

1979

# State of Utah et al v. I. M. C. Mint Corporation et al : Brief of Claimant-Appellant State of Utah

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Robert B. Hansen; Mark K. Buchi; Attorneys for Claimant-Appellant;

Herschel J. Saperstein; Attorney for Receiver-Defendant;

---

## Recommended Citation

Brief of Appellant, *State v. I. M. C. Mint Corp.*, No. 16555 (Utah Supreme Court, 1979).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/1833](https://digitalcommons.law.byu.edu/uofu_sc2/1833)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

THIRD JUDICIAL DISTRICT  
The Honorable Judge

CLERK OF DISTRICT COURT  
SALT LAKE COUNTY  
SALT LAKE CITY, UTAH  
80111  
Attorneys for Appellant

HERSCHEL J. SAPERSTEIN  
Twelfth Floor  
310 South Main Street  
Salt Lake City, UT 84101  
(801) 363-3300

Attorney for Receiver-  
Respondents

FILED

AUG 31 1979

IN THE SUPREME COURT OF THE STATE OF UTAH

---

STATE OF UTAH, and STATE OF )  
UTAH, by and through JOHN W. )  
ROLLY, Director, Utah State )  
Trade Commission, )

Plaintiff, )

vs. )

Case No. 16555 )

I.M.C. MINT CORPORATION, )  
ROBERT GRABOR, GEORGE E. )  
TWIBEY, et al., )

Defendants. )

---

BRIEF OF CLAIMANT-APPELLANT STATE OF UTAH

---

REVIEW OF A DECISION OF THE  
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY

The Honorable James S. Sawaya, Presiding

---

ROBERT B. HANSEN  
Attorney General

MARK K. BUCHI  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, UT 84114  
(801) 533-5261

Attorneys for Claimant-  
Appellant

HERSCHEL J. SAPERSTEIN  
Twelfth Floor  
310 South Main Street  
Salt Lake City, UT 84101  
(801) 363-3300

Attorney for Receiver-  
Respondents

## TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE -----	1
DISPOSITION IN LOWER COURT -----	1
RELIEF SOUGHT ON APPEAL -----	2
STATEMENT OF THE FACTS -----	2
ARGUMENT	
POINT I: THE GENERAL CREDITORS OF I.M.C MINT SHOULD TAKE SECOND POSITION BEHIND THE CLAIM FOR TAXES AS UTAH IS FIRMLY COMMITTED TO THE RULE THAT TAXES FOR GENERAL GOVERNMENTAL PURPOSES ARE PARAMOUNT TO ALL OTHER DEMANDS AGAINST THE TAXPAYER -----	3
POINT II: RULE 66(f) OF THE UTAH RULES OF CIVIL PROCEDURE REQUIRES THE STATE'S CLAIMS FOR SALES AND WITHHOLDING TAXES BE PAID PRIOR TO CLAIMS OF GENERAL CREDITORS -----	10
POINT III: PUBLIC POLICY DICTATES THAT THE STATE'S CLAIM FOR WITHHOLDING TAXES BE SUPERIOR TO ALL LIENS	19
POINT IV: THE LOWER COURTS RELIANCE ON THE <u>PHILLIPS PETROLEUM CO. V. WAGSTAFF</u> CASE WAS INAPPROPRIATE AS THE INSTANT CONTROVERSY INVOLVES DIFFERENT CONCEPTS THAN WERE THERE INVOLVED -----	24
CONCLUSION -----	26

## AUTHORITIES CITED

### CASES CITED

<u>Archer v. Arnovitz</u> , 92 Utah 459, 70 P.2d 462 (1937) . . .	7
<u>Coy v. Title Guarantee &amp; Trust Co.</u> , 220 Fed. 90 (1915) . .	19
<u>Dewar v. Hagans</u> , 146 P.2d 208, 61 Ariz. 207 (1944) . . . .	17
<u>District of Columbia v. Hechinger Properties Co.</u> , 197 A.2d 157 (1964) . . . . .	11,13,15,16
<u>Dutt v. Marion Air Conditioning Sales</u> , 112 N.E.2d 32, 159 Ohio St. 290 (1953) . . . . .	8,17
<u>Hanson v. Burris</u> , 86 Utah 424, 46 P.2d 400 (1935) . . .	4,5

