

1980

# State of Utah et al v. I. M. C. Mint Corporation et al : Brief of Respondent

Utah Supreme Court

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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-

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

Defendants.

BRIEF OF RESPONDENT, RAY TWELVES, RECOVERER

I.M.C. MINT CORPORATION, IN ANSWER TO

PETITION FOR REHEARING

APPEAL FROM THE ORDER OF THE DISTRICT COURT OF THE

THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY

Honorable James S. Sawaya, District Judge

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UTAH, by and through JOHN W. :  
ROLLY, Director, Utah State :  
Trade Commission, :  
Plaintiff, :  
-vs- : Case No. 16555  
I.M.C. MINT CORPORATION, :  
ROBERT GRABAR, GEORGE E. :  
TWIBEY, et al., :  
Defendants. :

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POINT I

THE DECISION OF THIS COURT IN I.M.C. MINT  
IS NOT INCONSISTENT WITH THE PHILLIPS DECISION.

The Appellant, State Tax Commission claims that there is some inconsistency between the decision in Phillips Petroleum Co. v. Wagstaff, 22 Utah 2d 177, 450 P.2d 100 (1969), which held that the State's lien for withholding taxes does not begin to run until a warrant is filed, and the decision rendered by this Court in the instant case, State of Utah v. I.M.C. Mint Corp., No. 1655, filed April 2, 1980. In the I.M.C. Mint decision, this Court found the Phillips decision controlling as to the interpretation of the pre-1979 tax statutes and held

that no lien existed for unpaid sales and withholding taxes on the date the receivership of I.M.C. Mint Corporation was established because no warrants had been filed at that time.

The source of the "confusion" claimed by the Tax Commission is the following statement on Page 4 of the I.M.C. Mint decision:

Although lien priority of tax debts is now established by statute to date from the time a tax assessment is made, the ruling of the trial court in the present case is controlled by Phillips and the pre-1979 tax statutes.

In this statement, the Court merely recognizes that although subsection (3) of §59-10-22, Utah Code Annotated was amended in 1979 to provide that a ". . . lien imposed for state taxes shall arise at the time the assessment is made", this amendment is not applicable in the present case, the facts of which arose prior to enactment of the 1979 amendment. Despite the Tax Commission's argument, it is clear that there is no inconsistency in the Court's refusal to apply the 1979 amendment retroactively.

## POINT II

THE TAX COMMISSION'S PUBLIC POLICY ARGUMENT THAT THE NEED FOR TAX REVENUES OUTWEIGHS THE NEED FOR NOTICE WAS GIVEN FULL CONSIDERATION IN THE ORIGINAL HEARING.

In its Brief supporting its Petition for Rehearing, the Tax Commission reiterates the same arguments made in its

original Brief that the public's need of tax revenues outweighs the notice considerations stated in Phillips . (See, Brief of Claimant-Appellant State of Utah at 21). The Tax Commission even refers to its original Brief for authority in support of that argument. (Brief of Authorities Supporting Appellant's Petition for Rehearing at 3.)

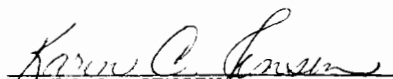
In the I.M.C. Mint decision, this Court carefully reviewed and rejected each of the arguments made by the Commission. This Court has long held that where the points relied on as a basis for rehearing have been fully considered in the original hearing, rehearing will not be granted. See, e.g. Ducheneau v. House, 4 Utah 483, 11 P. 618 (1886).

#### CONCLUSION

The Commission has asserted no basis which would support the granting of its Petition for Rehearing. The inconsistency which it asserts between the Phillips and the I.M.C. Mint decisions is simply non-existent, and the public policy argument it asserts was previously raised and given full consideration in the original appeal. For these reasons, the Commission's Petition for Rehearing should be denied.

Respectfully submitted this 7th day of May, 1980.

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Attorneys for Receiver-  
Respondent

CERTIFICATE OF MAILING

I hereby certify that two copies of the above and foregoing Brief of Respondent, Ray Twelves, Receiver of I.M.C. Mint Corporation in Answer to Petition for Rehearing was mailed, postage prepaid, to Mark K. Buchi, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah, 84114, Attorneys for Claimant-Appellant this 7th day of May, 1980.

A handwritten signature in cursive script, reading "Karen C. Jensen", written over a horizontal line.