislature has made a deliberate, carefully drawn delegation of power, SLC now asserts a much broader authority, one wholly implied from the language of general licensing statutes. Logically, the inference to be drawn runs in the opposite direction: where the legislature has so carefully designated how and by whom a transient room tax may be imposed, the omission of others from that grant should be understood as an exclusion. See 2A Sutherland on Statutory Construction § 47.23 (4th ed. Sands 1973). A classic maxim of statutory construction reads in substance: "That which is expressed puts an end to that which is implied." See Id. at 123 n.1; cf. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733, 743 (1943) ("Expressum facit cessare tacitum").

The argument of authority by implication also runs afoul of the Legislature's treatment of transient room taxation issues with reference to cities. Rather than authorizing a tax like that imposed by counties, the Uniform Local Sales and Use Tax Act provides:

[A] city or town in which the transient room capacity equals or exceeds the permanent census population may impose a sales tax of up to 1%. . . .

Utah Code Ann. § 59-12-204(8)(a)(Supp. 1987)(emphasis added). Thus, where concern has arisen regarding an influx of visitors

as guests of Innkeepers within a city, the act establishes a specific revenue-raising mechanism for enhancing the city's general fund. This grant of authority gives not even a hint of legislative intent that cities and towns may now impose a transient room tax like that used by counties, but without the accompanying limits on use.

Remembering that "[c]ities are creatures of the legislature and can exercise no power except that granted," Mountain States Tel. & Tel. Co. v. Ogden City, 26 Utah 2d 190, 192, 487 P.2d 849, 850 (1971), a power to impose the Innkeeper Tax cannot now be conferred upon SLC by mere inference.

CONCLUSION

Because the trial court's award of summary judgment to SLC was in error, and because the trial court's protective order prohibiting discovery of taxes paid by Innkeepers to Salt Lake City was an abuse of discretion, appellant Hotels respectfully request that the summary judgment granted by the trial court on the issues of the legality of the classification of Innkeepers as the only class subject to the Innkeeper Tax be vacated and this case remanded to the trial court for a trial on these issues. Further, because it was an abuse of discretion to

prohibit discovery of the taxes paid by Innkeepers to SLC, appellant Hotels request that the trial court's protective order prohibiting discovery of such information be vacated and that the trial court be instructed upon remand to allow discovery of relevant facutal information.

Should this Court determine the Innkeeper Tax to be an unlawful sales or income tax, the district court's judgment should be reversed, and judgment should be entered in favor of the Hotels.

DATED: December 22, 1987.

RICHARDS, BIRD & KUMP
Lon Rodney Kump
David J. Bird

By: David J. Bird
Attorneys for Little America
Hotel Corporation

CALLISTER, DUNCAN & NEBEKER
Dorothy C. Pleshe
Russell C. Kearl

By: Russell C. Kearl
Attorneys for Utah Hotel
Company

CDN0712K

CERTIFICATE OF MAILING

I hereby certify that four (4) true and correct copies of the foregoing BRIEF OF APPELLANTS LITTLE AMERICA HOTEL CORPORATION AND UTAH HOTEL COMPANY were mailed, postage fully prepaid, this 22^d day of December, 1987, to the following:

Roger F. Cutler, Esq.
Salt Lake City Attorney
324 South State Street, #500
Salt Lake City, Utah 84111

Russell C. Fenn

CDN0712K

ADDENDUM

EXHIBIT 1

SALT LAKE CITY ORDINANCE
No. 40 of 1982
(Innkeeper License Taxes)

AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 20 OF THE REVISED ORDINANCES OF SALT LAKE CITY, UTAH, 1965, BY ADDING A NEW SECTION 15 RELATING TO INNKEEPER LICENSE TAX.

Be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. That Chapter 3 of Title 20 of the Revised Ordinances of Salt Lake City, Utah, be, and the same hereby is amended by ADDING a new Section 15 thereto to read as follows:

Sec. 20-3-15. Innkeeper license tax.

(1) There is hereby levied upon the business of every person, company, corporation, or other like and similar persons, groups or organizations, doing business in Salt Lake City, Utah, as motor courts, motels, hotels, inns or like and similar public accommodations, an annual license tax equal to one percent (1%) of the gross revenue derived from the rent for each and every occupancy of a suite, room or rooms, for a period of less than thirty (30) days.

(2) For purposes of this section, gross receipts shall be computed upon the base room rental rate. There shall be excluded from the gross revenue, by which this tax is measured:

(a) The amount of any sales or use tax imposed by the State of Utah or by any other governmental agency upon a retailer or consumer;

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(b) The amount of any transient room tax levied under authority of Chapter 31 of Title 17, Utah Code Annotated, 1953, as amended;

(c) Receipts from the sale or service charge for any food, beverage or room service charges in conjunction with the occupancy of the suite, room or rooms, not included in the base room rate; and

(d) Charges made for supplying telephone service, gas or electrical energy service, not included in the base room rate.

(3) Any person or business entity subject to the payment of taxes provided under subsection (1) of this section, shall be entitled to credit against the amount of taxes due thereunder, the amount of license taxes due the City under Sections 20-3-2 and 20-15-3 of these ordinances.

(4) The tax imposed by this section shall be due and payable to the City Treasurer quarterly on or before the thirtieth day of the month next succeeding each calendar quarterly period, the first of such quarterly periods being the period commencing with the first day of July, 1982. Every person or business taxed hereunder shall on or before the thirtieth day of the month next succeeding each calendar quarterly period, file with the License Division a report of its gross revenue for the preceding quarterly period. The report shall be accompanied by a remittance of the amount of tax due for the period covered by the

report.

The City may contract with the state tax commission to perform all functions incident to the administration and operation of this ordinance.

SECTION 2. This ordinance shall become effective July 1, 1982. No tax shall be due or accrue under this enactment prior to such effective date.

Passed by the City Council of Salt Lake City, Utah,
this 8th day of June, 1982.


CHAIRMAN

ATTEST:


CITY RECORDER

Transmitted to Mayor on June 15, 1982

Mayor's Action: June 15, 1982


MAYOR

ATTEST:


CITY RECORDER

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(S E A L)
BILL 40 of 1982.
Published

82-000479

EXHIBIT 2

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

NOV 30 1983

H. B. Connelley, Clerk of Dist. Court
[Signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LITTLE AMERICA HOTEL
CORPORATION, a Utah
corporation, et al.,

Plaintiffs,

vs.

SALT LAKE CITY, et al.,

Defendants.

:
:
:
:
:
:

MEMORANDUM DECISION

CIVIL NO. C-82-5220

This matter comes before the Court on cross Motions for Summary Judgment between the various plaintiffs and the defendants. Also before the Court are cross Motions to Strike all or portions of affidavits filed by the respective parties in support of or in opposition to the Motions for Summary Judgment. This matter was extensively briefed and argued by the parties' respective counsel. Following argument, the Court took the matter under advisement and has now considered further the oral arguments made by counsel for the respective parties, the exhaustive Memoranda submitted by all parties, reviewed the cases cited by the parties, and has conducted further independent research on the questions and issues raised.

The Court is now fully advised on the issues, and therefore enters the following Memorandum Decision.

The Court declines to deal individually or in depth with the multitude of legal issues raised by the various parties, inasmuch as the legal Memoranda of the respective parties accomplish that task in an extremely adequate fashion, and to restate those legal arguments here would only tend to unduly lengthen this Memorandum Decision.

With regard to some of the issues raised by the parties, the Court is satisfied that the application of proper law and proper legal analysis allows this Court to make disposition of those issues as a matter of law. Other issues, however, necessarily encompass disputed material issues of fact that under the rules applicable to motions for summary judgment, prohibit determination as a matter of law, and require full resolution of those contested issues of fact by a trier of fact.

The Court is of the opinion that the affidavits to which objections have been raised, should be allowed, for purposes of these Motions, at least for determination as to the weight to be given to the statements offered by the various affiants. The Court is mindful of the potential foundational difficulties that exist in some or all of the affidavits, and has considered those potential foundational problems in determining the weight

to be given to the respective affidavits. The cross Motions to Strike affidavits (referred to by the defendant as "Objections") are denied. The Court has considered the affidavits in light of the above standards and even giving the appropriate weight to the affidavits, the affidavits lead this Court to the inescapable conclusion that a portion of the issues raised in the respective Motions for Summary Judgment contain material questions of fact prohibiting disposition of this case as a matter of law.

The Court concludes, based upon the undisputed facts or upon those facts where no "substantial" disputed facts exist, and upon application of the legal authorities urged by the defendants, which the Court accepts as proper and appropriate under the circumstances of this case, that Summary Judgment in part as suggested above, is appropriate. The Court finds in favor of the defendants and against the plaintiffs on all legal issues raised by the pleadings and Motions, together with those suggested in the supporting Memoranda, with the exception of the issue of "classification" and whether or not such a classification is arbitrary and/or discriminatory. A determination of the issue of the reasonableness of the classification under the circumstances of this case must be based on the facts as they may eventually be found by a trier of fact. The affidavits, considered in the light set out above, make clear that contested issues of fact remain for ultimate resolution at trial on the classification issue.