<u>Ingraham v. Hanson</u> , 297 U.S. 378 (1936) . . . . .	4
<u>International Harvester Credit Corp. v. Goodrich</u> , 350 U.S. 537 (1956) . . . . .	17,22
<u>Kerr-McGee Oil Industries v. W.J. McGary</u> , 361 P.2d 734, 89 Ariz. 307 (1961) . . . . .	17
<u>Lannan v. Waltenspiel</u> , 45 Utah 564, 147 P. 908 (1915) . .	17
<u>Lewis v. Midway Lumber, Inc.</u> , 561 P.2d 750, 114 Ariz. 426 (1977) . . . . .	17
<u>Marshall v. New York</u> , 254 U.S. 380 (1920) . . . . .	4
<u>Michigan v. Michigan Trust Co., Receiver</u> , 286 U.S. 334 (1932) . . . . .	5,18
<u>Peterson-Donnelly Engineers &amp; Contractors Corp. v.</u> <u>First National Bank of Arizona, Phoenix</u> , 408 P.2d 841, 2 Ariz. App. 321 (1966) . . . . .	17
<u>Phillips Petroleum Co. v. Wagstaff</u> , 22 Utah 2d 177, 450 P.2d 100 (1969) . . . . .	6,14,15,16,17 20,21,23,24,25
<u>Phoenix of Hartford v. Harmony Restaurant</u> , 560 P.2d 441 (Ariz. App. 1977) . . . . .	7
<u>Robinson v. Hanson</u> , 75 Utah 30, 282 P. 782 (1929) . . .	4,8,19
<u>Schlothman v. Territory of Alaska</u> , 276 F.2d 806 (1960). .	16,21
<u>State v. Bradley</u> , 93 So. 595, 207 Ala. 677 (1922) . . . .	18
<u>State v. Hi-Lo Foods, Inc.</u> , 383 P.2d 910 (Wash. 1963). . .	8
<u>Strahan v. Strahan</u> , 400 P.2d 542 (Wyo. 1965) . . . . .	7
<u>Territory of Alaska v. Craig Enterprises</u> , 355 P.2d 397 (Alaska 1960) . . . . .	22
<u>Union Central Life Insurance v. Black</u> , 67 Utah 268, 247 P. 486 (1926) . . . . .	4,16,19,20
<u>Wasson v. Hogenson</u> , 583 P.2d 914 (Colo. 1978) . . . . .	23

## SECONDARY SOURCES CITED

	Page
66 Am.Jur.2d, Receivers §423 . . . . .	7
73 Am.Jur.2d, Statutes §253 . . . . .	14

## STATUTES CITED

Utah Code Ann. §59-14-71(3)(e) . . . . .	15
Utah Code Ann. §59-14A-44(e) . . . . .	9,10,12,14,15,16 17,22,25
Utah Code Ann. §59-14A-79 . . . . .	13,14,15
Utah Code Ann. §59-15-10 . . . . .	11,15,17,20
Utah Code Ann. §72-2-4 . . . . .	6
D.C. Code Ann. §47-312 . . . . .	12,14,15
D.C. Code Ann. §47-1406 . . . . .	12,14,15
D.C. Code Ann. §47-1586g(f)(2) . . . . .	12,14
D.C. Code Ann. §47-2610 . . . . .	16
Utah Rules of Civil Procedure 1 . . . . .	6
Utah Rules of Civil Procedure 66(f) . . . . .	5,6,7,8,9 10,11,17,18

## CONSTITUTIONS CITED

Utah Constitution Art. V, §1 . . . . .	7
--	---

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, and STATE OF :  
UTAH, by and through JOHN W. :  
ROLLY, Director, Utah State :  
Trade Commission, :

Plaintiff, :

Case No. 16555

-vs-

I.M.C. MINT CORPORATION, :  
ROBERT GRABOR, GEORGE E. :  
TWIBEY, et al., :

Defendant. :

---

STATEMENT OF THE NATURE OF THE CASE

This a review of a decision of the Third District Court wherein the court denied the state of Utah's claim for priority payment toward the sales and withholding tax debts of the defendant from the assets held by the receiver.

DISPOSITION IN LOWER COURT

The above captioned case was commenced when the defendant I.M.C. Corporation was ordered into receivership by the Third District Court. The Tax Commission timely filed its claim of a preferred debt for sales and withholding taxes with the receiver. Formal objection to the state of Utah's claim of priority over general unsecured creditors was accomplished by the filing of a pleading to that effect. An informal hearing before the Honorable James S. Sawaya was held on the 15th day of March, 1979. Memoranda of Law were filed by counsel for the

receiver and the State Tax Commission. After due consideration the district court sustained the receiver's objection to the priority claims of the Utah State Tax Commission. This appeal is from that particular order only.

### RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the Third District Court's determination and a ruling that the state's claims for sales and withholding taxes be declared superior to those claims of general unsecured creditors.

### STATEMENT OF THE FACTS

An informal hearing was held before the Honorable James S. Sawaya on the 15th day of March, 1979, for the purpose of hearing the receiver's objection to the claims of the Utah State Tax Commission for unpaid sales and withholding taxes. (R. 485-486) Brief arguments were heard and the Judge granted the request of the tax commission's counsel for leave to file a written memorandum of law on the issues involved with the state's claim for priority over general, unsecured creditors. Memoranda were filed by both parties. (R. 455-484). An order was issued sustaining the receiver's objections. (R. 485).

The sales and withholding tax amounts arose in the following context. Defendant, I.M.C. Mint was found to be conducting business in Utah which was creating sales transactions which are the proper subject of the Utah sales tax. The tax commission contacted the corporation by making a request for audit arrangements and an application for a sales tax license.



Through various acts of the defendant, the audit arrangements were not made, thereby preventing the tax commission from completing the audits for sales taxes until June 20, 1974. In due course, the audit was sent to the defendant-taxpayer on June 25, 1974. In the meantime, a receiver was appointed by Judge James S. Sawaya on June 21, 1974. (R. 12-13). As the receiver had not yet notified the creditors, thereby putting the commission on notice of the receivership, the tax commission continued in its normal procedure by mailing a notice of intent to file a tax warrant dated September 11, 1974.

