1981

Utah Hotel Company, a Utah Corporation v. R. Milton Yorgason, in his official Capacity as Salt Lake County Assessori and William E. Dunn, Robert G. Salter, William L. Hutchinson, Each In Their official Capacities As Members of the Board of Equalization For Salt Lake County : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF
THE STATE OF UTAH

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UTAH HOTEL CORPORATION corporation,	:	
Plaintiff and Appellant,	:	
-vs-	:	
R. MILTON YORGASON, in his official capacity as Salt Lake County Assessor; and WILLIAM E. DUNN, ROBERT G. SALTER, WILLIAM L. HUTCHINSON, each in their official capacities as members of the Board of Equalization for Salt Lake County,	:	Case No. 17612
Defendants and Respondents.	:	

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BRIEF OF RESPONDENT

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Appeal from the Judgment of the
Third District Court
for Salt Lake County,
Hon. G. Hal Taylor, Judge

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BRIEF OF DEFENDANT

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a decision of the lower court dismissing Appellant's Amended Petition for Extraordinary Writ with prejudice. Appellant, Hotel Utah Company, filed an Amended Petition for Extraordinary Writ in the District Court of Salt Lake County seeking to preclude the Salt Lake County Assessor from appropriately valuing

Appellant's property for the year 1980 and requiring Salt Lake County to accept the 1978 value for Appellant's property as established by the State Tax Commission of Utah at an informal hearing. The initial action filed by the Appellant was filed with the Court even prior to the date that Appellant made an administrative appeal from the decision of the Salt Lake County Board of Equalization. Appellant, in the manner in which it has attempted to posture the case presently before the Court, is seeking to avoid any inquiry into the current value of its property and, in effect, asserts that the value for the year 1978 is the value for all subsequent years. Respondent, County Assessor and County Board of Equalization assert that there is an affirmative statutory duty to value all properties within the County at its value as of January 1, 12:00 noon of each year and that the statute that Appellant, Hotel Utah Company relies upon to preclude the fulfillment of this statutory duty relates only to county-wide reappraisal under the direction of the State Tax Commission of Utah and accordingly moved to dismiss Appellant's Amended Petition for Extraordinary Writ, which Motion was granted by the trial court.

DISPOSITION IN THE LOWER COURT

The lower court granted Respondents Motion to Dismiss Appellant's Amended Petition for Extraordinary Writ thereby confirming the affirmative duty placed upon the Assessor to value all taxable property within the County as of January 1, 12:00 noon of each year. The lower court also dismissed Appellant's Amended Petition for Extraordinary Writ on the grounds that the Appellant had failed to exhaust its administrative remedies.

RELIEF SOUGHT ON APPEAL

Respondent seeks a decision of this Court affirming the decision of the trial court and thereby upholding the statutory duty of the assessor of each county to value and assess all taxable property within the county as of January 1, 12:00 noon.

STATEMENT OF FACTS

Appellant, Hotel Utah Company, is a Utah corporation and is the owner of real property located within Salt Lake County, State of Utah, more particularly described in Salt Lake County Assessor's records under serial numbers

01-3023, 01-3024-001 and, 01-3024-002. (T-136.)

Appellant's property was valued by Salt Lake County for tax purposes, for the year 1978, during the year 1978.

Appellant appealed the 1978 valuation to the State Tax Commission. The value of Appellant's property for tax year 1978 was adjusted by a decision of the State Tax Commission of Utah. (T-136.)

The decisions of the Tax Commission specifically limited their applicability to tax year 1978. (T-24-25.)

During tax year 1980, the Salt Lake County Assessor determined Appellant's valuation for tax year 1980. That valuation was appealed to the County Board of Equalization. That Board, after consideration of Appellant's appeal, upheld the 1980 valuation by the Salt Lake County Assessor. The Appellant then appealed the decision of the Salt Lake Board of Equalization to the State Tax Commission of Utah. Appellant's appeal of the 1980 valuation is still pending before the State Tax Commission of Utah. (T-136.)

Appellant filed its Petition for Extraordinary Writ with the Court nearly two months prior to appealing to the State Tax Commission. (T-2-32 and T-98-103.)

In their petition to the Court, Appellants sought to require Salt Lake County to use the same value in 1980

that was used two years earlier in 1978. (T-2-32 and T-62-94.)