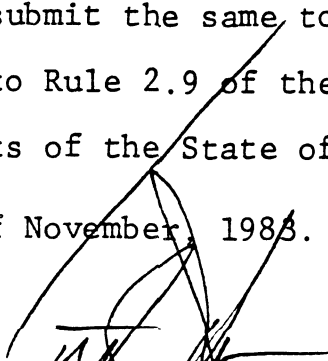
The legal authorities and positions urged by the plaintiffs regarding the validity of the defendant Salt Lake City's ordinance other than the "classification" issue are not, in the Court's judgment well taken or are otherwise not applicable in this case.

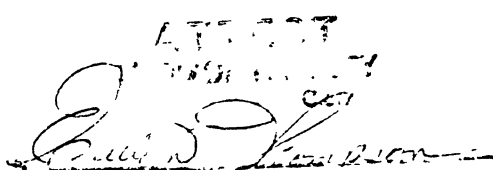
While the plaintiffs attempt to raise fact questions in some limited areas in their Reply Memorandum, for example: interference with interstate commerce, there exists no "genuine issue of material fact" so as to prohibit Summary Judgment on those issues.

Accordingly, the Motions of the respective plaintiffs for Summary Judgment are denied. The Motion for Summary Judgment of the defendants is granted in part and denied in part in conformance with this Memorandum Decision.

Counsel for the defendant is requested to prepare an Order reflecting the foregoing, and submit the same to the Court for review and signature pursuant to Rule 2.9 of the Rules of Practice for the District Courts of the State of Utah.

Dated this 30 day of November, 1988.


TIMOTHY R. HANSON
DISTRICT JUDGE


KELLY D. PETERSON
Clerk

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of
the foregoing Memorandum Decision, postage prepaid, to the
following, this 30 day of November, 1983:

Lon Rodney Kump
Attorney for Plaintiff
333 East Fourth South
Salt Lake City, Utah 84111

Kent M. Winterholler
James M. Elegante
Attorneys for Plaintiffs Pearson
Enterprises, Boyer-Gardner Hotel
Properties, Tri-Arc Hotel Associates,
and Holiday Inns, Inc.
185 South State Street
P. O. Box 11898
Salt Lake City, Utah 84147

Dorothy C. Pleshe
Attorney for Plaintiff Utah
Hotel Company
Suite 800 - Kennecott Building
Salt Lake City, Utah 84133

Roger F. Cutler
Attorney for Defendants
100 City & County Building
Salt Lake City, Utah 84111

Ernest J. Pearson

EXHIBIT 3

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

JUL 29 10 46 AM '85

H. DICKINSON, CLERK
DISTRICT COURT

BY *[Signature]* DEPUTY CLERK

*Service
Accepted - 7-27-85
Paul H. [Signature]
Att. for Utah Co.*

Lon Rodney Kump
State Bar Number 1862
David J. Bird
State Bar Number 0334
RICHARDS, BIRD & KUMP
Attorneys for Plaintiff
333 East Fourth South
Salt Lake City, Utah 84111
Telephone: 328-8987

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LITTLE AMERICA HOTEL CORPORA- :
TION, a Utah corporation, :

Plaintiff, :

v. :

SALT LAKE CITY, et al., :

Defendants. :

SUBPOENA DUCES TECUM

Civil No. C82-5220

JUDGE HANSON

THE STATE OF UTAH SENDS GREETINGS TO: UTAH POWER & LIGHT COMPANY

WE COMMAND YOU, that all singular business and excuses being laid aside you appear on August 15, 1985 at 10:00 a.m., at the offices of Richards, Bird & Kump, 333 East Fourth South, Salt Lake City, Utah 84111, and that at that time you produce and allow for inspection by plaintiff, an accurate summary of your records of the total Utility Franchise Taxes paid by the businesses identified on Exhibit "A" attached hereto and incorporate herein by reference. Please provide only the total utility franchise taxes paid for the entire group of hotels or motels identified on Exhibit "A" for each of the two fiscal years, July 1, 1981

333 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
Phone 328-8987

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to June 30, 1983 (Fiscal 1983), and July 1, 1983 to June 30, 1984 (Fiscal 1984). Please provide no data specific to any one customer. At the time and place described above, you will be deposed before a certified shorthand reporter concerning the records you are required to produce. Rather than attend the deposition and bring the records, you may, prior to the date set for your deposition, produce the records requested and provide plaintiff or its authorized representative adequately verified copies of such records. To do so, please make arrangements with plaintiff's attorney. Please be advised that plaintiff agrees to pay you the reasonable cost of production of these documents. Please make prior arrangements regarding calculation of such charges with plaintiff's attorney.

Disobedience will be punished as a contempt by the above-named Court.

WITNESS: THE HONORABLE JUDGES of the Third Judicial District Court, in and for the County of Salt Lake, State of Utah, this 11 day of July in the year of our Lord One Thousand Nine Hundred and Eighty-Five.

ATTEST, my hand and the seal of said Court the day and year last above written.

H. DIXON HINDLEY

Clerk

By

Kathy Grotapan
Deputy Clerk

EXHIBIT 4

FEB 14 1986

H. Dixon Hindley, Clerk 3rd Dist. Court
By *Julius Thompson* Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LITTLE AMERICA HOTEL	:	MEMORANDUM DECISION
CORPORATION, a Utah corporation,	:	
	:	CIVIL NO. C-82-5220
Plaintiff,	:	
	:	
vs.	:	
	:	
SALT LAKE CITY, et al.,	:	
	:	
Defendants.	:	

The matter pending before the Court in the above-referenced proceeding is the defendant Salt Lake City Corporation's Motion for a Protective Order, wherein the City seeks to relieve a third party, Utah Power and Light, from the obligation to respond to a Subpoena Duces Tecum, dated July 11, 1985, issued and served at the request of the plaintiff. The matter of the type of discovery sought by the proposed inquiry directed at Utah Power and Light has been before the Court on at least two prior occasions. On those prior occasions the Court has refused to allow the inquiry, and has granted the protective relief sought, or on the last occasion, has refused to reconsider a prior Order. At the latest hearing, all interested parties appeared and argued their respective positions. It was clear to the Court that the Court's prior rulings regarding the defendant City's Motions for Summary Judgment are not clear as to what issues remain for determination in this suit. Accordingly, the Court directed

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counsel to set forth their positions as to the breadth of the Court's prior rulings on the City's Motions for Summary Judgment regarding the remaining issues, in letter form. The parties have done that, and the Court has reviewed those materials. The Court was hopeful that the capsulized versions in the aforementioned letter briefs would allow the Court to re-evaluate the issues and resolve the questions regarding the remaining issues for trial determination without the necessity of reviewing all the prior Memoranda in the prior extensive files that led up to this Court's Order dealing with the plaintiff's Motion for Partial Summary Judgment which were denied, and the defendants' Motion for Summary Judgment which was granted in part and denied in part. Unfortunately, such was not the case, and to adequately advise itself regarding the reasons and basis, and more particularly the scope and breadth of the Court's rulings regarding remaining issues the Court has again reviewed the materials submitted in this case by all parties. Having accomplished that task, and having taken into account the arguments of the parties, the Court makes the following Memorandum Decision.

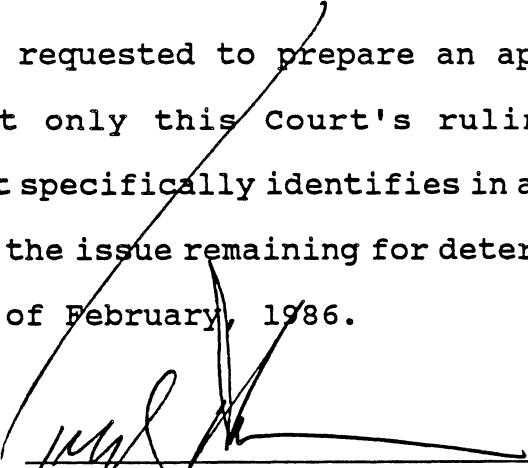
As to the position of the parties as to the scope and breadth of the Court's ruling on the defendant City's Motions for Summary Judgment, the position asserted by Salt Lake City is correct. Whether or not the benefits received by the plaintiff from the defendant bears any relationship to the taxes paid is not an

issue that remains for determination. The Court's prior rulings on the defendants' Motion for Summary Judgment encompassed such a claim, and by this Memorandum any ambiguity contained in either the Memorandum Decision or the subsequent Order signed by the Court is resolved. The only remaining issue is whether or not the tax classification in question is arbitrary and/or discriminatory as applied.

