

1952

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

Utah Supreme Court

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Thomas C. Cuthbert; Attorney for Defendant;

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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JACKSON LAND AND LIVE-  
STOCK COMPANY, a corpora-  
tion,

*Plaintiff,*

vs.

THE STATE TAX COMMIS-  
SION OF UTAH,

*Defendant.*

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**FILED**  
BRIEF OF DEFENDANT  
NOV 26 1952

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**THOMAS C. CUTHBERT,**  
Attorney for Defendant.

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# IN THE SUPREME COURT of the STATE OF UTAH

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JACKSON LAND AND LIVE-  
STOCK COMPANY, a corpora-  
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*Plaintiff,*

vs.

THE STATE TAX COMMIS-  
SION OF UTAH,

*Defendant.*

Case No.  
7904

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## BRIEF OF DEFENDANT

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### STATEMENT OF FACTS

This matter was presented to the State Tax Commission upon a stipulation of facts which is to be found in the record in this action. The essential facts briefly are as follows:

Plaintiff is a Utah corporation organized in 1929, with its principal place of business at Randolph, Utah. It is engaged in the business of raising hay for feeding cattle, raising cattle for sale, and marketing livestock, hay and grain. The purposes of the corporation are for the profit of its shareholders. Ownership of the corporation is evidenced by certificates of stock issued to shareholders.

Up to the year 1949 the corporation filed returns and paid the corporation franchise tax. On March 13, 1951 the corporation filed claims for refund of the taxes paid in the years 1948 and 1949 in the amounts of \$198.54 and \$278.04, respectively. These claims for refund were denied by the commission on April 26, 1951 and the corporation was notified on that date of the commission's action.

On May 25, 1951, the corporation filed a corporation franchise tax return for the year 1950, claiming no tax was due for the reason that the corporation was exempt from tax. On February 18, 1952, the commission sent a notice to the corporation of the proposed deficiency for the year 1950. On March 24, 1952, the corporation filed a petition for redetermination of the deficiency and filed an amended return for the year 1950, showing a tax in the amount of \$269.14 which would be due if the commission determined the corporation was subject to corporation franchise tax. On August 15, 1952, the commission rendered its decision that the corporation was subject to the tax and that claims for the years 1948 and 1949 were barred by Sections 80-13-44 and 80-13-46, U.C.A. 1943. It is for review from this decision that the corporation commenced this proceeding for the issuance of a writ of certiorari.

## STATEMENT OF POINTS

1. THE ORGANIZATIONS WHICH ARE EXEMPT UNDER SECTION 80-13-5(1), U.C.A., 1943, ARE THOSE WHICH HAVE NO NET INCOME INURING TO THE BENEFIT OF

ANY MEMBER, ARE EDUCATIONAL IN CHARACTER, AND HAVE FOR THEIR OBJECTS THE BETTERMENT OF THE ENUMERATED PURSUITS.

2. CLAIMS FOR REFUND FOR TAXES FOR THE YEARS 1948 AND 1949 ARE BARRED BY SECTIONS 80-13-44 AND 80-13-46, UTAH CODE ANNOTATED, 1943.

## ARGUMENT

### POINT 1.

THE ORGANIZATIONS WHICH ARE EXEMPT UNDER SECTION 80-13-5(1), U.C.A., 1943, ARE THOSE WHICH HAVE NO NET INCOME INURING TO THE BENEFIT OF ANY MEMBER, ARE EDUCATIONAL IN CHARACTER, AND HAVE FOR THEIR OBJECTS THE BETTERMENT OF THE ENUMERATED PURSUITS.

The principal question involved in this matter is what organizations the legislature intended to exempt from the Corporation Franchise Tax by the enactment of Section 80-13-5(1), U.C.A. 1943.

The rule is well settled in Utah that in interpreting legislative acts, the courts will give effect to the intent of the legislature. *State ex rel Pincock, Sheriff v. Franklin*, 63 Utah 442; *Buttrey v. Guaranteed Securities Co.*, 78 Utah 39; *Norville v. State Tax Commission*, 98 Utah 170.