No where in Appellant's petition is there any evidence of 1980 valuation. The only evidence as to 1980 valuation are the assessor's assessments and the decisions of the Salt Lake County Board of Equalization. (T-27-30 and T-91-94.)

Respondents filed a Motion to Dismiss asserting that the Court was without jurisdiction over the subject matter of the action because Appellant had failed to exhaust its administrative remedies; that Appellant was required, as a condition precedent to bringing the action, to pay the taxes under protest and file a claim for refund; and that the remedies sought by Appellant were specifically prohibited by Section 59-11-14, Utah Code Annotated, 1953 as amended. Respondent, County, in its Memorandum in Support of its Motion to Dismiss also contended that Appellant's reliance upon Section 59-5-109, Utah Code Annotated, 1953, as amended was misplaced because the statute did not apply to this particular case. Respondents asserted that while said statutory provision was passed by the Legislature for purposes of equalizing values between and among the various counties of the State of Utah, it did not conflict with or

limit the ongoing statutory duty and obligation of the Assessor set forth in Section 59-5-4, Utah Code Annotated, 1953, as amended, to assess property located within the county to its owner at its value as of 12:00 noon the first day of January of the year in which the assessment was made. (T-137.)

The trial court concluded that Section 59-5-109(2), Utah Code Annotated, 1953, as amended, was passed by the legislature specifically for the purpose of equalizing values between and among the various counties of the State of Utah and therefore did not preclude the assessor of each county from valuing properties within the county on an annual basis as of January 1 of each year and assessing current property taxes against those properties. The Court further concluded that Section 59-5-109(2), Utah Code Annotated, 1953, as amended, did not require Salt Lake County to use the Tax Commission decision as to value for the year 1978 as the value of Appellant's property two years later for tax year 1980. (T-137.)

The Court thereupon dismissed Appellant's petition with prejudice in so far as it sought to limit the Assessor's legal capacity to value property on an annual basis. (T-137.)

ARGUMENT

POINT I

THE COUNTY ASSESSOR IS REQUIRED BY LAW TO VALUE ALL TAXABLE PROPERTY WITHIN THE COUNTY AT ITS VALUE AS OF THE FIRST DAY OF JANUARY OF EACH YEAR.

Section 59-5-4, Utah Code Annotated, 1953, as amended, was first enacted in 1898. That statute has been in effect for more than 82 years. While there have been some modifications of the 1898 statute, the language relative to the assessor's duty concerning annual valuation has remained unchanged since the original enactment.

In said statute, the assessor's annual statutory duty is to:

> "...ascertain the names of all taxable inhabitants and all property in the county subject to taxation except such as is required to be assessed by the State Tax Commission and must assess such property to the person by whom it was owned or claimed, or in whose possession or control it was, at 12 o'clock m. of the 1st day of January next preceeding, and at its value on that date;...." (Emphasis supplied.) Section 59-5-4, Utah Code Annotated, 1953, as amended.

The same statute further charges assessors with the duty to:

> "...become fully acquainted with all property in their respective counties, and are required to visit each separate district or precinct either in person or by deputy, annually, and in person or by deputy annually to inspect the property they are required to assess..." (Emphasis supplied.)

The above and foregoing language was in the statute 71 years prior to the time that the section relied upon by the Appellant, was enacted. Similarly, the above statute was reaffirmed by the 1981 legislature. See Sections 59-5-4 and 59-5-109, Utah Code Annotated, 1953, as amended.

Respondent has found no Utah case interpreting the underlined portion of the annual valuation statute cited above. Perhaps the language of the statute relative to annual valuation is so clear in its expressed terms, that no need for interpretation exists. The Supreme Court of Arizona, confronting similar statutory language had this to say:

> "...since the full cash value of all property shall be determined yearly, the statute contemplates that valuations may change from time to time and that county assessors are directed to make these changes yearly as circumstances demand. Security Properties v. Arizona Department of Property Valuation, 537 P. 2d 924 (Ariz. 1975) at page 926. (Emphasis supplied.)

The Court in reaching its decision in the above case referred to the case of Transamerica Development Co. v. County of Maricopa, 489 P. 2d 33 (Ariz. 1971) wherein a statement was made that should dispose of this case:

> "While there may be some evidentiary value in previous valuation for purposes of arriving at full cash value, the assessment must be considered on a year-to-year basis, and the previous year's valuation is not controlling." 489 P.2d at 36. (Emphasis supplied.)