Based upon the foregoing clarification of the Court's prior Orders, the information sought from non-party Utah Power and Light to which the defendant City objects and seeks a protective order is not material nor relevant to the remaining issues, and therefore the protective order sought by the City should be granted.

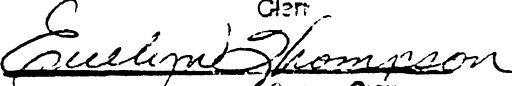
Counsel for the City is requested to prepare an appropriate Order which encompasses not only this Court's ruling on the requested protective order, but specifically identifies in accordance with the foregoing discussions the issue remaining for determination.

Dated this 13 day of February, 1986.


TIMOTHY R. HANSON
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
Clerk

By


Evelyn Thompson
Deputy Clerk

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 14 day of February, 1986:

Lon Rodney Kump
David J. Bird
Attorneys for Plaintiff
333 East 400 South
Salt Lake City, Utah 84111

Roger F. Cutler
Salt Lake City Attorney
Attorney for Defendants
100 City & County Bldg.
Salt Lake City, Utah 84111

John Fellows
800 Kennecott Bldg.
Salt Lake City, Utah 84133

Kent M. Winterholler
185 S. State Street, Suite 700
Salt Lake City, Utah 84111

Paul H. Proctor
Attorneys for Utah Power and Light
1407 W. North Temple, Suite 340
P. O. Box 899
Salt Lake City, Utah 84111

By *Quelwyn Thompson*
Deputy Clerk

001128

EXHIBIT 5

Lon Rodney Kump
David J. Bird
RICHARDS, BIRD & KUMP
Attorneys for Plaintiff
Little America Hotel Corporation
333 East Fourth South
Salt Lake City, Utah 84111
Telephone: 328-8987

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

MAR 22 4 51 PM '83

H. DIXON HINDLEY CLERK
3rd DIST. COURT

BY
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH
- - - - -

LITTLE AMERICA HOTEL)	
CORPORATION, et al.,)	AFFIDAVIT OF MERRILL R. NORMAN
)	
Plaintiffs,)	
)	
vs.)	Civil No. C 82-5220
)	
SALT LAKE CITY, et al.,)	
)	
Defendants.)	
<hr/>		

STATE OF UTAH)
 :
County of Salt Lake)

Comes now Merrill R. Norman, who having been first duly sworn upon oath,
deposes and saith as follows:

1. Fox & Company is a national partnership of certified public accountants, with its Utah office located at 36 South State Street, Salt Lake City, Utah. The affiant is a partner of said company and himself a duly licensed certified public accountant in the state of Utah.

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2. Affiant has received advance education degrees including a Bachelor of Science in Accounting, Masters of Business Administration and additional post graduate work in finance and economics. Affiant is currently the partner-in-charge of the Business Advisory Services in the Salt Lake City office which provides consulting services of various types for clients in seven western states. Affiant's experience includes financial, industrial and governmental audits, feasibility studies, utility rate regulation, investigative accounting, and general business consulting. Affiant has qualified as an expert and testified before federal and state courts, Public Service Commissions in various states, Securities and Exchange Commission, Internal Revenue Service, and a Special Presidential Commission on Funding of the Central Utah Project. Affiant has performed engagements relative to the measurement of the impact of tax limitation upon cities and towns within the state of Utah, and other municipal consulting type engagements. Affiant has provided consulting services of various types to the hotel industry including the Little America Hotel group, the Las Vegas Hilton Hotel, Cottontree Inn, etc.

3. Prior to June 1, 1982, affiant was contacted, hired and retained by Little America Hotel Corporation (LAHCO) to be an expert witness in the above-captioned litigation. Among other purposes, he was retained for the purpose of evaluating the discriminatory nature and economic impact of the proposed innkeeper license tax to be levied upon hotels, motels, inns and like or similar accommodations within Salt Lake City (SLC). Affiant has undertaken to use his expert knowledge and accounting background to evaluate those issues.

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Affiant's services and those of his firm were retained in anticipation of litigation and preparation for trial and pretrial motions. Affiant has access to all accounting and tax records of LAHCO, and has utilized such records in the development of his opinions relating to this matter.

4. Affiant has reviewed the affidavit of Louis E. Miller, Acting Director of the SLC International Airport (airport authority), filed by defendants in this case, and the financial reports of SLC Corporation, which contain financial information as to the operations of the airport authority, for the years 1979, 1980 and 1981.

5. Based on his review of the financial information and as an expert, affiant states that the airport authority is operated as an enterprise fund of SLC. As an enterprise fund, the airport is a self-supporting activity within the SLC government which renders service on a user-charge basis. The airport authority derives its revenues from sales and charges for various services provided at the airport. Operating costs, including general obligation bonds (both interest and principal), are paid for by these revenues. Historically, revenues have consistently exceeded costs, resulting in net income of \$3,211,737 in 1979, \$3,835,256 in 1980, and \$3,078,798 in 1981.

6. In addition to income generated from its principal activities, the airport authority contracts with concessionaires whose business activities generate sales tax for the general fund of SLC. As a self-supporting activity, the airport authority provides a necessary link between SLC and the outside world.

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7. Hotel and motel owners are not the sole beneficiaries of ancillary revenues originating from travelers and employees associated with the SLC International Airport. A substantial portion of local enterprise, particularly those businesses that cater to out-of-town travelers and interstate commerce, derives direct benefit. Likewise, local residents leaving SLC via the airport also benefit. The governmental sector also benefits, since the airport provides transportation means for tourists and other types of incoming travelers who generate additional tax revenues.

8. The use of a special tax on hotels and motels to attempt recovery of costs of the airport (if they were not entirely recovered from airport authority revenues) would discriminate against hotel and motel guests arriving in SLC by use of other forms of transportation (i.e., car, bus, train).

9. Defendant claims that SLC Corporation expends funds on behalf of the airport for which it is not reimbursed. Affiant is not aware of any reason why the city cannot levy fees on the airport to obtain reimbursement.

10. If there are some unreimbursed airport-related expenditures on the part of the SLC general fund, then residents and hotel/motel guests share the unreimbursed costs through existing general fund taxes i.e., sales and property. To levy taxes on hotel/motel guests only for these unreimbursed costs places a discriminatory burden on them.

11. Affiant has reviewed the affidavit of E.L. "Bud" Willoughby who claims that the "highly transient nature of SLC hotel and motel guests renders hotels and motels susceptible to a high degree of criminal activity" and that "the high degree of transiency occurring by hotel residents often makes more difficult the investigation and prosecution of criminal cases occurring within hotels."

12. Affiant is of the opinion that guests of the LAHCO and many other hotels receive proportionately fewer benefits from the SLC Police Department (SLPD) than do residents or nonhotel visitors to SLC. This is attributed to the fact that LAHCO, as well as many other hotels, provides an extensive security force on the premises for the protection of their guests. Affiant has quantified the benefits LAHCO guests derive from the SLPD by two different methods:

a. First, the yearly utilization of the SLPD by LAHCO has been measured by comparing total police calls to LAHCO to total police calls made by the SLPD (Method I, see Exhibit 1). The results show that LAHCO accounts for .001670 of all calls for 1981.

b. Second, the average acreage of the LAHCO is compared to all SLC acreage. The ratio is then multiplied by a factor to reflect the increased police protection needed in the downtown area (Method II, see Exhibit 1). LAHCO accounts for .001656 of all calls in SLC.

c. The average of these two measurements of SLPD utilization by LAHCO is .001663 (See Exhibit 1).

13. Total police department expenditures for 1979, 1980 and 1981 total \$44,479,418 (see Exhibit 3). Applying the average percentage of SLPD utilization by LAHCO, determined by the two methods, to the SLPD expenditures estimates LAHCO's cost of police services, which amounts to \$73,969 (see Exhibit 2). The same exhibit compares this cost to what was actually paid by LAHCO for the same period. Total taxes paid to SLC general fund by LAHCO for the same period total \$808,980 (see Exhibit 4). Police department expenditures as a percent of total general fund expenditures for the same period

(see Exhibit 3) equal 26.54%. Assuming a proportionate distribution of taxes paid by LAHCO, taxes paid for the operation of the SLPD for 1979 through 1981 would be \$214,703. Comparing this to the total police expenditures for LAHCO based on its utilization of total police calls reveals that for the years 1979 through 1981 LAHCO has paid excess taxes for police services of \$140,734.

14. In addition to paying more than their proportionate share of police department expenditures, guests at LAHCO pay approximately \$100,000 per year for its own security force on the premises.

15. Affiant has compared the per capita SLPD call rate to that of LAHCO. Exhibit 5 demonstrates that the call rate per capita for LAHCO guests is 39% of the overall rate for SLC.