*Norville v. State Tax Commission*, supra, in an excellent discussion of rules of construction which this court will follow in determining the intention of the legislature in taxing statutes, states:

“\* \* \* in seeking to give effect to the intent of the legislature, the court will adopt that inter-

pretation of a taxing statute which lays the tax burden uniformly on all standing in the same degree in relation to the tax adopted.

\* \* \*

“Tax statutes should be interpreted in connection with other tax legislation and in the light of the report of the committee which framed the statute. *Nash v. City of Milwaukee*, 198 Wisconsin 281, 224 N.W. 126, and where those statutes are patterned after statutes of sister states, the interpretation given by the highest court of the sister state is presumed to prevail. *New York Jobbing House v. Sterling Fire Ins. Co.*, 54 Utah 394, 182 Pac. 361; *In re Shenk’s Estate*, 53 Utah 381, 178 Pac. 244; *Lurich v. Utah Construction Co.*, 48 Utah 452, 160 Pac. 270; *In re Raleigh’s Estate*, 48 Utah 128, 158 Pac. 705.”

In attempting to determine what organizations the legislature intended to exempt in its enactment of 80-13-5(1), U.C.A. 1943, it is necessary to examine the legislative history of the enactment.

As indicated in Plaintiff’s brief, in the corporation license tax laws enacted prior to 1931, the only corporations which were exempt were those which did not operate for profit. Plaintiff’s brief indicates that building and loan associations were exempt under the earlier laws even though they operated for profit. An examination of these earlier laws shows that building and loan associations were not exempt, but rather were taxed upon their outstanding capital stock rather than authorized stock, which was the basis of the tax for most of the corporations. (Laws of Utah, 1923, Chapter 66.)



Attention must therefore be turned to the enactment of the Corporation Franchise Tax Act in 1931 to determine if it was the intent of the legislature in that act to exempt agricultural corporations operating for the profit of its shareholders.

The 1931 enactment was a part of a complete revision of the taxing policies of the state of Utah. A Tax Revision Commission created by the legislature in 1929 had examined the problem of revenue and taxation in the state and studied systems of raising revenue. In its report the commission recommended certain constitutional amendments and legislative changes revising the taxing policies of the state. It was the outgrowth of this commission's report that the legislature enacted the corporation franchise tax act, the individual income tax act, created the State Tax Commission, and revised tremendously the property tax methods of the state.

The commission's recommendations relating to the Corporation Franchise Tax stated as follows at page 65:

“3. *All business conducted for profit, except insurance companies, shall be taxed at a moderate uniform rate upon the net income of the business done within this state.*

a. Insurance companies shall be taxed on their net premiums.

b. The present license tax on corporations shall be repealed when the corporation tax becomes effective. All other special taxes for state purposes shall be continued.” (Emphasis added.)

In discussing the details of the tax, the Commission's report at pages 71-2 contains the following passage:

"Net income should be determined, under a law, substantially as it is now determined under the Federal Income Tax Act. This arrangement has the great advantage of being familiar to all of the larger business concerns, and the further advantage of permitting the taxpayer to comply with the provisions of the state law by using the data on the basis of which the federal return is prepared, with the necessary modifications on account of the income from tax-exempt sources. From the standpoint of the state it affords the advantage of being able to check the accuracy of the local return, where this is deemed advisable or necessary, against the return made to the federal government."

Upon the basis of this report, the present Corporation Franchise Tax Act was adopted. The Act is modeled after the Federal Income Tax Act, and the exemption section here in question was copied almost verbatim from the Federal Income Tax Act. Hereafter, to demonstrate how closely the Utah exemption section was copied from the Federal Income Tax Act, is set out a consolidation of the federal act exemption section as it existed in 1931 when the Utah law was enacted and the Utah law as it was enacted in 1931, with the Utah law italicized and the Federal law in brackets where they differ from one another.