Appellant, in the instant case wants this Court to foreclose any possible inquiry into Appellant's current value. It wants previous year's values to be controlling. It wants this Court to say: 1978 equals 1980--end of inquiry. Why is this so? Appellant wants to force Salt Lake County to accept in perpetuity a 1978 decision of the Tax Commission after an informal conference. Respondents don't even know why the Tax Commission reduced the Appellant's value for that year. A review of the Tax Commission's decisions affecting Appellant's property makes reference to "...taxation purposes for the year 1978." (T-24-25). The decisions of the Tax Commission do not say for all subsequent years. The decisions of the Tax Commission do not say for the year 1980. They are specifically limited to 1978. Further reference to those decisions will show that one decision was reached "...in lieu of an informal hearing..." (T-24) No explanation for the adjustment is given. No findings are made. No specific evidence is cited. In fact, Salt Lake County, after learning of the extent of the adjustment made to Appellant's property, endeavored to learn the basis for the decision. One indication is that the income approach to valuation was used and

since the Hotel Utah had finished a multi-million dollar expansion project during the year 1978, it was not up to full occupancy. A discounted rate of occupancy was purportedly given. However, by 1980 the Hotel was considered to be at full or near full capacity, contrary to the situation in 1978, thereby necessitating a removal of the discount and corresponding increase in value. (T-124).

The situation confronting Salt Lake County in 1978 was similar to what was confronting Maricopa County Arizona in Security Properties v. Arizona Department of Property Valuation, Supra. The Assessor in that case testified that they "...were attempting to correct errors," meaning the errors which had occurred in the statewide revaluation program..." 537 P. 2d at page 926. Salt Lake County was revalued in 1978. Over 200,000 separate parcels of property existed at that time. There were over 8,000 appeals during the year. Obviously the County could not ascertain the accuracy of all assessments during that year. In 1980 when the assessor learned of the apparent discrepancy in the current value of the Hotel Utah property, he undertook to correct it. Not only is this good assessment practice, but it is action that was contemplated by the legislature of this state when it enacted Section 59-11-3, Utah Code

Annotated, 1953, as amended, which provides:

> "Omissions, errors or defects in form in the Assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county commissioners, be supplied or corrected by the Assessor at anytime prior to sale for delinquent taxes and after the original assessment was made."

In addition, the assessor must certify under oath that he has allowed no one to escape a "...just and equal assessment..." See 59-5-30 Utah Code Annotated, 1953, as amended. If he permits underassessment to occur, he and his sureties are subject to suit by the county attorney. Section 59-5-35, Utah Code Annotated, 1953, as amended. And, the value of property underassessed being shown requires a judgment to be entered for the amount of uncollected taxes. See Section 59-5-36, Utah Code Annotated, 1953, as amended.

A reasonable review of the above statutes clearly demonstrateds an intention on the part of the legislature to impose an affirmative duty upon each assessor to vigilantly maintain correct values on the assessment rolls. He has no choice. See also, Baker v. Tax Commission, 520 P. 2d 203 (Utah, 1974). Tax year 1980 is not tax year 1978. Facts change. Conditions change. Circumstances change. As was stated by the Supreme Court of Oregon:

> "...The interval between the transaction in the subject property sought to be introduced and the assessment date may be so great that it can be said as a matter of law that there was a change in conditions. However, where this determination cannot be made as a matter of law, reference must be made to the underlying conditions affecting value before such evidence can be rejected." Sabin v. Department of Revenue, 528 P. 2d 69 (Oregon, 1974) at page 71. In that case, the Plaintiff's value

In that case, the Plaintiff's value had risen dramatically. The area in which it was located had changed from low density suburban commercial area to the site of two shopping centers. Plaintiff contested the current value asserting that the 1969 purchase price he paid for the subject property was controlling for the year 1971. The Court rejected his argument, reasoning:

> "...The evidence was conclusive that prices in the area of the subject property rose dramatically between 1969 and the assessment date because of a fundamental change in the use of the land in the area. This rapid change in the basic condition affecting value rendered the 1969 purchase sufficiently remote to warrant its rejection."