16. LAHCO guests contribute more than their fair share of the financial burden for providing services of the SLPD.

17. Affiant has reviewed the affidavit of Peter O. Pederson, affiant for SLC, who claims that "the unique nature of hotels and motels render them susceptible to high fire risk and impose unusual costs and risks upon the City and its personnel."

18. Taxes for fire department services are paid for the availability of such services and the usage of such services. In the first instance, standard fire-fighting equipment would service all nonhigh-rise structures and would be paid for through the existing tax system. High-rises, on the other hand, require additional training and equipment to be maintained by the fire department. It is erroneous to think that hotels and motels are unique in requiring

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such support. The fire department classifies a high-rise as being taller than 75 feet (the height of their tallest ladder). Exhibit 6 identifies the buildings in SLC over five stories in height. All hotels account for 11.5% of the high rise floor space in SLC. The tallest buildings in SLC are commercial buildings, apartment buildings, condominiums, and other buildings that do not provide SLC with either sales tax revenue or the innkeeper tax revenue for rental or ownership of space. Specialized fire department service to provide protection to high-rises is not unique to the hotel/motel industry (which already pays sales tax on hotel rentals while the other building are sales-tax free as to rental or ownership costs). An additional innkeeper tax to recover costs of the fire department is certainly discriminatory.

19. The fire department also provides paramedic service. Such service is ideally suited for user fees. Ambulance fees, for example, are charged directly to users. Ambulance companies often provide both ambulance and paramedic services. By currently paying a disproportionate share of fire department costs, LAHCO already shoulders more than its share of ancillary services such as paramedic protection for its guests and staff. The desire to generate additional revenues could be more fairly satisfied by alternatives that tend to level the tax burden among all public users.

20. Affiant has allocated total fire department expenditures for 1979, 1980 and 1981 over the ratio of the population of the LAHCO to the total population of SLC (see Exhibit 7). Based on this allocation, LAHCO's proportionate fire department expenditures would be \$133,753. Taxes paid by LAHCO to the SLC general fund in the same three-year period were \$808,980. When allocated to the fire department by the department's percentage expenditure to

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total general fund expenditures, taxes paid by LAHCO for support of the fire department totals \$151,522. Accordingly, LAHCO's actual expenditures for fire protection exceed its consumptive share of service and result in a subsidy to other users in the approximate amount of \$17,769. The additional innkeeper tax increases this existing excess burden.

21. Affiant has made a comparison of the per capita taxes paid to SLC by tourists and residents (see Exhibit 9). A similar comparison was prepared by SLC officials in considering the ordinance (Exhibit 2J Plaintiff's answer to Defendant's interrogatory, #1), however, the City's comparison assumes that tourists do not pay property or franchise taxes. Hotels and motels contribute to the general fund by paying these same taxes. Hotel and motels guests pay these taxes in addition to all other costs of hotel service. Affiant has, therefore, computed for LAHCO in Exhibit 9 the per capita property taxes and franchise-business taxes paid by guests for fiscal year 1981 through room rates. This was done by equating 365 guest nights to one SLC resident for a year. In their previous study, SLC also erroneously fails to consider the transient room tax which only hotel/motel-type businesses pay. This tax is used exclusively to develop the tourist industry in the Salt Lake County area. Such tourist development benefits SLC government, businesses and residents without requiring such parties to pay similar taxes. The innkeeper tax increases this imbalance by placing additional tax burden on hotel prices.

22. Affiant is aware of changes in the assessed value of property which will cause nonresidential property to pay additional property tax. Title 59 - Revenue and Taxation, Chapter 5, Assessment of Property, Article I, General Provision, states in part, "all taxable property, not specifically exempted

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under Article XIII, Section 2, of the Constitution of Utah, must be assessed at 20% of its reasonable fair cash value; but in implementing the exemption for residential property provided for in that Section 2, residential property shall be assessed at 15% of its reasonable fair cash value."

23. The above exemption, known as Proposition I, was voted on and passed by the general public on November 2, 1982. The amendment is effective January 1, 1983. Commercial property, which includes hotels and motels but not apartment structures are being taxed at higher assessed values than residential properties. Approximately 20.8% of the property taxes paid within SLC end up in the general fund of SLC. Under the amendment, commercial property owners pay a larger percentage of the 20.8% of property taxes allocated to the SLC general fund. Of the remaining 79.2% of property tax (that portion administered by Salt Lake County), public education represent the single largest expense. Salt Lake City residents share directly in educational benefits, while hotel guests do not.


24. Affiant has computed the impact of the innkeeper tax on LAHCO assuming the tax was in effect for LAHCO's fiscal year ended June 30, 1981 (see Exhibit 10). The tax would have increased the taxes paid by LAHCO to the SLC general Fund by 42%. The first six months the tax was in effect (July 1 through December 31) LAHCO paid \$56,668.86. The business license fee (which is a credit on the innkeeper tax) actually paid in 1981 was \$5,107. The innkeeper license tax (had it been effective for all of 1981) would have totaled \$119,737.

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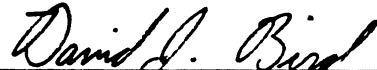
25. Overall, the tax burden borne by hotels and motels and in particular, LAHCO Corporation, exceed the tax burden borne by any other class of taxpayer. Exhibit 11 identifies the various types of taxes borne by various categories of residents or individuals residing or owning businesses within SLC boundaries. Guests at hotels and motels are subject to three additional taxes not levied on others in similar circumstances.

26. Further affiant saith naught.

Dated this 22nd day of March, 1983.


Merrill R. Norman

Subscribed and sworn to before me this 22nd day of March, 1983.


NOTARY PUBLIC
residing in Salt Lake City

My commission expires: 3-29-85

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CERTIFICATE OF SERVICE

This certifies that the foregoing Affidavit of Merrill R. Norman was served this 22nd day of March, 1983, by hand-delivering a true and correct copy hereof to Roger F. Cutler, Salt Lake City Attorney, 100 City & County Building, Salt Lake City, Utah 84111, and on James M. Elegante, PARSONS, BEHLE & LATIMER, 185 South State Street, P.O. Box 11898, Salt Lake City, Utah 84147, and on Mark Van Wagoner, GREENE, CALLISTER & NEBEKER, 800 Kennecott Building, Salt Lake City, Utah 84133.

Sue Wooley

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LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

LAHCO UTILIZATION OF POLICE DEPARTMENT

Year ended December 31, 1981

Method I: LAHCO police calls to total SLC police calls

<u>Type of call (a)</u>	<u>Total number of calls (a)</u>		<u>Percent of LAHCO to total number of calls</u>
	<u>LAHCO</u>	<u>SLC</u>	
Part I crimes	55	20,850	.002638
Part II crimes	59	45,319	.001302
Accidents (31), traffic (12), and service (34)	<u>77</u>	<u>48,211</u>	.001597
Total Method I	<u>191</u>	<u>114,380</u>	<u>.001670</u>

Method II: Police Department utilization by acreage ratio

Total square miles of LAHCO (10 acres)(b)	.015600
Total square miles of SLC(c)	<u>75.400100</u>
Ratio of LAHCO to SLC	.000207
Factor for increased police protection needed in downtown area(a)	<u>8</u>
Total Method II	<u>.001656</u>
Average Method I and II	<u>.001663</u>

Sources:

- (a) SLC Police Department - Crime Analysis Division
- (b) Based on 640 acres per square mile
- (c) SLC Fire Department - 1981 Annual Report

LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

COMPARISON OF TAXES PAID BY LAHCO FOR POLICE
PROTECTION TO BENEFITS RECEIVED

YEARS ENDED JUNE 30, 1979 THROUGH 1981

Total police department expenditures (Exhibit 3)	\$44,479,418
Portion used by LAHCO based on utilization of police department and area covered (Exhibit 1)	<u>.001663</u>
Total police department expenditures for LAHCO	<u>\$ 73,969</u>
Taxes paid by LAHCO to SLC General Fund (Exhibit 4)	\$ 808,980
Police department expenditure percentage (Exhibit 3)	<u>26.54%</u>
Taxes paid by LAHCO for the police department	<u>\$ 214,703</u>
Taxes paid by LAHCO in excess of proportionate benefit received	<u>\$ 140,734</u>

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Exhibit 3

LITTLE AMERICA HOTEL CORPORATION, et al.,

vs.

SALT LAKE CITY, et al.

