

1952

Jackson Land and Livestock Company v. The State Tax Commission of Utah : Brief of Plaintiff

Utah Supreme Court

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In the Supreme Court of the State of Utah

JACKSON LAND AND
LIVESTOCK COMPANY,
a corporation

plaintiff,

vs.

THE STATE TAX COMMISSION
OF UTAH,

defendant.

Plaintiff's

Brief

No. 7904

FILED

Clerk, Supreme Court, Utah

On a Writ of Certorari Directed to The State Tax
Commission of Utah

Preston & Harris,

Attorneys for plaintiff

TABLE OF CONTENTS

Subject	Page
Statement of Facts	1
Point Plaintiff Relies on	1
Argument on Plaintiff's Point	2
The State Tax Commission of Utah erred in determining that plaintiff was and is subject to the payment of Franchise taxes; and in failing to determine that plaintiff was exempt from such tax under the provisions of 80-13-5 (1), UCA, 1943.	

INDEX OF CASES AND AUTHORITIES CITED

80-13-5 (1), UCA, 1943	2
Laws of Utah, 1907, Chap. 107	3
Compiled Laws of Utah, 1907, Sec. 1271	3
Laws of Utah, 1919, 1923, 1925 & 1929	4
Laws of Utah, 1931, Chap. 39, Sec. 2	4
Bonham & Young Co., v. Martin, (N. J.) 11 A. 2d 371	6
Miles v. Dept. of Treasury, (Ind.) 193 N. E. 855, 97 A. L. R. at page 1487	8

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STATEMENT OF FACTS

Plaintiff filed with defendant a petition for redetermination of deficiency for franchise tax, upon a written stipulation contained in the files of this matter, and thereafter, on the 15th day of August, 1952, the Commission made its decision determining the plaintiff subject to the tax. Both parties are in agreement that the plaintiff is an agricultural corporation, and it is for the purpose of a review of this decision that the Writ of Certorari issued.

STATEMENT OF THE POINT RELIED ON BY PLAINTIFF

The State Tax Commission of Utah erred in determining that the plaintiff was and is subject to the payment

of Franchise taxes; and in failing to determine that plaintiff was exempt from such tax under the provisions of 80-13-5 (1), UCA, 1943.

ARGUMENT

The sole question presented in this matter appears to us to be: Whether Jackson Land & Livestock Company is exempt from the payment of the State Franchise Tax under the provisions of 80-13-5 (1). We claim such exemption, and the attorneys for the Commission deny the exemption.

Before making an analysis of the history of the legislation we quote the wording of the statute: "The following corporations are exempt from the provisions of this chapter, to-wit: (1) Labor, agricultural or horticultural organizations."

We believe that we are correct in assuming that it will be the contention of Attorneys for the Commission that we are not entitled to the exemption because we admit that we are organized for profit. In relation to this matter please refer to 80-13-1 (3) (all references to UCA, 1943) "For the purpose of this chapter, unless otherwise required by the context. . . .(3) The term 'corporation' includes every corporation, and every company, joint-stock company, joint-stock association, business trust, society, or other association, organized for profit". . . . (etc.)

The original Franchise Tax Act is found in the laws

of Utah, 1907 Chapter 107, and provided for exemptions as follows: "Provided, That all corporations *organized not for pecuniary profit* and canal and irrigation companies organized for the express purpose of providing water for lands owned solely by the incorporators, and all insurance companies, shall be exempt from said license."

If the law as it exists today was the same as the 1907 Act, we would no doubt be subject to the tax, so that if we apply the reasoning that there must be some logical reasons behind the legislative changes, we come to the inescapable conclusion that different exemptions were provided for.

When the Compiled Laws of Utah, 1917, Section 1271 were adopted, the exemptions were broadened as follows: "All domestic corporations (except corporations not organized for pecuniary profit, and all religious, charitable, benevolent, and all corporations organized for educational purposes, and all private water corporations organized to furnish water for culinary purposes, and furnishing water exclusively to members of such corporations, and all canal and irrigation corporations engaged exclusively in furnishing water to or for lands owned by the members thereof, all water users' associations organized to comply with the rules of the United States reclamation service and all insurance corporation) . . . shall procure a license," (etc.)

Nothing was contained in the Act up to that time which purported to exempt an agricultural corporation, and since we are a domestic agricultural corporation organized for profit we were taxable under those provisions.