This dispute has arisen as the result of the receivership being established after the deficiency assessment but before the state filed warrants. The receiver asserts that the failure to file warrants prior to the court ordered receivership leaves the state without a tax lien and thus without a preference or priority over general, unsecured creditors. The tax commission asserts that the state has a lien for sales and withholding taxes independent of the warrant process.

#### POINT I.

THE GENERAL CREDITORS OF I.M.C. MINT  
SHOULD TAKE SECOND POSITION BEHIND  
THE CLAIM FOR TAXES AS UTAH IS FIRMLY  
COMMITTED TO THE RULE THAT TAXES FOR  
GENERAL GOVERNMENTAL PURPOSES ARE  
PARAMOUNT TO ALL OTHER DEMANDS AGAINST  
THE TAXPAYER.

At this point in time in the receivership proceeding, all that remains to be decided is whether the state's claims for sales and withholding taxes are to be given priority over the claims of general, unsecured creditors.

This court has repeatedly held fast to the basic rule of tax law that "taxes for general governmental purposes, lawfully imposed by the state, are paramount to all other demands against the taxpayer, although the statute imposing the tax does not expressly declare such priority." Hanson v. Burris, 86 Utah 424, 46 P.2d 400 (1935), affirmed in Ingraham v. Hanson, 297 U.S. 378 (1936). See also: Robinson v. Hanson, 75 Utah 30, 282 P. 782 (1929); Union Cent. Life Ins. Co. v. Black, 67 Utah 268, 247 P. 486 (1926).

The U.S. Supreme Court applied this basic principle to the receivership setting. In Marshall v. New York, 254 U.S. 380 (1920) the Court decided the exact issue involved in the present case — whether the state "has priority in payment our of general assets of the debtor over other creditors whose claims are not secured by act of the parties nor accorded a preference, by reason of their nature, by the state legislature or otherwise." Id. at 382. The Court noted the common law of England as incorporated by state constitution which established the sovereigns priority for payment. Such priority being effective whether the property was in the hands of the debtor or in custodia legis. The Court applied this rule to find the receiver acted improperly in denying the state's claim which had not become a lien under the laws of New York at the time of the receivership. Of special relevance was the Court's observance that the state's tax would have been collectable by warrant had the receiver not been appointed. The Court then stated: "Since the prerogative right of the State could not be enforced by levy and seizure, an application to the court for payment of the debt due was the appropriate

remedy." Id. at 385. In short, the court ordered the receiver to pay the state's claim for taxes notwithstanding the fact that the claim had not risen to the level of a lien.

As additional support for the proposition that this court should order the receiver to pay the taxes in the instant case, the appellant refers the court to Michigan v. Michigan Trust Co., Receiver, 286 U.S. 334 (1932). The case will be discussed in more detail, infra, but basically it stands for the proposition that the creation of a receivership should not be allowed to defeat a state's claim for taxes accruing before or during a receivership.

As the instant case does not involve a dispute between the state and creditors who can point to any preference or priority which attaches to their claim, the statement of substantive law quoted above dictates that the state's tax claims be satisfied prior to any disbursement to general creditors. This must follow unless the creditors can point to any law to the contrary which seeks to alter this established principle of tax law. The Robinson v. Hanson court explicitly so stated when it pronounced:

[T]he priority of the sovereign claims of the state will not be depreciated or denied without warrant from the Legislature in clear and unmistakable terms; . . . 282 P. at 784 (emphasis added).

The receiver points to Rule 66(f) of the Utah Rules of Civil Procedure as modification of the rule of inherent superiority. Appellant asserts that Rule 66(f) is only an attempt to implement the rule of state superiority and any construction to the contrary is without proper foundation in the law.

to pay taxes, Rule 66(f) provides:

Before any personal property coming into the hands of a receiver may be sold, transferred or hypothecated, such receiver shall pay and discharge any and all taxes constituting a lien thereon legally levied by any taxing unit of the state. . . .

The receiver argued below that 66(f)'s language, "taxes constituting a lien" when coupled with the statement made in Phillips Petroleum Co. v. Wagstaff, 22Utah 2d 177, 450 P.2d 100 (1969),<sup>1</sup> that the state's lien "for delinquent withholding taxes begins to run at the time notice thereof is given by filing the warrant" mandated that only taxes accompanied by warrants were preferred under Rule 66(f). The appellant maintains that it was error for the lower court to have adopted this view of the rule for three reasons.

First, by their own terms, Utah Rules of Civil Procedure are procedural only. Utah R. Civ. P. 1(a) reads:

(a) Scope of Rules: These rules shall govern the procedure in the Supreme Court, the district courts, city courts, and justice courts of the State of Utah, in all actions, suits and proceedings of a civil nature, whether cognizable at law or in equity. . . . (emphasis added).

These rules were promulgated pursuant to authority granted by Utah Code Ann. §72-2-4 which reads:

The Supreme Court of the State of Utah has power to prescribe, alter, and revise, by rules, for all courts of the State of Utah, the forms of process, writs, pleadings and motions and the practice and

---

1. The Phillips decision will be discussed at some length infra.

procedure in all civil and criminal actions and proceedings, . . . . Such rules may not abridge, enlarge, or modify the substantive rights of any litigant. (emphasis added).