SLC - GENERAL EXPENDITURES BY FUNCTION

Years ended June 30, 1979 through 1981

	City Council	Mayor	Office of Budget and Management Planning	City attorney	Personnel	Finance and admini- strative services	Fire	Police	Development services	Parks	Public works	Nondepart- mental	Total
1979	\$ -	\$ 977,607	\$ 190,412	\$ 515,018	\$ 504,333	\$ 5,664,573	\$ 8,785,195	\$13,046,859	\$1,295,530	\$ 2,962,335	\$11,315,238	\$2,327,120	\$ 47,584,220
1980	98,192	1,236,578	369,886	572,523	572,022	4,925,310	10,870,553	14,923,675	2,254,315	3,516,125	12,625,756	4,849,386	56,814,321
1981	314,419	1,171,965	609,478	698,301	647,862	5,362,992	11,741,582	16,508,884	4,606,548	4,442,040	14,472,150	2,617,475	63,193,696
1979-1981	<u>\$412,611</u>	<u>\$3,386,150</u>	<u>\$1,169,776</u>	<u>\$1,785,842</u>	<u>\$1,724,217</u>	<u>\$15,952,875</u>	<u>\$31,397,330</u>	<u>\$44,479,418</u>	<u>\$8,156,393</u>	<u>\$10,920,500</u>	<u>\$38,413,144</u>	<u>\$9,793,981</u>	<u>\$167,592,237</u>
Percentage	<u>.25%</u>	<u>2.02%</u>	<u>1.1%</u>	<u>1.06%</u>	<u>1.03%</u>	<u>9.52%</u>	<u>18.73%</u>	<u>26.54%</u>	<u>4.87%</u>	<u>6.5%</u>	<u>22.92%</u>	<u>5.84%</u>	<u>100.00%</u>

Nondepartmental and the total are decreased by \$1,577,055 of funds transferred to special assessments and capital projects.

(See SLC Corporate Annual Reports.)

2025000

LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

TAXES PAID BY LAHCO

Years ended June 30, 1979 through 1981

Fiscal year	Classification of Taxes Paid					Total
	Transient room tax	Utah income tax	Sales and use taxes	Utility franchise taxes	Property taxes (Schedule 4)	
1979	\$242,210	\$ 18,814	\$ 782,354	\$ 42,425	\$ 485,642	\$1,571,445
1980	314,657	94,680	951,551	45,359	419,935	1,826,182
1981	359,938	180,300	1,043,113	38,266	378,890	2,000,507
	<u>\$916,805</u>	<u>\$293,794</u>	<u>\$2,777,018</u>	<u>\$126,050</u>	<u>\$1,284,467</u>	<u>\$5,398,134</u>

Distribution of Taxes Paid						
alt Lake City General Fund	\$ -	\$ -	\$ 416,553	\$126,050	\$ 266,377	\$ 808,980
alt Lake City and County	-	-	-	-	1,018,090	1,018,090
tate of Utah	-	293,794	2,221,614	-	-	2,515,408
ther	916,805	-	138,851	-	-	1,055,656
	<u>\$916,805</u>	<u>\$293,794</u>	<u>\$2,777,018</u>	<u>\$126,050</u>	<u>\$1,284,467</u>	<u>\$5,398,134</u>

Source: LAHCO records

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LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

COMPARISON OF SLPD CALLS PER CAPITA

	<u>LAHCO</u>	<u>Total SLC</u>
Total number of police calls for year ended December 31, 1981 (see Exhibit 1)	191	114,380
Divided by per capita population (see Exhibit 8)	<u>÷ 990</u>	<u>÷ 232,383</u>
Per capita call rate	<u>.1929</u>	<u>.4922</u>
Percent LAHCO rate is of total SLC (.1929 - .4922)		<u>39%</u>

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LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

BUILDINGS GREATER THAN FIVE FLOORS IN SLC

	<u>Number of floors</u>	<u>Number of floors above 6</u>	<u>Rental or ownership of space is subject to Sales tax</u>	<u>Innkeepers tax</u>
OFFICE BUILDING:				
Church Office Building	30	24	NO	NO
Beneficial Tower	27	21	NO	NO
University Club	24	18	NO	NO
Commercial Security Building	20	14	NO	NO
Kennecott Building	18	12	NO	NO
County Complex	16	10	NO	NO
Mountain Bell	16	10	NO	NO
Walker Bank Building	16	10	NO	NO
Behavioral Science, U of U	14	8	NO	NO
Continental Bank	14	8	NO	NO
Deseret Building	14	8	NO	NO
Utah Retirement Systems (Wildewood Tower)	14	8	NO	NO
Boyer Company	13	7	NO	NO
First Security Bank	12	6	NO	NO
International Inc.	12	6	NO	NO
Utah Bancorporation (Valley Bank)	12	6	NO	NO
Boston Building	11	5	NO	NO
Hall of Justice	11	5	NO	NO
Newhouse Building	11	5	NO	NO
Episcopal MGM	10	4	NO	NO
The Tribune Building	10	4	NO	NO
Lincoln Association	9	3	NO	NO
City and County Building	8	2	NO	NO
Federal Building	8	2	NO	NO
Mountain Fuel	8	2	NO	NO
J.C. Penny Building	8	2	NO	NO
Bell Telephone	7	1	NO	NO
Boyer Gardner	7	1	NO	NO
Clark Leaming	7	1	NO	NO
Hill Mangum	7	1	NO	NO
Phillips Petroleum	7	1	NO	NO
Royal Tribe	7	1	NO	NO
Boyer Company	6	0	NO	NO
Commercial Club	6	0	NO	NO
State Office Building	6	0	NO	NO
Todd & Lignell	<u>6</u>	<u>0</u>	NO	NO
Total office buildings	<u>432</u>	<u>216</u>		

(Continued)

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(Continued)

	Number of floors	Number of floors above 6	Rental or ownership of space is subject to	
			<u>Sales tax</u>	<u>Innkeepers tax</u>
HOTELS:				
Little America	16	10	YES	YES
Hotel Marriott	14	8	YES	YES
Hilton Hotel	13	7	YES	YES
Howard Johnson Hotel	13	7	YES	YES
Tri-Arc Travel Lodge	13	7	YES	YES
Hotel Utah	<u>11</u>	<u>5</u>	YES	YES
Total Hotels	<u>80</u>	<u>44</u>		
CONDOS:				
Canyon Crest	17	11	NO	NO
Bonneville Towers	15	9	NO	NO
Aztec Apartments	12	6	NO	NO
Zions Summit	12	6	NO	NO
Belvedere	9	3	NO	NO
Bara Investment	8	2	NO	NO
University Heights	8	2	NO	NO
Oak Crest	<u>7</u>	<u>1</u>	NO	NO
Total Condos	<u>88</u>	<u>40</u>		
APARTMENTS:				
Sunset Towers	15	9	NO	NO
Friendship Manor	14	8	NO	NO
Medical Housing, U of U	14	8	NO	NO
Charleston Apartments	10	4	NO	NO
The Stansbury	10	4	NO	NO
Wasatch Towers	9	3	NO	NO
Carlton Towers	8	2	NO	NO
Ben Albert Apartments	7	1	NO	NO
Irving Heights	<u>7</u>	<u>1</u>	NO	NO
Total Apartments	<u>94</u>	<u>40</u>		
Total number of floors	<u>694</u>	<u>340</u>		
Hotels floors as a percentage of total floors	11.5%	12.9%		

Source: SLC Building and Housing Services originally supplied by SLC Fire Department.

Note: Buildings greater than six floors have been selected because the tallest ladder of the fire department is approximately 75 feet high.

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LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

COMPARISON OF TAXES PAID BY LAHCO FOR FIRE
PROTECTION TO BENEFITS RECEIVED

Years ended June 30, 1979 through 1981

Total Fire Department expenditures (Exhibit 3)	\$31,397,330
Portion used by LAHCO based on population ratio of LAHCO to SLC (Exhibit 8)	<u>.00426</u>
Total Fire Department expenditure for LAHCO	<u>133,753</u>
Taxes paid by LAHCO to SLC General Fund (Exhibit 4)	808,980
Average Fire Department Expenditure percentage (Exhibit 3)	<u>18.73%</u>
Taxes paid by LAHCO for the Fire Department	<u>151,522</u>
Taxes paid by LAHCO in excess of proportionate benefit received	<u>\$ 17,769</u>

000828

LITTLE AMERICA HOTEL CORPORATION, et al.,
 vs.
 SALT LAKE CITY, et al.