80-13-5 [Section 103]. The following *corporations* [organizations] *are* [shall be] exempt from *the*

*provisions of this chapter, to-wit* [taxation under this title]:

(1) Labor, agricultural or horticultural organizations;

[(2). Mutual savings banks not having capital stock represented by shares;]

(2) [(3)]. Fraternal beneficiary societies, orders or associations,

(a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;

[(4). Domestic building and loan associations, substantially all the business of which is confined to making loans to members; and co-operative banks without capital stock organized and operated for mutual purposes and without profit;]

(3) [(5)]. Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) [(6)]. Corporations and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(5) [(7)]. Business leagues or chambers of commerce, real estate boards or boards not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) [(8)]. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, *and* [or] local associations of employees, the membership of which is limited to the employees of a designated person or *corporation* [persons] in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

(7) [(9)]. Clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(8) [(10)]. Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations, but only if eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(9) [(11)]. Farmers' or other mutual hail, cyclone, casualty or fire insurance companies or associations (including interinsurers and reciprocal underwriters), the income of which is used or held for the purpose of paying losses or expenses.

(10) [(12)]. Farmers', fruit growers', or like associations organized and operated on a cooperative basis,

(a) For the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales, less the neces-

sary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or

(b) For the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight per cent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve *or surplus* for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of supplies and equipment purchased for members provided, the value of the purchases made for persons who are neither members nor *agricultural* producers does not exceed fifteen per cent of the value of its purchases.

[(13)]. Corporations organized by an association exempt under the provisions of *this section* [paragraph (12)], or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association *are also exempt*. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight per cent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

(11) [(14)]. Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this *chapter* [title].

(12) [(15)]. Federal land banks, national farm-loan associations, and federal intermediate credit banks [as provided in the Federal Farm Loan Act, as amended] *and other federal agencies*.

(13) [(16)]. Voluntary employees beneficiary associations providing for the payment of life, sick, accident, or other benefit to members of such associations or their dependents, if



(a) No part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and

(b) Eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses.

(14) [(17)]. Teachers' retirement associations of a purely local character, if

(a) No part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(b) The income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members and income in respect of investments.

(15). *Insurance companies which are otherwise taxed upon their premiums.*

(16). *Corporations whose sole business consists of holding the stock of other corporations for the purpose of controlling the management of affairs of such other corporations, if such other corporations make returns under this chapter.*

From this comparison no other conclusion can be reached except that the Legislature intended to exempt the same corporations which are exempt under the Federal law with the exception of those specifically omitted or added.

Attention should thus be turned to the Federal exemptions to see what corporations are exempted under subdivision (1) of that act. This exemption provision of the Federal law is first found in the Revenue Act

of 1909 (36 Stat. 11) and is carried through each Revenue act since that time.

Shortly after its original enactment, the Bureau of Internal Revenue Regulations interpreted the meaning of the exemption for "labor, agricultural or horticultural organizations." The regulation in effect in 1931 when the Utah law was enacted was as follows:

"Article 522 (Regulation 74): Labor, agricultural or horticultural organizations: The organizations contemplated by Section 103(1) as entitled to exemption from income taxation are those which: (1) have no net income inuring to the benefit of any member; (2) are educational or instructive in character, and (3) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products and the development of a higher degree of efficiency in their respective occupations.

"Organizations such as county fairs and like associations of a quasi-public character, which are designed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income from gate receipts, entry fees, and donations is used exclusively to meet necessary expenses of upkeep and operation, are thus exempt. On the other hand, associations which have for their purpose, for example, the holding of periodical race meets, the profits from which may inure to the benefit of their shareholders are not exempt. Similarly, corporations engaged in growing agricultural or horticultural products for profit are not exempt from tax."



This regulation is substantially the same as Article 512 of Regulation 69 (1926) and Regulation 65 (1924) and Article 512 of Regulation 62 (1921). It has continued in force in substantially the same form to the present time (Section 29.101(1) of Regulation 111).

