

2001

Woodbury Amsource, Inc. et al. v. Salt Lake County et al. : Unknown

Utah Supreme Court

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IN THE SUPREME COURT FOR THE STATE OF UTAH

WOODBURY AMSOURCE, INC. et al.,

Appellants,

v.

SALT LAKE COUNTY et al.,

Appellees.

Appeal No. 20010939-SC

Priority 15

SUPPLEMENTAL BRIEF OF APPELLANTS

**Appeal from the Order of the Honorable Ronald E. Nehring, dated June 12, 2001
Granting Summary Judgment to Appellee**

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Appellants (the "Taxpayers") hereby submit this supplemental brief to address Pingree Nat. Bank of Ogden v. Weber County, 183 P. 334 (Utah 1919), a case raised for the first time by appellees (the "County") at oral argument. Pingree is inapposite because it does not deal with Utah Code Ann. § 59-2-1321 ("section 1321"), the statute at issue in the current proceeding. In addition, even if Pingree was a section 1321 case, its analysis bolsters the Taxpayers' case.

Pingree dealt with Utah Code Ann. § 59-2-1327 ("section 1327"), the "paid under protest" procedure, rather than section 1321. A summary of procedural Utah property tax law may help the Court understand the important distinctions in the two statutes. To obtain refunds of property taxes, Utah taxpayers have three distinct avenues for relief:

1. Section 1004 Relief. If a taxpayer is "dissatisfied with the valuation or equalization" of the taxpayer's property, the taxpayer may challenge the county property tax assessment within 45 days after the assessment is mailed by filing an appeal with the County Board of Equalization ("BOE")¹ (see Utah Code Ann. § 59-2-1004 ("section 1004") (emphasis added)).² The taxpayer can appeal the BOE decision to the Tax Commission. See Id. § 59-2-1006.

¹ The BOE is comprised of the county legislative body (see Utah Code Ann. § 59-2-1001).

² While section 1004 specifically references only "valuation and equalization," as a practical matter, county BOE's often entertain any and all issues in section 1004 appeals, including issues that could be brought under section 1327 or section 1321. This practice by the County, however, does *not* alter the legislative or common law breadth of cases that can be legally addressed through section 1321.

2. Section 1327 Relief. Taxpayers who believe a tax is "unlawful" (e.g. unconstitutional), can pay the tax under protest, then bring a court action to recover the tax for up to four years after the tax is paid. See section 1327;³ Stevenson v. Monson, 856 P.2d 355, 357 (Utah App. 1993). The taxpayer must pay the tax under protest so the county is on notice and can budget accordingly given that the tax would appear to be legal as of the date of payment. See Shea v. Tax Comm'n, 120 P.2d 274, 276 (Utah 1941).

3. Section 1321 Relief. If taxes are "paid more than once, or erroneously or illegally collected," taxpayers can file a demand with the county legislative body requesting that the taxes be refunded, even if the taxes were not paid under protest. Utah Code Ann. § 59-2-1321;⁴ Neilson v. San Pete County, 123 P. 334, 338-40 (Utah 1912). If the county refuses to refund the taxes, the taxpayer can bring a court action for up to four years after the tax is paid to obtain a refund. Utah Parks Co. v. Iron County, 380 P.2d 924 (Utah 1963); Neilson, 123 P. at 339-40. This Court's specific guidance on section 1321 is that section 1321 refunds are available in the following situations:

- Taxes are involved "which it is clear the county had no authority to collect, and, in case they are collected, has no legal right to retain them." Neilson, 123 P. at 338.
- The taxes involved "collections which the officials themselves could have determined at the time of collection that they should not collect, such

³ The basic substance of section 1327 has remained unchanged in the Utah Code since the 1800s. The cited cases refer to the following previous versions of section 1327: section 80-11-11 (1933), section 6094 (1917), and section 2684 (1898).

⁴ The basic substance of section 1321 has remained unchanged in the Utah Code since the 1800s. The cited cases refer to the following previous versions of section 1321: section 80-10-17 (1933), section 6043 (1917), and section 2642 (1898).

determination to be made as a matter of fact and not as a matter of law." Shea, 120 P.2d at 276; see also CIG Explor. v. Tax Comm'n, 897 P.2d 1214 (Utah 1995).⁵

These three avenues for relief are not redundant. Rather, they have important distinctions. Section 1004 applies to disputes regarding valuation and equalization only. Section 1327 applies to refunds of "unlawful" (often unconstitutional) taxes, even if declared unlawful in the future. Section 1321 applies to refunds of taxes "paid more than once, or erroneously or illegally collected." This Court has added that under section 1321, the error must be ascertainable as a matter of fact at the time of collection.