POPULATION RATIO ANALYSIS

LAHCO (a)

Total number of guest nights - FYE June 30, 1982	314,214
Divided by total number of days	<u>365</u>
Average number of guests at a given time	<u>861</u>
Total number of employees on payroll	540
Times number of hours per week (40/168)	<u>.238</u>
Average number of employees at a given time	<u>129</u>
Average population of LAHCO	<u>990</u>

Salt Lake City

Resident population of SLC(b)	163,000
Additional daytime population of SLC [137,000 x 10/24 (hours in SLC)](c)	57,083
Population of all hotel guests(d)	<u>12,300</u>
Average population of SLC	<u>232,383</u>
Population ratio of LAHCO to SLC (990 - 232,383)	<u>.00426</u>

Sources:

- (a) LAHCO Records
- (b) 1980 Census
- (c) SLC Planning and Zoning Department
- (d) Office of the Mayor - Innkeeper License Tax Proposal (Exhibit 4-G answer to interrogatories #1)

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LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

COMPARISON OF TAXES PAID BY SLC RESIDENTS
TO PER CAPITA TAXES PAID BY LAHCO GUESTS

Year ended June 30, 1981

<u>Type of tax</u>	<u>LAHCO guests (per capita)</u>	<u>Residents (per capita)(a)</u>
Sales	\$ 75 (c)	\$ 46
Property	220 (b)	58
Franchise/business	<u>22 (b)</u>	<u>26</u>
	317	130
Transient room	<u>418 (b)</u>	<u>-</u>
	735	130
Innkeeper tax	<u>139 (b)</u>	<u>-</u>
	<u>\$874</u>	<u>\$130</u>

Note: Property and franchise/business taxes have been adjusted for the nonovernight room area, by assuming that only 50% of these taxes is attributable to the overnight room accommodations. In the opinion of the affiant this is a conservative estimate.

Sources: (a) "Innkeeper License Tax, A Revenue Alternative," prepared by Albert E. Haines, Chief Administration Officer of SLC Corporation, May 19, 1982 (Exhibit 4-G answers to interrogatories #1).

(b) LAHCO records. See Exhibit 8 for per capita hotel guests and employees. See Exhibit 4 for break down of taxes paid by LAHCO in 1981.

(c) Same sources as (a), however, if LAHCO per capita sales amounts are used, the tourist sales tax would be \$182.

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LITTLE AMERICA HOTEL CORPORATION, et al.,
 vs.
 SALT LAKE CITY, et al.

COMPARISON OF TAXES PAID TO THE SLC GENERAL FUND BY LAHCO

Year ended June 30, 1981

<u>Type of tax</u>	<u>1981 taxes paid</u>	
	<u>Actual</u>	<u>Assuming innkeeper tax in effect</u>
Sales and use	\$156,467	\$156,467
Utility franchise	38,266	38,266
Property	74,062	74,062
Business license	5,107	-
Innkeeper license tax	-	119,737
	<u>\$273,902</u>	<u>\$388,532</u>

Percentage increase in taxes paid to SLC
 by LAHCO in 1981 if innkeeper tax in effect 42%

Percentage Increase in business license taxes for
 innkeepers under innkeeper license tax
 (\$119,737 - \$5,107) 2,345%

Source: LAHCO records.

Note: The first six months the innkeeper tax was imposed by the City,
 LAHCO paid \$56,668.86.

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Exhibit 11

LITTLE AMERICA HOTEL CORPORATION, et al.,
vs.
SALT LAKE CITY, et al.

Taxes paid by residents of	Property tax (a)	Sales tax (b)	Utility, business and franchise tax (c)	Transient room tax (e)	Innkeeper tax (d)
Condominiums	Residents pay for tax through rent or if owned they pay direct.	No sales tax is paid on payments made for either renting or buying.	Tax paid either direct to utilities or through rent.	No tax.	No tax.
Office buildings	Occupants pay the property tax of the building through rent or lease payments.	No sales tax is paid on the rental or lease of office space.	Occupants pay tax on utilities direct or through rent or lease payments.	No tax.	No tax.
Apartments	Renters pay property through their rent.	No sales tax on apartment rent.	Renters pay the tax either through rent or direct to the utility.	No tax.	No tax.
Residents	Residents pay property tax.	No sales tax on house payment.	Residents pay the tax direct to the utility.	No tax.	No tax.
Hotel/motels	Guests pay property tax through room rates.	Guests pay sales tax on daily room rates.	Guests pay the tax through the room rates.	Guests pay through a tax on room rates.	Guests pay the tax through room rates.

Sources:

- (a) Residential property receives a 25% break in assessed values compared to nonresidential property due to passage of Proposition 1 effective January 1, 1983.
- (b) Even though all people pay a 5% sales tax on goods, hotel/motel customers, by nature, are forced to eat out and, therefore, pay sales tax on labor for food preparation, serving, cleaning etc., while those who eat at home do not pay tax on the labor, etc.
- (c) 6% of utility usage.
- (d) 1% of room revenue.
- (e) Tax revenues are used to generate tourism which benefits the hotels and motels. These same taxes provide employment to city residents which enhances the SLC tax base through increases in virtually all categories of tax revenues.

00533

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SALT LAKE COUNTY, UTAH

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ROGER F. CUTLER
Salt Lake City Attorney
Attorney for Defendants
100 City & County Building
Salt Lake City, Utah 84111
Telephone: 535-7788

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

LITTLE AMERICA HOTEL)	
CORPORATION, et al,)	
)	DEFENDANTS' OBJECTION TO
Plaintiffs,)	TRI-ARC HOTEL ASSOCIATES'
)	AND HOLIDAY INNS, INC.'S
vs.)	ANSWERS TO DEFENDANTS'
)	SECOND SET OF INTERROGATORIES
SALT LAKE CITY, et al.,)	
)	Civil No. C 82-5220
Defendants.)	
_____)	

COMES NOW the defendants and object to the plaintiffs Tri-Arc Hotel Associates and Holiday Inns., Inc.'s answers to defendants' Second Set of Interrogatories.

The objection is made and based upon the fact that the said answers are evasive, unresponsive, and fail to fully set forth the discoverable information requested.

DATED this 21st day of March, 1983.

[Signature]
ROGER F. CUTLER
Salt Lake City Attorney
Attorney for Defendants

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CEPTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Defendants' Objection to Tri-Arc Hotels Associates' and Holiday Inn, Inc.'s Answer to Defendants' Second Set of Interrogatories to Lon Rodney Kump, RICHARDS, BIRD & KUMP, 323 East 400 South, Salt Lake City, Utah 84111; Dorothy C. Pleshe, GREEN, CALLISTER & NEBEKER, 800 Kennecott Building, Salt Lake City, Utah 84133; and to James M. Elegante, PARSONS, BEHLE & LATIMER, 185 South State Street, P.O. Box 11898, Salt Lake City, Utah 84147, by depositing the same in the U.S. mail, postage prepaid, this 22nd day of March, 1983.

Chris Balle

cc71

EXHIBIT 6

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH
IN AND FOR UTAH COUNTY

OREM CITY,
a Corporation,

Plaintiff,

vs.

DEE PYNE,

Defendant.

CRIMINAL CASE NO. 4039

MEMORANDUM DECISION

and

ORDER OF DISMISSAL

Dee Pyne was charged with the crime of a misdemeanor in failing to pay a license tax to Orem City for a automobile business operated by him in Orem. He was convicted in the Orem City Court and has appealed his conviction to the District Court, claiming that the license ordinance is void as to him.

The defendant's appeal entitles him to a trial de novo. He has entered anew a plea of not guilty, but has stipulated that during the time charged in the complaint he conducted a used car business and made sales subject to the sales tax imposed by the State of Utah; and that he has not paid any Orem City license tax. He now moves the court for a dismissal of the complaint, solely on the ground that the ordinance is invalid in imposing any tax on his used car sales business.

Ordinance No. 26 of Orem City is the ordinance in question. It was enacted under the authority given to cities by Section 10-8-80, U.C.A. 1953, to tax businesses for revenue purposes; provided, however, "that all such license fees and taxes shall be uniform in respect to the class upon which they are imposed." The ordinance declares that its only purpose is to raise revenue.

Section 3 of the ordinance levies a tax of 1/10 of 1% on the gross sales of businesses in Orem City engaged in selling tangible personal property, where such sales are subject to the Utah State sales tax, with a minimum of \$6.25 per quarter-year and a maximum of \$75.00 for the same period.

If the defendant's business is covered at all it is covered by this general Section, and not by any specific provision of the ordinance.

The law presumes that the ordinance is valid until the contrary is shown. However, city licensing ordinances enacted for tax purposes must be strictly construed, and in cases of reasonable doubt, the construction should be against the government. *Miller v. Standard Nut Margarine Co.* 284 US 498, 52 S Ct 260, 263, 76 L Ed 422. *Appeal of School District of City of Allentown* (1952) 370 Pa 161, 87 A 2d 480.

The principal claim for invalidity is that the ordinance is discriminatory and arbitrary in its application to defendant's business.

In *Matthews v. Jensen*, 21 Utah 207, 61 P 303, at page 227 of the Utah Reports, our Supreme Court said: "Neither the constitution nor the statute authorizes. . . ordinances, . . . to tax citizens arbitrarily and unjustly, by license which confers no privilege that was not previously enjoyed, and which has no view to regulation. Unjust and illegal discrimination between persons in taxation, and the denial of equal justice, are within the prohibitions of the constitution of this state, and of the United States."