It seems clear that these Rules are promulgated to govern judicial procedure and are not intended to contravene or create any substantive law governing the people of the state of Utah.<sup>2</sup>

In fact, the appellant can imagine no reason why the court would have desired to cut off the rights of the state to claim priority for taxes in a receivership setting. This court upheld the taxes on a receivership while it operated a business<sup>3</sup> and in doing so fell in line with the majority position.<sup>4</sup> In the absence of the receivership the state would have taken over general creditors, so this author wonders why the court would believe the state should not take a priority posture simply because no lien had arisen as of the time the receiver was appointed.

Secondly, even if Rule 66(f) was intended to do more than establish procedural guidelines in a receivership proceeding it could not constitutionally operate so as to change the substantive law applicable to the payment of debts due the state of Utah. Utah Const. art. V, section 1 mandates this when it reads:

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person

2. For case authority addressing this issue see generally Strahan v. Strahan, 400 P.2d 542 (Wyo. 1965); Phoenix of Hartford v. Harmony Restaurant, 560 P.2d 441 (Ariz. App. 1977).
3. Archer v. Arnovitz, 92 Utah 459, 70 P.2d 462 (1937).
4. See 66 Am. Jur. 2d Receivers §423.

charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Appellant submits that the creation of liens and the effect to be given thereto is a legislative function. See Dutt v. Marion, 159 Ohio St. 290, 112 N.E. 2d 32, 36 (1953); State v. Hi-Lo Foods, Inc., 383 P.2d 910 (Wash. 1963). To place a construction of Rule 66(f) so as to provide a modification of the principle of law that the state's debts are inherently superior to general, private obligations would be unconstitutional. As there are other constructions of the Rule which are constitutional the unconstitutional construction should be discarded.

Lastly, the Utah Supreme Court emphatically stated that without a clear and unmistakable mandate from the legislature to the contrary, the state's general taxes would be preferred over other claims. Robinson v. Hanson, 282 P. at 784. That 66(f) is not such a clear and unmistakable mandate becomes clear by referring to the words of the rule. If no sufficient liquid assets are available to the receiver to satisfy the taxes constituting a lien on personal property, the court may authorize a sale of the property prior to a payment of such taxes. However, "immediately upon receipt of the consideration for such sale. . . such receiver shall pay and discharge all such liens, taxes, and within ten days thereafter shall file. . . evidence showing full payment and discharge of all such taxes." (emphasis added).

The appellant submits that the receiver's duty to "pay and discharge all such liens, taxes" under Rule 66(f) is simply language which allows the receiver to comply with the law in ensuring that the state is satisfied before the assets of the business are distributed to the public.

The logic behind the general recognition of the unique nature of a debt owed the state is apparent when one closely examines the taxes. With both taxes involved in this dispute the taxpayers on whom they fall have already paid the tax. In the instant case, the taxpayers remitted the sales tax to the defendant, I.M.C. Mint for transmission to the state. Similarly, I.M.C. Mint withheld projected income tax amounts from money owed its employees and in so withholding, became a trustee for the State of Utah. See express language to this effect in Utah Code Ann. §59-14A-44(e). Thus, the taxes the state seeks in this case are inherently different from and are of a higher nature than general and unsecured claims.

In summary, it is the state's contention that it's tax claims are inherently superior to the claims of unsecured, general creditors, that a receivership does not affect that superiority, and that Rule 66(f) does nothing more than ensure that these principles of law are uniformly carried out in all court-sanctioned receiverships in Utah.



## POINT II.

RULE 66(f) OF THE UTAH RULES OF CIVIL PROCEDURE REQUIRES THE STATE'S CLAIMS FOR SALES AND WITHHOLDING TAXES BE PAID PRIOR TO CLAIMS OF GENERAL CREDITORS.

Rule 66(f) reads in part as follows:

Before any personal property may be sold, transferred or hypothecated, such receiver shall pay and discharge any and all taxes constituting a lien thereon, legally levied by any taxing unit of the state, . . . .

In the present controversy there is no contention that the tax amounts were not properly levied. The only question remaining before invoking the provisions of Rule 66(f) is whether the sales and withholding taxes, which are the subject of the state's claim, are liens. The Tax Commission submits that Rule 66(f) makes no mention of perfected liens, nor does it distinguish between perfected or unperfected liens. It simply states that the receiver shall pay any and all taxes constituting a lien.

The Commission maintains that the state did have a lien for each type of tax for the stated amounts at the time the order appointing a receiver was signed by the district court judge. As supported for this position the appellant directs attention to Utah Code Ann. §59-14A-44(e) which establishes a lien for withholding taxes when it reads: "the State of Utah shall have a lien to secure the payment of any amounts withheld and not remitted upon all of the assets of the employer and all property. . . which said lien shall be prior to any lien of any kind whatsoever in- including existing liens for taxes." (emphasis added).



