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Timothy A. Bodily; assistant attorney general; Jan Graham; attorney general; counsel for respondent.
Brinton R. Burbidge, Paul D. Van Komen; Burbidge, Carnahan, Ostler, White; counsel for petitioner.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT, Petitioner / Appellant vs. UTAH STATE TAX COMMISSION, Respondent / Appellee	)	No. 20000109-CA Priority No. 14

UTAH STATE TAX COMMISSION'S PETITION FOR REHEARING

Appeal from a Final Decision of the Utah State Tax Commission

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Utah Court of Appeals
NOV 3 0 2000
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INTRODUCTION

The Utah State Tax Commission petitions this Court for a rehearing to reconsider two points of law in its decision issued on November 13, 2000. (A copy is attached as Exhibit A.) Pursuant to Utah R. App. P. 35, a rehearing is appropriate when there is a misstatement of the law. It is not the intent of this Petition to change the ultimate holding of this Court which reversed the decision of the Tax Commission, but rather to alert the Court of certain misstatements of the law contained in the Order. This petition is filed in good faith and not for delay.

The first statement deals with the Commission's power to lower tax rates which exceed the certified rate. The second statement concerns the Tax Commission's constitutional authority to administer the tax laws of Utah.

ARGUMENT

I. THE COMMISSION'S AUTHORITY TO LOWER A TAXING ENTITY'S RATE IS NOT LIMITED TO THOSE CIRCUMSTANCES WHERE THE RATE EXCEEDS THE MAXIMUM RATE SET FORTH IN UTAH CODE ANN.§ 59-2-908.

The first statement of concern is in ¶ 10 of the decision where the Court stated,

> The statute clearly states that the Division may only lower the tax rate if it exceeds the "maximum levy." See id. §

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> 59-2-914(1)(a). The maximum levy is defined by statute as: ".0032 per dollar of taxable value in all counties with a total taxable value of more than $100,000,000...." Id. § 59-2-908(1)(a) (1996). The Commission acknowledged during oral argument that Alpine's adopted tax rate does not exceed this figure.

The Commission is concerned that this paragraph suggests that a county may levy a tax rate in excess of the certified rate, if it is below the "maximum levy," without going through the truth-in-taxation procedures. The statutes are clear, as well as the briefs of both parties, in stating that a taxing entity's rate cannot exceed the certified rate unless the truth-in-taxation procedures of Utah Code Ann. §§ 59-2-918 and 919 have been completed. See Utah Code Ann. §§ 59-2-912 (1996), 59-2-918 (1999) and 59-2-919 (1999). With the exception of the portion of the opinion quoted above, it appears that the Court understood the law in this manner as well.

For example, if the certified rate is .0025 and the county proposes a rate of .0028, this rate cannot be enforced unless the truth-in-taxation requirements have been met despite the fact that .0032 is the "maximum levy" allowed by law. This Court must recognize that the

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Commission has the authority to adjust a rate in excess of the certified rate if the truth-in-taxation procedures have not been satisfied. Without such a finding, the Court's language as cited above may be inappropriately interpreted in a manner that eviscerates part of the truth-in-taxation statutes.

The Commission suggests the following language to replace the language of the opinion cited above:

> The Commission has authority to adjust any tax rate that exceeds the certified rate unless the taxing entity complied with the truth-in-taxation requirements of Utah Code Ann. §§ 918 and 919 (1999 and Supp. 2000). Once a taxing entity has complied with the truth-in-taxation procedures, the Commission is without authority to adjust the adopted rate unless the statutes provide otherwise. In this case, Section 59-2-924(g) (Supp. 2000) does not provide such authority nor does Section 59-2-914 (1999) since Alpine satisfied the truth-in-taxation procedures and its rate did not exceed the maximum rates allowed by law.

The Court is advised that the statutes contain maximum rates for many different taxing entities. The maximum rate of Utah Code Ann. § 59-2-908 (Supp. 2000) which applies to a county is one of many.[1] For example, maximum rates can be

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[1] The Court is reminded that the rate at issue in this case was not a county rate, but a school district rate.

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found in the following additional sections of the Utah Code, §§ 10-6-133, 10-7-14.2, and 17A-1-430. Additionally, school districts such as Alpine are governed by their own complex set of statutes which set forth minimum and maximum rates for property tax levies which vary depending upon the purpose of the levy or use of the tax. See e.g., Utah Code Ann. §§ 53A-17a-143, 53A-17a-135, and 53A-16-106.

