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

Utah Supreme Court

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In the Supreme Court
of the State of Utah

FILED

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JACKSON LAND AND
LIVESTOCK COMPANY ,
a corporation

plaintiff,

vs.

THE STATE TAX COMMISSION
OF UTAH,

defendant.

Clerk, Supreme Court, Utah

Plaintiff's
Reply Brief
No. 7904

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

PRESTON & HARRIS,
Attorneys for plaintiff

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Since counsel for the Commission based the argument against exemption on the similarity between the State Franchise Tax and the Federal Income Tax on corporations, we feel that it will be helpful to make a comparison of the two laws. Under the laws of Utah all agricultural corporations are specifically exempt, whether for profit or not, and if this broad exemption had not been intended the legislature could easily have said so.

Applying the same argument to the Federal Income Tax we find that the Congress actually made a distinction between taxable and non-taxable agricultural organizations. The Internal Revenue Code, 1951, provided for this distinction by what is known as the im-

position of the "Supplement U Tax". (See Prentice-Hall Federal Tax Service, 1952, — 9-4-52, Vol. 1, page 4291) Sec. 421, of I. R. C., as follows: "Supplement U-Taxation of Business Income of Certain Section 101 Organizations (Note: Section 101 corresponds to the Utah law on exempt corporations). (a) In General: There shall be levied, collected, and paid for each taxable year beginning after December 31, 1950 . . . (A) ORGANIZATIONS EXEMPT UNDER SECTION 101 (1) (Note: 101 (1) is the I. R. C. section exempting labor, agricultural and horticultural organizations). The taxes imposed by subsection (a) (1) shall apply in the case of any organization . . . which is exempt, except as provided in this supplement, from taxation under this chapter by reason of paragraph (1), (6), or (7) of section 101.

Supplement U then sets forth the rates of taxation on various incomes and classifications of corporations. Of course, Supplement U has been altered from time to time. The last one was aimed at the prevalent practice of "lease back agreements," but carried the usual Supplement U taxation which has characterized the Federal Statutes for years. Thus, if one reads only Section 101, he gains the impression that the Federal statutes and the State statutes are the same. Such is distinctly not the case. Our statute grants a blanket exemption with no stated exceptions. The Federal statute creates only an exempt classification, and re-

ference must then be had to Supplement U to determine whether any corporation falls within the exemption. This becomes so, because of other provisions of the Internal Revenue Code, which describe the character of the organizations which may be deemed as exempt. That is to say, a charitable organization may be exempt, but if it has what the Code calls "unrelated business net income", such income is subject to the tax, even though the company may still be an exempt corporation. Thus, regulation 111. Sec. 29.101 (1)—1, Prentice-Hall, supra. page 4224 states: "Similarly, corporations engaged in growing agricultural or horticultural products for profit are not exempt from tax. For taxable years beginning after December 31, 1950, organizations otherwise exempt from tax under this section (101-(1)) are taxable upon their Supplement U net income. See sections 421 through 424, and the regulations thereunder."

Thus, our State Tax Commission cannot follow the Federal practice because they do not have the same statutory power to do so, and citations from Federal decisions will not be based on the same reasoning, because of the terms of Supplement U which provides a tax on all organizations which make a profit from their operations for the benefit of stockholders or members, and it is this profit which it calls "unrelated business net income". If our statute had a similar "supplement U" provision we may be taxable. Lacking it, we are not taxable, and the statute is so clear and unequivocal.

able, that it needs no reference to any report of legislative proceedings for clarification.

The objection we see to the arguments in defendant's brief is that it ignores acknowledged and long established rules of statutory construction. It is only in cases where language is ambiguous that we need to construe a statute. Our Statute says in simple language that an "agricultural corporation is exempt". It would have been simple for the legislature to have said "agricultural corporations *not organized for profit*, are exempt". Why did the legislature use different language in sub-sec. (1) than in the others?

"Where language is used in one section different from that employed in other sections of the same chapter and from that used in statutes which existed prior to its enactment, it is to be presumed that the language is used with a different intent." *Wine v. Commonwealth*, (Mass.)

17 N. E. 2d 545, 120 A. L. R. 889.

This Court has repeatedly refused to write judicial legislation into statutes where the meaning is already clear:

"Those who are qualified under the statute are entitled to the benefit of the exemption; while under the maxim that, when a statute enumerates the things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned. Those who cannot qualify under the statute are to be excluded from its operation." *Zuniga v. Evans* (Utah) 48 P. 2d 513.

Neither is resort to be had to legislative debates and commission reports when the meaning of a statute is clear and needs no interpretation. The U. S. Supreme Court, *Addison v. Holly Hill Fruit Products*, 322 US 607, 153 A. L. R. 1107 set this matter at rest involving an administrative interpretation:

“The natural meaning of words cannot be displaced by reference to difficulties of administration. For the ultimate question is what has Congress commanded, when it has given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. The idea which is now sought to be read into the grant by Congress to the Administrator to define ‘the area of production’ beyond the plain geographic implications of that phrase is not so complicated nor is English speech so poor that words were not easily available to express the idea or at least to suggest it”.

The language of the Supreme Court of Montana is apt:

“To reach the result contended for by appellants, subdivision (4) would have to read: ‘On debts (originally) secured by mortgages, etc.’ We have neither the power nor the right to read the word ‘originally’ or language of similar import into the statute. Our office is simply to ascertain and declare what is in terms or in substance contained herein, not to insert what has been omitted, or to omit what has been inserted”.

(*Siuru v. Sell*, 91 P. 2d 411, 123 A. L. R. 432).

Since writing the original brief we have discovered a Washington case which treats with the same matter—

a tax on the doing of business. The question there was whether or not the Supreme Court would restrict the exemption:

“It has been said that, inasmuch as we are dealing with an exemption from taxation, the rule of strict construction applies, and this will be admitted. That rule, however, does not call for giving to words used in creating the exemption anything but their ordinary meaning. As we view it, the legislative intent is not stated in ambiguous language, nor is it doubtful”. (Yakima Fruit, etc. v. Henneford, 47 P. 2d 831, 100 A. L. R. 435).

That is the reason why the cases cited by opposing Counsel are not in point, as for example the much cited Norvill v. State Tax Commission, 98 Utah 170, 97 P. 2d 937.

Respectfully submitted,

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