In the Session laws of the years 1919, 1923, 1925, and 1929 amendments were successively passed with slight changes, but always maintaining the provision against exemptions of organizations for profit. Along the line, and to encourage building and loan associations, these were exempted, but this exemption was specifically deleted in 1929. Here is a parallel example to ours. Notwithstanding the fact that these associations were for profit, they were, for a time, exempted, and when this exemption was stricken, they were again *AND NOW ARE TAXED*. Thus, when a building and loan company was listed as exempt, it was actually granted the exemption, notwithstanding the fact that it was organized for profit. When the exemption was lifted, it was taxed. Applying the same situation to agricultural organizations, we can see that prior to 1931, agricultural corporations, if organized for profit, were subject to the tax. Now, 1931 the whole subject matter of exemptions under the franchise tax law was re-written, and here for the first time is the following: Laws of 1931, Chapter 39. "CORPORATION FRANCHISE TAX. Sec. 1. This Act shall be known and may be cited as the Franchise Tax Act of 1931 . . . Sec. 2. (Now 80-

13-1 UCA 1943) Terms defined: (c) The term "corporation" shall include every corporation or company, joint stock company, joint stock association, business trust or other association wherein interest or ownership is evidenced by certificates or other written instruments, organized for profit and doing business in this State."

Under the exemptions are the following: "Sec. 7. (Now 80-13-5 UCA, 1943) Corporations exempt from the provisions of the Act, to-wit: "Labor, agricultural, or horticultural organizations;"

That was the last substantial change made in the matter under consideration, and so far as we are concerned, the exemption provisions are identical.

Let us consider now, the entire exemption section. Sub-sections 1 and 2 are all exempt, and no mention is made as to whether they are organized for profit. 3 is different in that it exempts the companies, only IF THEY ARE NOT OPERATED FOR PROFIT.

No. 5 deals with business leagues and other like organizations and these are exempt ONLY IF THEY ARE NOT ORGANIZED FOR PROFIT, AND NO PART OF THE NET EARNINGS GOES TO THE SHAREHOLDERS.

No. 6 is about the same as 5 since no one may make a profit by the operation.

The question naturally arises: Why did the Leg-

islature omit the profit element from only one of these sub-paragraphs? It would have been very easy to add these words: "which are not operated for profit." Having failed to do so, is this Commission entitled to make the addition? Or should the Commission accept the clear meaning of the Statute as it is written?

So far as our search has been able to disclose, there is only one decided case in the United States which is on all fours. That is the case of *Bonham & Young Co., v. Martin*, from the New Jersey Supreme Court. 11 A. 2d 371. The New Jersey Statute is as follows: "a mining, manufacturing, agricultural or horticultural corporation at least fifty per cent of whose capital stock issued and outstanding is invested in mining or manufacturing or agricultural or horticultural pursuits carried on within this state and which has made a return in accordance with section 54: 13-4 of this title shall be exempt from the license fee or franchise tax imposed by this article."

Some of the land was used for ordinary farming, but the majority of the investment (70.8%) was for land and equipment used for the breeding, raising and trapping of muskrats for commercial purposes. The New Jersey Court held that the company was exempt even though operating for a profit and stated further: "The statutory exemption in question was to be construed liberally, in contradistinction to the usual rule of strick construction of tax exemptions."

Sub-section 10 exempts farmers co-operatives if operated on a co-operative basis.

This is a long and involved section on exemptions which the legislature has seen fit to exempt from the Franchise Tax.

The reason behind the legislation is for the legislature and not the commission or the Courts. If the legislature determines that it is in the public interest to exempt farmers organizations, their reasons for doing so should not be examined or criticized or modified by the Commission.

Farmer's co-operatives operate for a profit of the members of the organization. Some farmer's co-operatives are very large organizations and farm corporations are sometimes members of a Co-operative and they do a lot of business in nearly every hamlet and city in this State but they are exempt. All of the profits their organizations and the business they do are exempt from the franchise Tax.

Now, if an individual or family operating a farm decides to incorporate their holdings and the legislature determines that it is in the public interest to exempt that sort of organization from the State Franchise Tax, that is a matter for the legislature to determine and unless and until they say that "Farm Organizations or labor organizations or Horticultural Organizations NOT OPERATED FOR PROFIT" are exempt then

the commission is bound by the act as adopted by the legislature and where the language is plain, and simple, and not open to construction, then it is the duty of the commission to exempt all of the organizations so exempted under the language of the statute.

We respectfully submit that there is no place for other construction of the language "Labor, Agricultural and Horticultural Organizations" than that it includes all organizations thus described and any limitations on such list of organizations should be placed thereon by the legislature and not the Commission.

As an example of a state statute similar to ours, but which Grants the exemption we cite *Miles v. Dept. of Treasury*, (Ind.) 193 N. E. 855, 97 A. L. R. at page 1487 (left column). "B excepts labor, agricultural and other organizations not operated for profit." As pointed out above, that is the manner of the Utah exemption beginning with 1907, and carrying through until 1931, when the profit motive was stricken by our Legislature, so far as this case is concerned, and has never been restored.

Respectfully submitted

Preston & Harris,

Attorneys for plaintiff