As to what constitutes illegal and unjust discrimination in taxation, our Court has held: "Discrimination is the essence of classification and does violence to the constitution only when the basis upon which it is founded is unreasonable. In fixing the limits of the class, the legislative body has a wide discretion and this court may not concern itself with the wisdom or policy of the law. Our function is to determine whether an enactment operates equally upon all persons similarly situated. If it does then the discrimination is within permissible legislative limits. If it does not, then the discrimination would be without reasonable basis and the act does not meet the test of constitutionality." *Slater v. Salt Lake City*, 115 Utah 476, 206 P 2d 153.

This indicates that the classification by the legislative body must be reasonable and the tax must be applied with uniformity upon similar kinds of businesses and with substantial equality of the tax burden to all members of the same class. The imposition of taxes which are to a substantial degree unequal in their operation upon similar kinds of businesses is prohibited.

What is the situation with respect to discrimination and reasonableness as this ordinance is written and may be applied and enforced?

Section 1 of the ordinance lists 201 purported businesses for taxation and fixes a tax rate for each. A few of these names do not indicate businesses at all and are beyond the power of the City to tax for revenue purposes. Excluding these few, the remainder represent legitimate businesses, subject to taxation for revenue purposes. Even here, however, the lack of definitions renders the application of the ordinance and the tax uncertain, confusing, and perhaps inequitable. And since this section and the ordinance as a whole does not attempt to tax all business within the city, it may well be questioned as to any equality in spreading the tax burden.

Section 3, standing alone, appears to be fair, reasonable, and definite in its application to all businesses generally in Orem City selling tangible personal property. This is a reasonable and proper classification fixed by the City. The difficulty arises when Section 1 is considered along with Section 3; because Section 1 places several businesses, that would otherwise be covered by Section 3, on a flat annual fee basis that may be only one-twelfth as much as if they were on the gross sales basis, and taxable under Section 3. Why should one business selling tangible personal property at retail be subjected to a tax of up to \$300.00 per year, while other businesses (also selling tangible personal property at retail) such as an implement dealer, an appliance shop, cement plant, creamery, butcher shop, photography shop, or a dealer specializing in the sale of goods made in Japan, Hong Kong, Formosa, China, or India, doing the same volume of business, be taxed \$25.00?

To establish by Section 3 of the ordinance a reasonable classification of businesses generally for taxation and fix a tax rate therefor based on gross sales with certain minimum and maximum amounts, and by another section of the same ordinance exclude from the operation of Section 3, certain businesses naturally falling within its classification, and apply to such excluded businesses a tax rate on a flat annual basis that can not possibly be more than the minimum for the unexcluded businesses is unreasonable, arbitrary, and discriminatory. Such exclusion assures to the excluded businesses a concession not accorded to other businesses similarly situated.

It is clear that the ordinance is void as it applies to the defendant's business in this case, and the motion for dismissal is granted.

This ruling is limited to the question presented by the defendant's motion. It is not within the province of the court at this time to pass on the validity of the entire ordinance. It may be valid as to some businesses and invalid as to others. As hereinabove stated, in a few instances there seems to be an entire absence of authority for the city to impose any tax at all for revenue purposes.

Dated this 3rd day of August, 1964.

Maurice Harding
Maurice Harding, Judge.

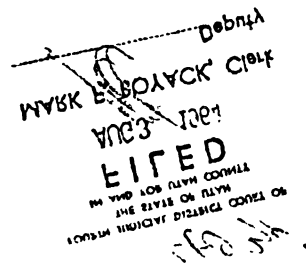


EXHIBIT 7

17-31-1. Authority of county commissioners to establish, promote and finance bureaus.

In addition to the powers elsewhere conferred the board of county commissioners is hereby authorized and empowered to establish, promote and finance recreational, tourist and convention bureaus.

History: L. 1965, ch. 35, § 1; 1979, ch. 68, § 1.

Cross-References. — Travel development, Chapter 16 of Title 63.

17-31-2. Imposition of transient room tax.

They may raise revenue by the imposition of a transient room tax which shall not exceed three per cent of the rent for every occupancy of a suite, room or rooms on all persons, companies, corporations, or other like and similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like and similar public accommodations, and from time to time increase or decrease such levy as is necessary or desirable, and shall regulate the same by ordinance.

History: L. 1965, ch. 35, § 2; 1975, ch. 114, § 1.

referred to in this section, apparently means the county commissioners.

Meaning of "They". — The term "They,"

17-31-3. Purpose of tax — Purchase or lease of facilities — Issuance of bonds.

(1) A transient room tax as provided for in this act, may be imposed for the purposes of establishing, financing and promoting recreational, tourist and convention bureaus.

(2) Counties receiving at least \$250,000 annually from proceeds of the transient room tax may utilize not more than one-third of the tax for the purpose of acquiring, leasing, constructing, furnishing or maintaining convention meeting rooms, exhibit halls, visitor information centers, museums, and other facilities associated with the activities of said bureaus and for the acquisition or lease of land required for or related to these purposes.

(3) The board of county commissioners may issue bonds under the provisions of the Utah Municipal Bond Act to pay any costs incurred for the purposes set forth in Subsection (2) of this section, and may pledge the entire proceeds of the transient room tax as provided in this act to the payment of principal, interest, premiums and necessary reserves for any such bonds, provided that no bonds shall be issued as provided in this act unless the average annual debt service, including provisions for reserves, on those bonds and on all outstanding bonds to which the transient room tax is pledged is less than one-third of the amounts derived from the proceeds of the transient room tax in the fiscal year of the county next preceding the date of issuance of those bonds, and provided further that when the proceeds of the transient room tax are not needed for payment of principal, interest, premiums and reserves on bonds issued as provided herein, those proceeds shall be utilized as provided in Subsections (1) and (2) of this section.

History: L. 1965, ch. 35, § 3; 1979, ch. 68, § 2.

Meaning of "this act". — The term "this act," referred to in Subsection (1), means Laws 1965, ch. 35, which appears as §§ 17-31-1 to 17-31-7.

The term "this act," referred to in Subsection (3), means Laws 1979, ch. 68, which appears as §§ 17-31-1 and 17-31-3.

Utah Municipal Bond Act. — See § 11-14-22 and notes thereto.

17-31-4. Reserve fund authorized — Use of collected funds.

The board of county commissioners is hereby authorized and empowered to create a reserve fund and any funds collected but not expended during any fiscal year shall not revert to the general fund of the governing bodies but shall be retained in a special fund to be used in accordance with this act.

History: L. 1965, ch. 35, § 4. graph of note under same catchline following
Meaning of "this act". — See first para- § 17-31-3.

17-31-5. "Transient" defined.

For the purpose of this act the term "transient" is defined as any person who occupies any suite, room or rooms in a motel, hotel, motor court, inn or similar public accommodation for fewer than thirty consecutive days.

History: L. 1965, ch. 35, § 5. graph of note under same catchline following
Meaning of "this act". — See first para- § 17-31-3.

17-31-6. Manner of collection of tax.

Such tax shall be levied at the same time and collected in the same manner as is provided in Title 11, Chapter 9, Utah Code Annotated 1953, "The Uniform Local Sales and Use Tax Law of Utah."

History: L. 1965, ch. 35, § 6.

17-31-1. Board authorized to establish and promote bureau and finance with transient room tax.

(1) In addition to the powers elsewhere conferred the Board of County Commissioners may establish, promote, and finance recreational, tourist, and convention bureaus.

(2) Any Board of County Commissioners may raise revenue by the imposition of a transient room tax under § 59-12-301.

History: L. 1965, ch. 35, § 1; 1979, ch. 68, § 1; 1987, ch. 5, § 12.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, designated the former provisions as set out in the bound volume as Subsection (1) and in that subsection substituted "may" for "is hereby autho-

rized and empowered to"; added, present Subsection (2); and made minor changes in phraseology and punctuation.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

17-31-2. Purpose of tax — Purchase or lease of facilities — Issuance of bonds.

(1) A transient room tax provided for in § 59-12-301, may be imposed for the purposes of establishing, financing, and promoting recreational, tourist, and convention bureaus.

(2) Counties receiving at least \$250,000 annually from proceeds of the transient room tax may utilize not more than $\frac{1}{3}$ of the tax for the purpose of acquiring, leasing, constructing, furnishing, or maintaining convention meeting rooms, exhibit halls, visitor information centers, museums, and other facilities associated with the activities of said bureaus and for the acquisition or lease of land required for or related to these purposes.