The Hotel Utah property, in part, is across the street from the Crossroads Shopping Mall. The Mall was not there in 1978. It was there in 1980. Did it have any affect on values? Certainly it should be a factor in Appellant's 1980 valuation. In Sabin, supra., the Court rejected a purchase of the subject property as fixing the value because it occurred two years prior to the current

assessment date. This Court should also reject Appellant's 1978 value as being the 1980 value. Particularly is this required when, as in this case, there is absolutely no evidence to controvert the assessor's 1980 valuation as affirmed by the Salt Lake County Board of Equalization. There is no factual basis upon which this Court could justify judicial intervention into the area of taxation. A mere difference of opinion as to the method to be used in computing valuation does not justify intervention. Pima County v. Cypress-Pima Mining Co., 579 P. 2d 1081 (Ariz. 1978). See also Caldwell v. Department of Revenue, 596 P. 2d 45 (Ariz. 1979) where the Arizona Court of Appeals upheld an assessment based upon the statutory presumption that an assessment is correct and lawful in the absence of sufficient evidence to establish a different value.

Some cases go so far as to say that a person challenging an assessment procedure must show systematic and intentional conduct deliberately creating inequality before judicial intervention will be allowed. See Xerox Corp. v. ADA County Assessor, 609 P. 2d 1129 (Idaho, 1980).

Section 59-5-4, Utah Code Annotated, 1953, as amended and the other statutes cited above clearly establish the obligation on the part of the assessor to value property as

of January 1 of each year. This will insure that all properties are valued on an annual basis and thereby carry out the constitutional mandate of uniformity. The applicable statutes support this principle. The case law cited above also support this position. The trial court's ruling currently insures that these principles will be followed. Appellant's should not be allowed to preclude inquiry into the value of its property for the year 1980 or any other year that inquiry is justified. The decision of the Trial Court was correct and should be affirmed.

POINT II

SECTION 59-5-109, UTAH CODE ANNOTATED, 1953, AS AMENDED, 1979, APPLIES TO THE STATE-WIDE RE-APPRAISAL PROGRAM AND NOT AS A RESTRICTION OR LIMITATION UPON THE ASSESSOR'S ANNUAL DUTY TO APPRAISE PROPERTY AS OF JANUARY 1, 12:00 NOON.

Appellant, Hotel Utah's entire case is based upon two misconceptions.

The first misconception is that the law governing the manner in which the Tax Commission administers the re-appraisal program for the entire State of Utah affects the miriad of statutes dealing with the assessment of property within each county.

The second misconception that the appellant has is

that the word "valuation" as used in the various assessment statutes means the same as the word "level".

Reviewing the title of Section 59-5-109, Utah Code Annotated, as amended, 1979, reveals that the statute addresses the following subject: Revaluation of property--Tax commission to administer--Procedure--State-county agreements--Record systems--Programs to be successive--Apportionment of expense--Reimbursement by counties--Disposition.

As can be seen by the various subjects set forth in the heading of the statute, that statute covers the administration of the state-wide, county by county, cyclical reappraisal program set up by the State Legislature in 1969. See Harmer v. State Tax Commission, 452 P. 2d 876 (Utah, 1969) relating to the same duty under earlier statutes.

The statute is located in the section of the Tax Code under the heading "Administration of Property Tax Assessments." Subsection 2 of that statute, the one relied upon by Appellant speaks in terms of "taxable real properties revalued, as provided in this chapter...." And, subsection 3 also relied upon by Appellant reads in part as follows: "All properties added to the tax rolls after January 1, 1978, in counties reappraised by the Tax

Commission on or after January 1, 1978...." (Emphasis supplied.)

As can be seen from both provisions, the statute relates to the situation wherein the State Tax Commission of Utah is conducting its reappraisal program. The statute and the subsections referred to above in no way relate to the annual duty of the various assessors in the various counties to assess property at its value as of January 1, 12:00 Noon to its owner. If the Legislature had intended the reappraisal statute to so apply, it would have amended the various statutes set forth in Argument I of Respondents brief. However, rather than amend out the annual appraisal obligation it, in fact, reaffirmed that obligation in 1981 when it amended 59-5-4 and left in the annual valuation requirement. See 59-5-4, Utah Code Annotated, 1953, as amended, 1981. As this Court has stated on previous occasions:

> "...one of the fundamental rules of statutory construction is that the statute should be looked at as a whole and in the light of the general purpose it was intended to serve; and, should be so interpreted and applied as to accomplish that objective. In order to give the statute the implementation which will fulfill its purpose, reason and intention sometimes prevail over technically applied literalness." Andrus v. Allred, 404 P. 2d 972 (Utah, 1965) at P. 974.