II. THE COMMISSION IS GRANTED CONSTITUTIONAL AUTHORITY IN SUPPORT OF ITS DUTY TO ADMINISTER THE TAX LAWS OF UTAH.

The second statement in question, found in ¶ 13 of this Court's decision, reads:

> We disagree. We cannot conclude that this constitutional provision is self-executing. A self-executing provision is one that "can be judicially enforced without implementing legislation." Spackman v. Board of Educ. of Box Elder County, 2000 UT 87, ¶ 7. As stated by the Utah Supreme Court, "[t]he tax commission is created by statute and has only such powers as the statute confers upon it." E.C. Olsen Co. v. State Tax Comm'n, 109 Utah 563, 168 P.2d 324, 328 (1946).

Contrary to the statement above, the Utah Supreme Court has fully recognized the constitutional authority of the Commission. In Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n, 953 P.2d 435 (Utah 1997), the Court held that the Utah constitution prohibits the legislature from

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conferring "the Commission's powers on other governmental entities." Id at 442. Moreover, the Court went to great lengths to recognize the "Commission's constitutionally bestowed power to adjust and equalize the valuation and assessment of property..." Id at 440.

In addition, the Court quoted from Article XIII, Section 11 of the Constitution saying, "[u]nder such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties." Id. at 441. Based on the above statements, the Court made it clear that the Commission does have authority independent from the Legislature.

Further support for the Commission's constitutional authority comes from the Utah Supreme Court in Mountain States Tel. & Tel. Co. v. Garfield County, 811 P.2d 184, 190 (Utah 1991). There, the Court noted that the tax commission, under article XIII, has to a large degree assumed control over the local administration of the property tax system." Id.

The Commission proposes that the following paragraph be

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inserted in place of the language of the Court's opinion quoted above:

> Although the Constitution grants the Commission authority pertaining to the levies of local entities, the Constitution plainly authorizes the legislature to limit this authority. The legislature has limited such authority in this case through the enactment of Section 59-2-914 (1999).

This suggested language is consistent with this Court's decision and more closely harmonizes this Court's decision with the prevailing case law established by the Utah Supreme Court.

CONCLUSION

The Tax Commission respectfully petitions this Court for a rehearing to clarify two points of law contained in the decision. The Commission respectfully suggests that this Court change the language in ¶¶ 10 and 13 described above in order to make the opinion consistent with established law. These statements will not affect the outcome of this case.

It is not the intent of the Commission to quibble with the Court over every phrase of its decision. However, the Commission does point out the two stated errors so that the Court will have the opportunity to correct its opinion if it

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deems appropriate.

RESPECTFULLY SUBMITTED this 30 day of November, 2000.

TIMOTHY A. BODILY
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of November, 2000, I caused two (2) copies of the foregoing UTAH STATE TAX COMMISSION'S PETITION FOR REHEARING, to be mailed, postage prepaid, to:

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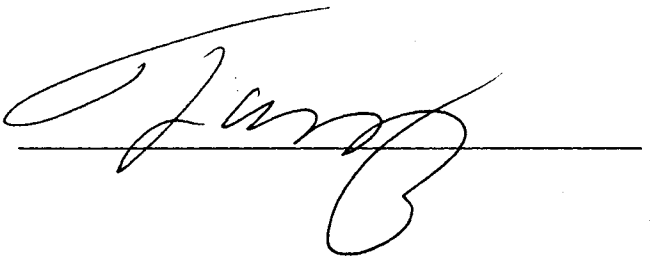

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EXHIBIT A

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Utah Court of Appeals
NOV 16 2000
Paulette Stagg
Clerk of the Court

This opinion is subject to revision before publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

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Alpine School District Board of Education, Petitioner, v. State Tax Commission, Property Tax Division, Respondent.	OPINION (For Official Publication) Case No. 20000109-CA F I L E D (November 16, 2000) 2000 UT App 319

Original Proceeding in this Court

Attorneys: Brinton R. Burbidge and Paul D. Van Komen, Salt Lake City, for Petitioner
Jan Graham and Timothy A. Bodily, Salt Lake City, for Respondent

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Before Judges Bench, Billings, and Davis.

BENCH, Judge:

¶1 Petitioner Alpine School District (Alpine) appeals the decision of the Utah State Tax Commission (Commission), which upheld the lowering of Alpine's 1999 adopted tax rate by the Commission's Property Tax Division (Division). Alpine contends that the Division has no statutory authority to reduce Alpine's adopted tax rate. We reverse.

BACKGROUND

¶2 Alpine formulated a budget for the 1999 tax year. After this budget was approved, the Division notified Alpine of its certified tax rate for ad valorem property tax. Within this certified tax rate was an adjustment for the change in the motor vehicle fee-in-lieu revenue, effective that year.[1] This

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1. The certified tax rate is "a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were

(continued...)

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adjustment was based on an estimate by the Division of what the motor vehicle fee-in-lieu revenue would be.