(3) The Board of County Commissioners may issue bonds under the provisions of the Utah Municipal Bond Act, Chapter 14, Title 11, to pay any costs incurred for the purposes set forth in Subsection (2), and may pledge the entire proceeds of the transient room tax as provided in § 59-12-301 to the payment of principal, interest, premiums, and necessary reserves for any such bonds. No bonds may be issued as provided in this section unless the average annual debt service, including provisions for reserves, on those bonds and on all outstanding bonds to which the transient room tax is pledged is less than $\frac{1}{3}$ of the amounts derived from the proceeds of the transient room tax in the fiscal year of the county next preceding the date of issuance of those bonds. When the proceeds of the transient room tax are not needed for payment of principal, interest, premiums, and reserves on bonds issued as provided in this section, those proceeds shall be utilized as provided in Subsections (1) and (2).

History: L. 1965, ch. 35, § 3; 1979, ch. 68, § 2; C. 1953, 17-31-3; renumbered by L. 1987, ch. 5, § 14.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 17-31-3; in Subsection (1) and (3) substituted "§ 59-12-301" for "this act"; and made minor

changes in phraseology and punctuation throughout the section.

Compiler's Notes. — Laws 1987, ch. 5, § 13 renumbered the former provisions of this section, which now appear as § 59-12-301.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

17-31-3. Reserve fund authorized — Use of collected funds.

The Board of County Commissioners may create a reserve fund and any funds collected but not expended during any fiscal year shall not revert to the general fund of the governing bodies but shall be retained in a special fund to be used in accordance with §§ 17-31-1 through 17-31-5.

History: L. 1965, ch. 35, § 4; C. 1953, 17-31-4; renumbered by L. 1987, ch. 5, § 15.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 17-31-4; substituted "§§ 17-31-1 through 17-31-5" for "this act"; and made minor changes in phraseology.

Compiler's Notes. — Laws 1987, ch. 5, § 14 renumbered the former provisions of this section, which now appear as § 17-31-2.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

17-31-4. "Transient" defined.

For the purpose of §§ 17-31-1 through 17-31-5 "transient" means any person who occupies any suite, room, or rooms in a motel, hotel, motor court, inn, or similar public accommodation for fewer than 30 consecutive days.

History: L. 1965, ch. 35, § 5; C. 1953, 17-31-5; renumbered by L. 1987, ch. 5, § 16.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 17-31-5; substituted "§§ 17-31-1 through 17-31-5" for "this act"; and made minor changes in phraseology and punctuation.

Compiler's Notes. — Laws 1987, ch. 5, § 15 renumbered the former provisions of this section, which now appear as § 17-31-3.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

17-31-5. General authority and powers of county commissioners.

The Board of County Commissioners may do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of §§ 17-31-1 through 17-31-5.

History: L. 1965, ch. 35, § 7; C. 1953, 17-31-7; renumbered by L. 1987, ch. 5, § 18.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 17-31-7; substituted "§§ 17-31-1 through 17-31-5" for "this act"; and made minor changes in phraseology and punctuation.

Compiler's Notes. — Laws 1987, ch. 5, § 16 renumbered the former provisions of this section, which now appear as § 17-31-4.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

17-31-6. Renumbered.

Compiler's Notes. — This section was renumbered as § 59-12-302 by Laws 1987, ch. 5, § 17.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

17-31-7. Renumbered.

Compiler's Notes. — This section was renumbered as § 17-31-5 by Laws 1987, ch. 5, § 18.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

THE UNIFORM LOCAL SALES AND USE TAX ACT

59-12-201. Short title.

This part shall be known as "The Local Sales and Use Tax Act."

History: L. 1987, ch. 5, § 2.

59-12-202. Purpose and intent.

It is the purpose of this part to provide the counties, cities, and towns of the state with an added source of revenue and to thereby assist them to meet their growing financial needs. It is the legislative intent that this added revenue be used to the greatest possible extent by the counties, cities, and towns to finance their capital outlay requirements and to service their bonded indebtedness.

History: L. 1987, ch. 5, § 3.

59-12-203. County, city and town may levy tax — Exception — Contracts pursuant to Interlocal Cooperation Act.

Any county, city, or town may levy a sales and use tax under this part. Any county, city, or town which elects to levy such sales and use tax may enter into agreements authorized by Chapter 13, Title 11, the Interlocal Cooperation Act, and may use any or all of the revenues derived from the imposition of such tax for the mutual benefit of local governments which elect to contract with one another pursuant to the Interlocal Cooperation Act.

History: L. 1987, ch. 5, § 4.

59-12-204. Sales tax provisions required in county sales and use tax ordinance — Additional county or municipal taxes authorized.

(1) The tax ordinance adopted pursuant to this part shall impose a tax upon those items listed in § 59-12-103.

(2) Except as provided in Subsection 59-12-205(2), such tax ordinance shall include a provision imposing a tax upon every retail sale of items listed in § 59-12-103 made within a county including areas contained within the cities and towns thereof at the rate of $\frac{3}{4}\%$ or any fractional part of such $\frac{3}{4}\%$ of the purchase price paid or charged.

(3) In addition to the $\frac{3}{4}\%$ or any fractional part of such $\frac{3}{4}\%$ tax authorized by this section, any county, city, or town within a transit district organized under Chapter 20, Title 11, may impose a sales and use tax of $\frac{1}{4}$ of 1% to fund a public transportation system only if the governing body of the county, city, or town by resolution, submits the proposal to all the qualified voters within the county, city, or town for approval at a general or special election conducted in the manner provided by statute. Notice of any such election shall be given by the county, city, or town governing body 15 days in advance in the manner prescribed by statute. If a majority of the voters voting in such election approve the proposal, it shall become effective on the date provided by the county, city, or town governing body. This subsection may not be construed to require an election in jurisdictions where voters have previously approved a transit district sales or use tax.

(4) Such tax ordinance shall include provisions substantially the same as those contained in Part 1, Chapter 12, Title 59, insofar as they relate to sales or use tax, except that the name of the county as the taxing agency shall be substituted for that of the state where necessary for the purpose of this part and that an additional license is not required if one has been or is issued under § 59-12-106.

(5) Such tax ordinance shall include a provision that the county shall contract, prior to the effective date of the ordinance, with the commission to perform all functions incident to the administration or operation of the ordinance.

(6) Such tax ordinance shall include a provision that the sale, storage, use, or other consumption of tangible personal property, the purchase price or the cost of which has been subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this part by any county, city, or town in any other county in this state, shall be exempt from the tax due under this ordinance.

(7) Such tax ordinance shall include a provision that any person subject to the provisions of a city or town sales and use tax shall be exempt from the county sales and use tax if the city or town sales and use tax is levied under an ordinance including provisions in substance as follows:

(a) a provision imposing a tax upon every retail sale of items listed in § 59-12-103 made within the city or town at the rate imposed by the county in which it is situated pursuant to Subsection (2);

(b) provisions substantially the same as those contained in Part 1, Chapter 12, Title 59, insofar as they relate to sales and use taxes, except that the name of the city or town as the taxing agency shall be substituted for that of the state where necessary for the purposes of this part;

(c) a provision that the city or town shall contract prior to the effective date of the city or town sales and use tax ordinance with the commission to perform all functions incident to the administration or operation of the sales and use tax ordinance of the city or town;

(d) a provision that the sale, storage, use, or other consumption of tangible personal property, the gross receipts from the sale of or the cost of which has been subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this part by any county other than the county in which the city or town is located, or city or town in this state, shall be exempt from the tax; and

(e) a provision that the amount of any tax paid under Part 1, Chapter 12, Title 59 shall not be included as a part of the purchase price paid or charged for a taxable item hereunder.

(8) (a) In addition to the other taxes provided for, a city or town in which the transient room capacity equals or exceeds the permanent census population may impose a sales tax of up to 1% subject to exemptions provided for in § 59-12-104, and shall exempt from that additional tax, wholesale sales and sales of single items for which consideration paid is \$2,500 or more.

(b) An amount equal to the total of any costs incurred by the state in connection with the implementation of Subsection (a) which exceed, in any year, the revenues received by the state from its collection fees received in connection with the implementation of Subsection (a) shall be paid over to the state General Fund by the cities and towns which impose the tax provided for in Subsection (a). Payment costs shall be allocated proportionally among those cities and towns according to the amount of revenue the respective cities and towns generate in that year through imposition of that tax.

TRANSIENT ROOM TAX

59-12-301. Transient room tax — Rate.

Any Board of County Commissioners may raise revenue by the imposition of a transient room tax. This tax may not exceed 3% of the rent for every occupancy of a suite, room, or rooms on all persons, companies, corporations, or other like and similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like and similar public accommodations. Any Board of County Commissioners may, from time to time, increase or decrease such transient room tax as necessary or desirable, and shall regulate the same by ordinance.

History: L. 1987, ch. 5, § 13.

59-12-302. Manner of collection of tax.

The transient room tax shall be levied at the same time and collected in the same manner as is provided in Part 2, Chapter 12, Title 59.

History: L. 1987, ch. 5, § 17.