The Commission maintains that the above provision establishes a lien as a matter of law at the moment in time when both of the following have occurred:

(1) The income tax has been withheld from the employee's pay; and

(2) when the amount withheld was not remitted to the tax commission as required by law.

The Commission submits that Utah Code Ann. §59-15-10, created a lien for the sales tax amounts due when the defendant ceased doing business as a result of the appointment of a receiver. §59-15-10 reads: "The tax imposed by this Act [Emergency Revenue Act of 1933 or Sales Tax Act] shall be a lien upon the property of any wholesaler or retailer or proprietor who shall. . . quit business. . . ." (emphasis added).

It should be noted that neither of these taxing provisions is tied to the warrant statutes or procedures which may also impose a lien on the property of a delinquent taxpayer. A further observation is that these lien provisions do not mandate any "perfection" criteria or other requirements which the state must comply with prior to its being able to claim a lien against the delinquent taxpayer's property. The following discussion will amplify the state's contention that it has a lien for purposes of Rule 66(f).

The District of Columbia Court of Appeals has had the opportunity to construe a statutory scheme similar to Utah's scheme in District of Columbia v. Hechinger Properties Co., 197 A. 2d 157 (1964). Involved in Hechinger was the District of

Columbia's claim for sales and withholding taxes against funds held by a marshal for distribution to an attaching judgment creditor. The District's statutory scheme governing tax liens is analogous to Utah's tax lien statutes. D.C. Code 1961, §47-1586g(f)(2) provides that:

The District of Columbia shall have a lien upon all the property of any employer who fails to withhold or pay over to the collector sums required to be withheld under this section. If the employer withholds but fails to pay over the amounts withheld to the collector, the lien shall accrue on the date the amounts were withheld. If the employer fails to withhold, the lien shall accrue on the date the amounts were required to be withheld.

In substance, this above-quoted provision is identical to Utah Code Ann. (1953) (hereafter U.C.A.) §59-14A-44(e) supra.

Under D.C. Code §47-1586g(f)(2), the lien accrues on the dates the amounts were withheld. Under §59-14A-44, the lien arises when the amounts withheld are not remitted pursuant to the statutory procedure.

The Hechinger case became even more relevant when it is noted that the District of Columbia has a similar statute to Utah's various warrant statutes. D.C. Code 1961, §47-312 provides that when a person fails to remit the taxes due the district, the taxes may be collected in the manner prescribed in §47-1406, which reads in part:

...[T]he collector of taxes, . . . may file a certificate of such delinquent personal tax with the clerk of the United States District Court for the District of Columbia, which certificate from the date of its filing shall have the force and effect, as against the delinquent person named in such certificate of the lien created by a judgment granted by said court.

Again, the Utah counterpart to the above provision, U.C.A. §59-14A-79, provides substantially the same collection remedy as does the District's statutes. Subparagraph (c) of §59-14A-79 provides that "the tax commission may issue a warrant . . . directed to the sheriff . . . commanding him to levy upon and sell such person's real and personal property . . . ." Subparagraph (d) continues by providing that the sheriff shall file a copy of the warrant with the clerk of the district court which operates to create "a binding lien upon the real, personal and other property of the taxpayer to the same extent as other judgments duly docketed in the office of such clerk." Subparagraph (e) states that once the warrant is filed, the tax commission shall "be deemed to have obtained judgment against the taxpayer."

Having established the similarity of the two governments' tax statutes, it is important to note how the Hechinger court resolved the District's claims for taxes. In that case, the trial court had held that since the District had not filed its certificate prior to the attachment proceedings, its claim to taxes was subordinate to that of the attaching creditor. In holding in favor of the District, in its claim for priority for withholding taxes, the court stated:

A lien created by statute exists independently of the various means of enforcement which the statute permits. If the lien is given by the statute, further proceedings are not necessary to fix the status of the property. In our case a lien commenced at the time the income was withheld, or on the date it should have been withheld. It was perfected, it was choate, at these times and no further action was necessary to perfect it. It has long been regarded as a universal principle that a prior lien gives a prior legal right which is entitled to prior satisfaction out of the subject it binds. (citations omitted).

The construction given 47-1586g(f)(2) by the trial court must be tested against the intent and purpose of Congress. The trial court held that the District has no lien until it records a withholding tax lien in the United States District Court. But Section 47-312, by itself, with no reliance upon any other statute, gives the District the right to acquire a lien for taxes in the same manner that liens for personal property taxes are acquired, i.e., by filing a certificate of delinquent taxes with the United States District Court, pursuant to the authority of Section 47-1406 of the Code. If we uphold the trial court's interpretation, Section 47-1586g(f)(2) is meaningless. We do not believe Congress intended to enact a nullity in adopting Section 47-1586g(f)(2). We think that its purpose was clear -- to give the District a lien which arises and exists on the date income taxes are withheld or are required to be withheld by the employer and has priority over other claims. Id. at 160 (emphasis added).

The District of Columbia Court's unwillingness to render a piece of legislation meaningless is a well accepted judicial attitude founded on the rule of statutory construction that the legislature intends that all its enactments should be given effect.<sup>5</sup> Moreover, all statutes should be so construed, if possible, by a fair and reasonable interpretation, as to give full force and effect to each and all of them.<sup>6</sup> Furthermore, it is not to be assumed that one or the other of related statutes is meaningless; rather, such statutes will be so construed as to give each a field of operation.<sup>7</sup>

This argument is especially applicable in light of legislative action taken after a Utah Supreme Court case which construed the predecessor to U.C.A. §59-14A-44(e), U.C.A.