¶3 When Alpine received notification of its certified tax rate, it realized the rate would be inadequate to meet the needs of its budget. Therefore, Alpine proposed to the taxpayers an ad valorem tax rate higher than its certified tax rate. Alpine complied with the requirements commonly referred to as "truth in taxation" pursuant to Utah Code Ann. §§ 59-2-918 and 59-2-919 (1996 & Supp. 2000). The taxpayers approved Alpine's proposed tax rate and this rate was submitted to the Division.

¶4 In the meantime, the Commission discovered an error in the Division's calculation of the motor vehicle fee-in-lieu adjustment to the certified tax rate. When recalculated, the resulting certified tax rates were lower than those originally reported to the taxing entities. After Alpine submitted its adopted tax rate, which had been approved by the taxpayers, the Division lowered the rate by the same amount it had determined Alpine's certified tax rate should be lowered.

¶5 The Division claimed it had statutory authority to unilaterally lower Alpine's rate pursuant to Utah Code Ann. §§ 59-2-914 and 59-2-924 (1996 & Supp. 2000). Alpine appealed to the Commission the Division's adjustment of its adopted rate. The Commission recognized that the Division could not lower Alpine's adopted rate under section 59-2-914 alone, since Alpine had complied with the truth in taxation requirements. The Commission nonetheless upheld the Division's action based on its reading of sections 59-2-914 and 59-2-924 together.

ISSUE AND STANDARD OF REVIEW

¶6 The issue concerns whether the Division had authority under either section 59-2-914 or section 59-2-924 to lower Alpine's adopted tax rate. In reviewing the Commission's decision, we "grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statue at issue

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1. (...continued)
collected by that taxing entity for the prior year." Utah Code Ann. § 59-2-924(2)(a)(i) (Supp. 2000). Prior to 1999, property taxes on certain tangible personal property, such as motor vehicles, were based on value. Utah Code Ann. § 59-2-405.1 (Supp. 2000), enacted in 1998, provides that starting in 1999, the taxes on tangible personal property include a uniform fee based on the age of the motor vehicle.

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before the appellate court." Utah Code Ann. § 59-1-610(1)(b) (1996). The issue presented for our review is one of statutory interpretation, which is a question of law, and the Commission has been given no specific grant of discretion to interpret the statutes at issue. See Airport Hilton Ventures v. Tax Comm'n, 1999 UT 26,¶7, 976 P.2d 1197. Therefore, we give no deference to the Commission's interpretation.

ANALYSIS

¶7 Preliminarily, we discuss the Commission's belatedly filed Motion Regarding Suggestion of Mootness. The Commission contends that recent legislative changes requiring the Commission to make adjustments to certified tax rates to equalize any errors in the 1999 fee-in-lieu revenue estimates, as well as the fact that Alpine adopted a tax rate higher than the certified tax rate in 2000, render moot the Commission's decision on the 1999 tax rate. Thus, any harm Alpine may have experienced in subsequent years, based on the lowering of its 1999 tax rate, was abrogated by its adoption of a 2000 tax rate that was higher than its 1999 tax rate. The Commission concedes, however, that the broader issue of whether the Division has authority to alter a taxing entity's adopted rate may well arise in the future.

¶8 We have said that "'[a] case is deemed moot when the requested judicial relief cannot affect the rights of the litigants.'" 49th St. Galleria v. Tax Comm'n, 860 P.2d 996, 998 n.4 (Utah Ct. App. 1993) (quoting Burkett v. Schwendiman, 773 P.2d 42, 44 (Utah 1989)). The rights of a taxing entity such as Alpine to adopt a tax rate pursuant to statute without the Division unilaterally changing it are surely not negated by the fact that the taxing year in question has come and gone and subsequent measures were taken to correct the monetary difference. When a case "presents an issue that affects the public interest, is likely to recur, and because of the brief time that any one litigant is affected, is capable of evading review," we will address the merits of the case. Burkett, 773 P.2d at 44.

¶9 The Commission argues on appeal that section 59-2-914 gives the Division the authority to reduce Alpine's adopted tax rate. That section provides, in part: "[i]f the commission determines that a levy established for a taxing entity . . . is in excess of the maximum levy permitted by law, the commission shall. . . lower the levy so that it is set at the maximum level permitted by law." Utah Code Ann. § 59-2-914(1)(a) (1996). The Commission interprets this section to grant the Division broad discretion in determining whether a levy is in excess of the maximum, and then to reduce the levy to an appropriate level.