In 1921, when a reenactment of the exemption section was under consideration in Congress, there was considerable discussion of the effect of the sub-division exempting labor, agricultural or horticultural organizations. In those discussions, Senator McCumber, while explaining the bill, referred to the above quoted regulation, and informed Senator King that this section of law only related to organizations which are not organized for profit. The material portions of this Senate discussion are set out in Seidman's Legislative History of Federal Income Tax Laws, 1938-1861, at pages 855-9, where he quotes from Volume 61 of the Congressional Record, pages 5821 and 5957-59, as follows:

“Mr. King: Mr. President, before the request of the Senator is granted, may I inquire of him as to the interpretation placed by the committee upon the words ‘agricultural or horticultural organizations?’ As I understand, the purpose of subdivision (1) of this provision is to exempt agricultural and horticultural organizations from taxation under the title.

Mr. McCumber: It means those that are not organized for profit.

Mr. King: Does it mean that?

Mr. McCumber: Yes, and article 512 of the regulations covers the subject of dealing with that character of associations.”

During this discussion, Senator McCumber states that "agricultural or horticultural organizations" are modified by the provisions of subdivision (10) of the Federal Act relating to mutual ditch or irrigation companies. In response to this interpretation of the law, Senator King stated:

"Mr. King: \* \* \* The point I was trying to make was that the words 'agricultural or horticultural organizations,' separated as they are by a large number of paragraphs from subdivision 10, may not be construed as being modified or limited by such subdivisions.

Mr. McCumber: It has already been construed, and this is the law as it now stands, and this is the rule adopted by the department in the matter of taxation. Article 512 of the regulations. \* \* \*"

It is apparent from the congressional discussion above that Congress in 1921 interpreted the subdivision here under consideration as relating only to non-profit agricultural organizations. Congress, furthermore, considered Article 512 of the regulations, *supra*, and approved of the interpretation which had been placed upon the sub-section by the bureau.

It has been held in the Federal courts that the reenactment of the Revenue Act provision exempting business leagues from taxation subsequent to the promulgation of treasury department regulation defining the term "business league" gave the departmental regulation the quality of law *Underwriter's Lab. v. Comm.*, 135

F. 2d 371; *Retailer's Credit Ass'n. v. Comm.*, 90 F. 2d 47. The court in the former case said:

“This regulation is of long standing and the section of the statute in question which it supplements and explains has been enacted by Congress many times since the regulation was adopted. The regulation has the sanction of Congress. The Department's interpretation of the statute through this regulation these many years gives it the quality of law.”

It is thus seen that as early as 1921, Congress sanctioned the treasury department's interpretation of the term “labor or agricultural organizations.” From the federal statute's reenactment, there can be no question as to the meaning of the terms under the federal law. It was in this form when, in 1931, the Utah legislature copied the Federal exemption section as was demonstrated above. The Utah legislature's intention was manifestly to exempt the same corporations which are exempt under the Federal law, and the only corporations exempt as agricultural organizations are those which are non-profit, educational or instructive in character and have for their objects the betterment of the branches of agriculture.

The Utah Supreme Court in *American Investment Corporation v. State Tax Commission*, 101 Utah 189, 120 Pac. 2d 331 @ 334, in considering subdivision 16 of 80-13-5, U.C.A., 1943, discussed the nature of the exemptions granted under the section here under consideration and said:

“The exemption section of the Franchise Tax Law lists 16 groups or types of corporations that are exempt. The gist of the sections is to exempt corporations which may be characterized by these features: They are organized and operated not for profit but for the benefit of their members, and they cannot under their articles engage in trade, commerce or business in the state.”

This case was subsequently overruled on other points in *J. M. & M. S. Browning v. State Tax Commission*, 107 Utah 457, 154 Pac. 2d 993, but the above cited quotation was not affected by the latter decision.

Plaintiff's brief comments upon the definition of “corporation” as found in the Utah Act, which concerns associations “organized for profit and doing business in this state.” The definition section states that the meaning shall be attributed to the designated words “unless otherwise required by the context.” It is submitted that the definition of “corporation” contained in the act cannot be applied to the exemption section. This is observed readily if the definition is inserted in lieu of the word “corporation” in 80-13-5, and the subdivisions examined in this light. For example, subsection (6) would read as follows: “The following corporations organized for profit are exempt \* \* \*: (6) Business leagues \* \* \* not organized for profit \* \* \*.” Ascribing the definition to the word “corporation” in this instance would eliminate the exemption completely, since the first clause would limit the exemption to corporations organized for profit and the phraseology of the subsection would limit the exemption to non-profit corporations.