5. 73 Am.Jur.2d Statutes §253 and cases cited therein.

6. Id.

7. Spons. by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

§59-14-79(3)(e). In Phillips Petroleum Co. v. Wagstaff, 450 P.2d 100 (Utah 1969), the court declared that §59-14-79(3)(e) did not give the State a lien priority over prior, existing liens and that the state's lien for taxes begins to run at the time notice thereof is given by filing the warrant. Four years later the Utah Legislature enacted identical language to §59-14-71(3)(e) in the §59-14A-44(e). In the same act (Individual Income Tax Act of 1973), the legislature enacted §59-14A-79, the warrant statute governing withholding taxes.

It would seem odd indeed for the Utah Legislature to have revamped the State's entire income tax scheme in 1973 and include §59-14A-44(e) and §59-14A-79(d) if it did not intend for both lien statutes to have effect. The fact that this legislature used the exact language of §59-14-71(3)(e) in enacting §59-14A-44(e) four years after Phillips Petroleum Co. v. Wagstaff, supra, reemphasizes their desire to give priority treatment to tax liens over liens created by private parties to the extent allowed by law. (For discussion of what is allowed under the Phillips case see Point IV, infra.)

The Commission submits that just as the Hechinger court held that the District of Columbia's recording-to-create-a-lien statutes, §47-312 and 47-1406, were independent of any other statutes, so are Utah's warrant statutes independent of lien provisions found in U.C.A. §§59-14A-44(e) and 59-15-10.

Having disposed of the withholding tax dispute, the Hechinger court considered the District's claim for sales taxes. The private creditor again argued that the District's failure to file a certificate of delinquent taxes relegated its claim

inferior to the creditor's claim. In holding that the recording-type statute and the lien-arising-as-a-matter-of-law statute were independent provisions, the court noted:

We construe §47-2610 as a mere permissive way ("may" be collected) in which the District of Columbia can give notice, if it desires, to creditors or potential creditors of its prior claims. 197 A.2d at 161.

Just as the D.C. Code §47-2610, read "may be collected," U.C.A. §59-14A-79(c), states that the "tax commission may issue a warrant."

To adopt the interpretation of Utah's lien statutes that the court did in Phillips, supra, is to render §59-14A-44(e) meaningless, an act this court should seek to avoid.

The Commission urges this court to adopt the position of the highest Court of the District of Columbia. This is done in an effort to preserve that generally accepted proposition that the maintenance of all the vital governmental services depends upon the raising of the necessary revenue to fund the same. See Union Cent. Life Ins. Co. v. Black, supra, at 488; Schlothman v. Territory of Alaska, 276 F.2d 806 (1960).

The receiver attempted to dismiss the helpfulness of the Hechinger case by observing that a District statute gave taxes priority treatment in a receivership setting irrespective of whether they constitute liens. This observation is irrelevant because an undisturbed trial court ruling found the dispute was outside the scope of the priority statute, thereby rendering the appellate court's construction of the lien statutes very much in point. The appellant recognizes that the Hechinger



decision cannot be totally consonant with the Phillips Petroleum Co. v. Wagstaff, supra, but the appellant asserts that Hechinger is a better reasoned case when applied to the facts of the instant controversy where it is only important to decide if the state has a lien for purposes of Rule 66(f). For an extensive discussion of Phillips decision see Points III and IV, infra.

The interpretation of the Utah lien statutes proffered by the Commission, is strengthened by referring to two rules of general lien law stated below. In Lannan v. Waltenspiel,<sup>45</sup> Utah 564 147 P. 908, 909 (1915), the court stated that "Statutes giving a lien are remedial and therefore to be liberally construed, and so construed as to accomplish the legislative purpose" (emphasis added). To this same effect, see Kerr-McGee Oil Industries v. W.J. McGary, 361 P.2d 734, 89 Ariz. 307 (1961); Dewar v. Hagans, 146 P.2d 208, 61 Ariz. 207 (1944); Lewis v. Midway Lumber, Inc., 561 P.2d 750, 114 Ariz. 426 (1977); Peterson-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona, Phoenix, 408 P.2d 841, 2 Ariz. App. 321 (1966); International Harvester Credit Corp. v. Goodrich, 350 U.S. 537, 544 (1956).

The other rule the Commission cites for support was enunciated in Dutt v. Marion Air Conditioning Sales, 112 N.E. 2d 32, 36 (Ohio 1953), where the court said: "[T]he question, whether a statutory lien on property generally should prevail over a specific lien on particular personal property, is ordinarily a legislative and not a judicial question."