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¶10 The Commission found that Alpine complied with the requirements of sections 59-2-918 and 59-2-919, which require a taxing entity to notify taxpayers of a proposed rate increase in excess of the certified rate, and to hold hearings regarding the increase. See id. §§ 59-2-918, -919 (1999). This finding notwithstanding, the Commission claims that because the erroneous information the Division had provided Alpine regarding the certified tax rate was then used in the notice to taxpayers during the truth in taxation process, the Division had authority to lower the adopted rate. This interpretation is not consistent with the plain language of the statute. The statute clearly states that the Division may only lower the tax rate if it exceeds the "maximum levy." See id. § 59-2-914(1)(a). The maximum levy is defined by statute as: ".0032 per dollar of taxable value in all counties with a total taxable value of more than $100,000,000 . . . ." Id. § 59-2-908(1)(a) (1996). The Commission acknowledged during oral argument that Alpine's adopted tax rate does not exceed this figure.

¶11 The Commission also argues that section 59-2-924(2) gives the Division the authority to lower Alpine's adopted tax rate. That section reads:

> (f) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

Id. § 59-2-924(2)(f) (Supp. 2000). The Commission alleges that this section was added to avoid any possible shortfalls or windfalls to taxing entities as a result of the change in fee-in-lieu of ad valorem taxes charged on motor vehicles, which revenues are factored into an entity's certified tax rate. The Commission cites to statements made by legislators during Senate floor debates to derive the intent of the statute. In interpreting a statute, however, we are "guided by the principle that a statute is generally construed according to its plain language." Nelson v. Salt Lake County, 905 P.2d 872, 875 (Utah 1995). Further, "'[w]hen language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.'" Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick, 890 P.2d 1017, 1020 (Utah 1995) (quoting Hanchett v. Burbidge, 59 Utah 127, 135, 202 P. 377, 380 (1921)). "'Only when

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we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations.'" Nelson, 905 P.2d at 875 (quoting World Peace Movement v. Newspaper Agency Corp., 879 P.2d 253, 259 (Utah 1994)).

¶12 We do not dispute that section 59-2-924(2)(f) gives the Division statutory authority to reduce a taxing entity's certified tax rate pursuant to fluctuations in fee-in-lieu revenues. However, to also grant the Division authority to reduce a tax rate properly adopted under truth in taxation is to go well beyond the plain language of the statute. The legislature took great care in defining "certified tax rate" and providing the method for calculating the certified tax rate. See Utah Code Ann. § 59-2-924(2)(a)(i), (iii) (Supp. 2000). The legislature also differentiated between a certified tax rate and one adopted by the taxing entity through the truth in taxation procedures outlined in sections 59-2-918 and 59-2-919. We "presume that the legislature used each word advisedly and give effect to each term according to its ordinary and accepted meaning." Nelson, 905 P.2d at 875. We therefore conclude that section 59-2-924(2)(f) gives the Division the authority to adjust an entity's certified tax rate only.

¶13 Finally, at oral argument before this court, the Commission argued that it has a broad grant of constitutional authority to adjust tax rates pursuant to Article XIII, Section 11 of the Utah Constitution. Paragraph (3)(d) provides that the Commission "[u]nder such regulations in such cases and within such limitations as the Legislature may prescribe, . . . shall . . . revise the tax levies of local governmental units . . . ." Utah Const. art. XIII, § 11(3)(d). The Commission interprets this language as giving it unfettered authority to revise tax levies, except for specific statutory limitations. We disagree. We cannot conclude that this constitutional provision is self-executing. A self-executing provision is one that "can be judicially enforced without implementing legislation." Spackman v. Board of Educ. of Box Elder County, 2000 UT 87,¶7. As stated by the Utah Supreme Court, "[t]he tax commission is created by statute and has only such powers as the statute confers upon it." E.C. Olsen Co. v. State Tax Comm'n, 109 Utah 563, 168 P.2d 324, 328 (1946). The language in section 59-2-914 (giving the Division the authority to lower tax rates that exceed the maximum levy) and in section 59-2-924(2)(f) (giving the Division authority to reduce the certified tax rate) are legislative grants of specific authority. In granting such specific authority, the legislature necessarily limited the circumstances in which the Division is authorized to adjust tax rates. The general language in the constitution regarding the Commission's duties, therefore, does not broaden the statutory mandate. Where

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the legislature enacts regulations governing when tax rates can be adjusted, as it did in sections 59-2-914 and 59-2-924, the constitution simply directs that the Commission is the state agency authorized to carry out those duties.

CONCLUSION

¶14 The Division had no authority under sections 59-2-914 and 59-2-924(2)(f) to reduce the adopted tax rate of Alpine. Therefore, we reverse the decision of the Commission.

Russell W. Bench, Judge

¶15 WE CONCUR:

Judith M. Billings, Judge

James Z. Davis, Judge

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