Plaintiff's brief cites the case of *Bonham & Young Co. v. Martin*, 11 A. 2d 371. Examination of this case shows that the only point raised in the case was whether or not muskrat breeding was an agricultural pursuit. The court did not discuss whether or not the corporation was engaged in business for profit.

Plaintiff further draws an analogy to the section of the Utah law relating to farmer cooperative corporations. The theory of the exemption of farmer cooperatives is that the cooperative as an entity has no profit, and that as to income, the members of the cooperative are in a partnership. Cooperatives are created not for profit, but to provide marketing facilities for the farmer members of the cooperative, and any profit on the cooperative's operations is incidental to its primary objective.

The interpretation placed upon the federal law as above outlined has now been in effect for over 40 years, and has never been attacked in the courts. The State Tax Commission has consistently followed this interpretation of the Utah exemption section for over 20 years without attack. This long acquiescence in these interpretations of the organizations which are exempt as "agricultural or horticultural organizations" indicates that the organizations contemplated as being exempt are those which do not operate for profit, are educational in character, and which have for its objects the betterment of the designated pursuit.

Any doubt which may exist as to the meaning of Section 80-13-5, UCA 1943, must be resolved against the

taxpayer. It is well settled in this state that exemptions from general taxing statutes must be strictly construed against the taxpayer. *Norville v. State Tax Commission*, supra; *Equitable Life & Casualty Company v. State Tax Commission*, .....U. ...., .....Pac. 2d ..... (1952).

In summary, it is Defendant's position that (1) a corporation such as Plaintiff was clearly taxable prior to 1931; (2) the tax revision commission report, upon which the present law was based shows an intention that *all* businesses operated for profit except insurance companies should be taxed, and recommended making the law as similar as possible in word and application to the federal law; (3) the Legislature in fact copied the federal law on exemptions almost verbatim, so the only conceivable intention to be drawn is that the same corporations which are exempt under the federal law should be exempt under the Utah law; (4) the interpretation of the federal exemption relating to labor, agricultural and horticultural organizations was well established at the time of the Utah enactment by reason of the law being re-enacted after the Treasury Department regulations had been adopted defining the types of organizations exempted; (5) the consistent interpretation of the federal law for over 40 years and the Utah law for over 20 years without prior attack indicates that the interpretation placed upon this exemption subsection is correct.

## POINT 2.

CLAIMS FOR REFUND FOR TAXES FOR THE YEARS 1948 AND 1949 ARE BARRED BY SECTIONS 80-13-44 AND 80-13-46, UTAH CODE ANNOTATED, 1943.



The issue of the liability of the corporation for the franchise taxes for the years 1948 and 1949 has not been raised by the plaintiff in his brief to the court. However, it is the contention of the commission that, even if the plaintiff were declared to be an exempt corporation, any right to refund for taxes paid in these years is barred by sections 80-13-44 and 80-13-46, Utah Code Annotated, 1943.

80-13-44(2) states:

“No such credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed with the tax commission by the taxpayer.”

Since the claim for refund was not filed until March 13, 1951, no refund for taxes paid in 1948 can be allowed.

On April 26, 1951, the corporation was duly notified in writing that the claims for refund had been disapproved. No action was taken by the corporation on these claims until February 13, 1952, and it is the contention of the commission that any claim for refund for both 1948 and 1949 would be barred by Section 80-13-46, U.C.A. which states as follows:

“Every decision of the tax commission shall be in writing, and notice thereof shall be mailed to the taxpayer within ten days, and all such decisions shall become final upon the expiration of thirty days after notice of such decision shall have been mailed to the taxpayer, unless proceedings

are thereafter taken for review by the supreme court upon writ of certiorari as hereinafter provided, \* \* \*."

Respectfully submitted,

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