The Commission maintains that U.C.A. §§59-14A-44(e) and 59-15-10 are indicative of a legislative intent to give priority

to the tax claims of the state. The Commission further asserts that Rule 66(f) was set up to implement the state's preference over other creditors and not as a technicality to serve as a roadblock or divest the state of priority it would have otherwise had in the absence of the receivership. As to this latter point it could be observed that the U.S. Supreme Court has recognized that at times a receivership goes beyond its purpose of conservation of assets and liquidation of a business when it stated:

Receiverships for conservation have at times a legitimate function, but they are to be watched with jealous eyes lest their function be perverted. . . . To protect through a receiver the enjoyment of the corporate privilege and then to use the appointment as a barrier to the collection of the tax that should accompany enjoyment would be an injustice to the State and a reproach to equity. Michigan v. Michigan Trust Co., Receiver, 286 U.S. 334, 345-346 (1932)<sup>8</sup> (emphasis added).

This statement becomes very relevant in light of the fact that the Michigan court ordered the receiver to pay the franchise tax which had accrued the year prior to the establishment of the receivership. To this effect the court stated:

---

<sup>8</sup> For a statement in a similar vein, see *State v. Bradley*, 207 N. 677, 93 So. 595, 596 (1922) where the court stated: "It is the manifest duty of a receiver of an existing domestic corporation to satisfy out of the funds in the receiver's hands all valid tax or governmental impositions in that nature imposed by the corporation's creator that would have been demandable of the corporation had the receivership not been created."



Taxes owing to the Government, whether due at the beginning of a receivership or subsequently accruing, are the price that business has to pay for protection and security." citing Coy v. Title Guarantee & Trust Co., 220 Fed. 90, 92, 286 U.S. at 344 (emphasis added)

The Commission merely urges this court to follow the intent of the legislature in providing for the payment of debts due the state before private debts are paid.

POINT III.

PUBLIC POLICY DICTATES THAT THE  
STATE'S CLAIM FOR WITHHOLDING  
TAXES BE SUPERIOR TO ALL LIENS

Appellant maintains that cases upholding statutes which grant state tax claims priority over other obligations are well reasoned in light of the nature of the obligations involved. The Utah decisions which recite the state's inherent claim for priority over general obligations have stated their reasons for doing so. In Robinson v. Hanson, 75 Utah 30, 282 P. 782, 784 (1929) the court stated:

The first and paramount necessity for social order, personal liberty, and private property is the maintenance of civil government; and government cannot exist without revenues. The necessity and importance of preferring the lien for general taxes over other claims are so impelling that the priority of the sovereign claims of the state will not be depreciated or denied without warrant from the Legislature in clear and unmistakable terms.

In Union Cent. Life v. Black, 67 Utah 268, 247 P. 486, 488 (1926) the court noted:

It has been held frequently that a tax lawfully imposed by the state on its citizens is not an ordinary debt, but is an obligation which by its very nature should be regarded as paramount to all other demands against the taxpayer . . . . Such decisions proceed on the theory that the maintenance of good government and the public welfare are to such an extent dependent upon the prompt collection of taxes that demands of that nature should take precedence of all claims founded upon private contracts." (emphasis added).

The need for these revenues is never more apparent than it is right now when the lack of state revenue has caused a state reduction in all budgets. This has had the direct impact of cutting off government service in the welfare area and in various service arms of the government.

To follow the Phillips decision and ignore the legislative mandate to prefer withholding tax claims over prior secured creditors notwithstanding a notice giving warrant is to deal the state treasury a double blow. Not only has the state been deprived of revenue it was relying upon to come from the defaulting employer to fund necessary services, but in many instances the state must deplete other needed and appropriated funds. This occurs when the employee of the defaulting employer files for and receives his or her income tax refund. It is obvious that the legislature singled out the withholding tax as the only tax needing special procedures to guarantee vital revenue at the expense of prior lien holders - even tax-lien holders.

In Union Cent. Life v. Black, supra, this court recognized that circumstances surrounding the public debt will save a

collection procedure from constitutional attack when it cited another court decision as follows:

The fact has also been recognized from time immemorial that every sovereignty ought to be armed with the requisite power to enforce the collection of taxes without fail, and to compel the prompt payment of whatever imposts it sees fit to levy for its own support. In view of that necessity it has been a common practice to provide summary remedies for enforcing such demands, which have been upheld by the courts whenever assailed, although it is quite probable that some of the remedies so provided could not have been sustained as affording due process of law, if the proceedings had related to the collection of purely private debts. 247 P. at 488 (emphasis added).

Appellant asserts that the state's need for revenue and the legislature's recognition of that outweighs the notice considerations stated in the Phillips Petroleum Co. v. Wagstaff decision. To the extent that the court finds the Phillips decision dispositive of this case, the appellant asks this court to overrule that decision. The legislative decision to limit this powerful collection tool to withholding taxes was a prudent use of its authority which was founded on a recognition of the peculiar problems attendant to that tax.