Pingree is inapplicable to the instant case as it was brought under section 1327, not section 1321. Moreover, even if Pingree had been a section 1321 case, it supports the Taxpayers. In Pingree, a taxpayer paid its tax under protest and filed a complaint, arguing that its stock had been overvalued because the assessor had misapplied a statutory formula for valuing the stock.⁶ Pingree, 183 P. at 334-35. The county argued that the district court had no jurisdiction to hear the case because it involved valuation issues. Id. at 335-36. The Supreme Court agreed with this legal premise, but held that Pingree did *not* involve issues of valuation. Id. Said the Court:

[T]he question here presented [whether stock was overvalued] was not a matter of discretion [i.e. subjective valuation] at all. It was a matter of statutory requirement susceptible of ascertainment to a mathematical certainty. It was a mistake on the part of the assessor in the application of a

⁵ Contrary to the allegations of the County at oral argument, there are no other tests for determining whether section 1321 is satisfied. These are the only tests, and as explained in the Taxpayers' prior briefs, these tests are satisfied by the double taxation of leasehold improvements and the imposition of tax on the wrong owner.

⁶ Stock is no longer subject to property tax in Utah. See Utah Code Ann. §§ 59-2-102(17), -1101(2)(g).

plain provision of the statute. The mistake was repeated by the county board of equalization. The record on its face discloses the mistake

Id. at 336 (emphasis added). This analysis is reminiscent of the case at hand. First, the fact that the county was double taxing leasehold improvements and taxing them to the wrong owner "was not a matter of discretion."⁷ Prior to the collection of the double tax, the County and the Tax Commission had issued several decisions explaining it, and the County had published reports of it on its own web site. Accordingly, the government itself had found and corrected the double taxation on several occasions, making it an established principle that did not require a discretionary call from the assessor. Second, the double taxation was "susceptible of ascertainment to a mathematical certainty." As evidenced by the County and Tax Commission decisions, ascertaining and correcting the double tax involved two simple steps: (1) determining the method used to value property, and if an offending method,⁸ (2) deducting the value established for leasehold improvements on the personal property assessment from the real property assessed value. See Taxpayers' Opening Brief at 10-16. Third, the failure to correct the double

⁷ There are matters of discretion involved in the Taxpayers annual assessments, including the values placed on real and personal property, but the Taxpayers accept the County's discretionary judgments on these matters. There is no dispute as to these discretionary matters. The only dispute is that property was assessed and valued twice on two separate assessments, once to the wrong owner, meaning the latter assessment must be corrected.

⁸ As explained in the Taxpayers' memorandum in opposition to summary judgment in the district court (R. at 295-298), of the four valuation methods used by the County (sales, cost, market rent income, and contract rent income), all capture leasehold improvements unless contract rent income is used and no leasehold improvement allowance was provided by the landlord. The Taxpayers believe this rarely occurred. In any event, those Taxpayers who did suffer from the use of offending methods, whether they be 1% or 99%, are entitled to relief.

assessment and taxation to the wrong owner "was a mistake on the part of the assessor."

Lastly, if the Taxpayers are allowed to obtain the assessment records of the County explaining what assessment methods they used, and what taxes were paid on leasehold improvements through personal property assessments, "the record[s] on [their] face [will disclose] the mistake."

In short, what Pingree tells us is that it is okay to change valuations outside of section 1004 appeals. After all, Pingree changed the value of stock. Similarly, it is proper in the current case to change the value of the Taxpayers' property to remove the property that was taxed twice and to a party that did not own it, especially where the distinct taxpayers could not discover the over-taxation from their individual assessments. While the assessor could have discovered the error since they possessed all the records, the Taxpayers cannot ascertain the mistake until the real and personal property assessments and records are viewed side by side. The Taxpayers accept the County's discretionary assessments. They do not accept the County's mistakes, and neither should this Court. This Court should reverse the district court's order by holding that a tax paid twice and/or by the wrong owner is, under section 1321, a "tax paid more than once, or erroneously or illegally collected."

RESPECTFULLY SUBMITTED this 24th day of April, 2003.

HOLME ROBERTS & OWEN LLP

A handwritten signature in cursive script, reading "Mark K. Buchi", is written over a horizontal line.

Mark K. Buchi
Attorneys for Appellants

CERTIFICATE OF SERVICE

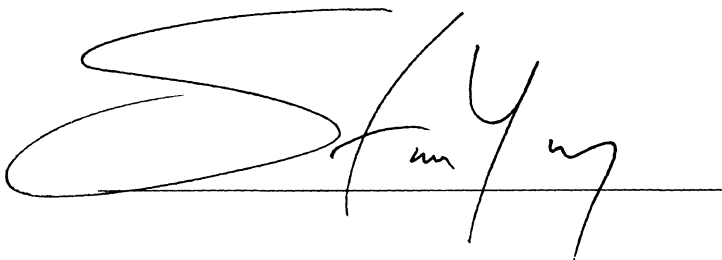
I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Brief of Appellants was served by the method below indicated below, and addressed to the following this 24th day of April, 2003, to the following:

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