Applying this principle of statutory construction to the statute relied upon by Appellant as limiting the assessor's authority, will clearly demonstrate to this Court that the limitations relied upon by the appellant apply to the situation when the State Tax Commission is reappraising an entire county and relates to the equalization process among the several counties of the State of Utah and, in no way relates to the processes within each respective county. It allows county-wide adjustment so that one county is not paying another county's share of the tax.

Appellant, in their brief, equates the phrase "assessment level" with the word "valuation". Respondent would respectfully submit that the words do not have the same meaning. The Legislature has defined "value" in Section 59-3-1, Utah Code Annotated, 1953, as amended, subsection (5) which reads as follows: "Value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor. That is what is meant by value as it relates to property taxation. While it is admitted that there is no statutory definition of "assessment level," respondent would assert that the phrase "assessment level" relates to reappraisal and results from the sales ratio studies conducted on an annual

basis by the State Tax Commission of Utah to ascertain the correlation between assessed value and actual market value within the various counties and to then determine the assessment level of each county as they relate to market value and as they relate to each other. Again, the concept of assessment level addresses the question of equalization among the various counties, as implemented by the State Tax Commission, and in no way relates to individual properties within each county and the appraisal thereof by the County Assessor. The phrase, "level of assessment" then relates more to a class or grouping of properties rather than individual properties as is involved in the instant case. See Security Properties v. Arizona Department of Property Valuation, 537 P. 2d 924 (Ariz. 1975).

It is therefore respectfully submitted that the Appellant's reliance upon Section 59-5-109 as limiting the Assessor's ability to correct a previously underassessed property is not justified. The statute in question relates only to the reappraisal program conducted by the State Tax Commission of Utah and not to the individual valuation duty imposed upon the Assessor. That this misplaced reliance results, in part, from a failure to recognize that the words "value" and "assessed value" have a different meaning than

the word "assessment level." And, even assuming arguendo that the Plaintiff-Appellant's interpretation were correct, a current valuation rolled back to 1978 may very well result in a different valuation than the 1978 value. There are other factors that can affect the market place relating to the value of a particular property other than inflation. Such as the addition of a new shopping mall or restrictions on the ability to build any more high-rise hotels or, the availability of competitive financing. All of these factors could have an affect upon the value of a property in 1980 which, when rolled back to the 1978 value to remove the affects of inflation, could result in a substantially different value than the value was, in fact, in 1980. Therefore, under no circumstance could an argument be made that the 1980 value, even rolled back, would necessarily be the same as the 1978 value. Since the only evidence before the Trial Court for the year 1980 is the county's valuation, this Court should sustain that Court's decision.

CONCLUSION

Respondent, Salt Lake County, respectfully submits that the Trial Court correctly applied the law applicable to this case and upheld the statutory duty of the County

Assessor to appraise properties to their owners, at their value, as of January 1, 12:00 Noon. And, further concluded that Section 59-5-109 did not act as a limitation or impediment to this annual statutory duty but, applied to the reappraisal of the State of Utah by the State Tax Commission when it was conducting its reappraisal program on a county by county basis. Additionally, the only evidence in the record relative to 1980 value are the values set by Salt Lake County. This Court should not substitute its judgment for that of the taxing authorities in the absence of competent evidence. It is therefore, respectfully submitted that the decision of the Trial Court should be affirmed in all respects.

DATED this 2nd day of November, 1981.

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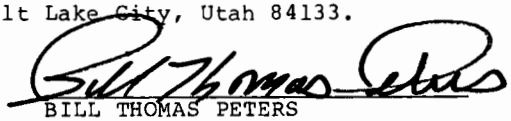
CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 1981, two copies of the foregoing brief of Defendant-Respondents, was served upon Louis H. Callister, Jr., Greene, Callister and Nebeker, attorney's for Appellant, 800 Kennecott Building, Salt Lake City, Utah 84133.



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