As to the notice issue, several courts have considered the requirements of sufficient notice when a state tax has been involved. At issue in Schlothman v. Territory of Alaska, 276 F.2d 806 (9th Cir. 1960), was the priority of liens between a mortgagee and the Territory of Alaska. As in Phillips, the mortgagee had a recorded mortgage predating any recorded lien for taxes due the Territory of Alaska. The territory had a

statute which provided that the lien for taxes was "prior, paramount and superior to all other liens, mortgages . . . ." (Compare with Utah Code Ann. §59-14A-44(e). The court rejected the mortgagee's constitutional due process attack when it held that the mortgagee is "chargeable with knowing of the lien provisions of chapter 82. Hence, . . . [the mortgagee] had constructive notice that when Einstoss [the mortgagor and defaulting taxpayer] acquired title to her property a paramount inchoate lien would immediately attach. . . . This notice was sufficient to meet the requirements of due process." Id. at 811. The Schlothan court cited as support, International Harvester Credit Corp. v. Goodrich, 350 U.S. 537, 76 S. Ct. 621 100 L.Ed. 681 (1956), wherein the court upheld a New York State Highway tax. The New York statute imposed a lien for highway use taxes which was paramount to all prior liens or encumbrances of any character. In upholding the state's priority, the court rejected a due process attack, noting that the statute imposing the lien gave ample notice of the tax and the provisions of its collections. 350 U.S. at 543-44. For further discussion in the constitutional area, see Territory of Alaska v. Craig Enterprises, 355 P.2d 397 (Alaska 1960), where the court discusses many other cases which have considered the notice issue surrounding so-called "secret" liens of states for taxes. Of special relevance to the case at hand was the Craig Enterprises case where the court upheld the state's statute providing priority treatment for state tax claims. The court applied a balancing standard in finding that such a statute did not overpass the bounds of reason. See 355 P.2d at 402.

For a recent case where the court upheld the state's right to prefer public obligations over prior private debts, see Wasson v. Hogenson, 583 P.2d 914 (Colo. 1978).

In summary, the appellant believes that the Phillips Petroleum Co. v. Wagstaff decision is not controlling of the instant case and is distinguishable therefrom.<sup>9</sup> Even if it were controlling, it should be overruled.<sup>10</sup>

---

9. For further discussion of this position see Point IV, *infra*.

10. For further discussion of this position see Point II, *supra*.

POINT IV.

THE LOWER COURTS RELIANCE ON THE  
PHILLIPS PETROLEUM CO. V. WAGSTAFF  
CASE WAS INAPPROPRIATE AS THE INSTANT  
CONTROVERSY INVOLVES DIFFERENT CONCEPTS  
THAN WERE THERE INVOLVED.

Counsel for the receiver would urge this court to find that Phillips Petroleum Co. v. Wagstaff, 22 Utah 2d 177, 450 P.2d 100 (1969), is controlling in the matter at hand. The Phillips case involved a suit to foreclose a mortgage wherein the State of Utah asserted that its liens for delinquent withholding taxes were superior to the mortgage by reason of a statute stating that the lien of the State "shall be prior to any lien of any kind whatsoever."

The court decided in favor of the mortgagee by holding that the State's lien for withholding taxes only begins to run at the time notice thereof is given by filing the warrant. The appellant submits that this holding simply reflects the court's recognition of, and strict adherence to, the system of recordation of all matters affecting real property. Practically speaking, the court's holding directs the State to comply with the recording and notice provisions of the recording statutes if it wishes to resort to the real property of the delinquent taxpayer in seeking satisfaction of the debt due the State.

It is possible to reach this conclusion by referring to the State's various lien statutes. In the statutes creating sales, use, income, franchise and privilege taxes, the legislature established a procedure for lien creation. In each statute, where the legislature expressly creates a lien upon real property,

express direction is given to the Tax Commission to docket a warrant in the District Court. However, where no express mention of real property exists (U.C.A. §59-15-10 and §59-14A-44(e)), the legislature gives no directions at all concerning the docketing of a warrant. Appellant submits that this possibly demonstrates a legislative intent to subject the Tax Commission to the sacrosanct real property recording system before granting any priority to the State for taxes. The foregoing analysis also recognizes that no such complete and conclusive record exists in other property areas.

Thus, as the State's current claim for taxes is made against assets for which there is no all encompassing system wherein claims can be established or protected, the reasoning behind the Phillips decision is simply inapplicable. Especially is this so in this case, where the creditors involved did not rely on any record in extending credit the way a secured party does. A general creditor may seek out a potential debtor's financial condition before extending credit, but he does not depend on a particular asset to have a fixed value which will be available to him, and no one else, if a default occurs and resort to the security is needed.

The legislature's passage of statutes containing identical language as was construed in Phillips Petroleum v. Wagstaff four years subsequent to that decision, may be argued to be the recognition of this construction.

The considerations involved in the Phillips case are absent from the present one and it should not be controlling in the instant controversy.

## CONCLUSION

The State's claims for sales and withholding taxes were appropriately made. The fact that a receivership was ordered before the State could perfect and execute upon its liens should not operate to cut off the state's claims for taxes in favor of general, unsecured creditors. This is especially true in light of the fact that it was the debtor-taxpayer's own actions of failing to file true and correct tax returns which prevented the State from perfecting its lien.

The lower court erred in finding that a rule of civil procedure operated to divest the State of its inherently paramount claim for taxes, relegating it to the level of a general creditor. Appellant asks this court to order the receiver to pay all sales and withholding taxes prior to any payment to general, unsecured creditors.

Respectfully submitted,

ROBERT B. HANSEN  
Attorney General



---

MARK K. BUCHI  
Assistant Attorney General