

1989

# Larry J. Zissi v. State Tax Commission of Utah : Brief of Appellee

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

**890317**

IN THE SUPREME COURT OF THE  
STATE OF UTAH

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LARRY J. ZISSI,	)	
	)	
Petitioner,	)	CASE NO. 890317
	)	
v.	)	PRIORITY 14A
	)	
STATE TAX COMMISSION OF UTAH,	)	
	)	
Respondent.	)	

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BRIEF OF RESPONDENT

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APPEAL FROM THE DECISION OF THE UTAH STATE  
TAX COMMISSION ISSUED JUNE 21, 1989.

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JAN 17 1990

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## **JURISDICTIONAL STATEMENT**

The Supreme Court has jurisdiction over this matter pursuant to Utah Code Ann. § 63-46b-16 and Utah Code Ann. § 78-2-2(3)(e)(ii).

## **ISSUES PRESENTED**

I. Whether The Hearing Before The Commission To Determine Zissi's Tax Liability Under The Illegal Drug Stamp Tax Act Was A Civil Proceeding.

II. Whether The Federal Criminal Exclusionary Rule Should Be Extended To Apply To A State Civil Tax Proceeding To Exclude Evidence Of Possession Of Drugs Being Taxed Under The Illegal Drug Stamp Tax Act.

III. Whether The Illegal Drug Stamp Tax Act That Does Not Require A Drug Dealer To Give His Name Address, Social Security Number, Or Other Identifying Information On Stamp Purchase Forms Violates the Privilege Against Self-Incrimination.

IV. Whether Criminal Protections Against Cruel And Unusual Punishment Should Extend To Tax Proceedings For Violation Of The Illegal Drug Stamp Tax Act.

V. Whether The Commission Erred In Construing The Tax Rate Provisions Of The Illegal Drug Stamp Tax Act To Tax Petitioner's Drugs In Tablet Form As Units and Not By Weight.

VI. Whether The Commission Erred By Holding That The Term "Dosage Unit" Means One Separate Tablet.

VII. Whether The Illegal Drug Stamp Tax Act Applies So As To Single Petitioner Out And Treat Him Differently Than Other Drug Dealers Possessing Amphetamines In Tablet Form.

## **CONSTITUTIONAL PROVISIONS AND STATUTES**

The following statutes and constitutional provisions are dispositive in this case:

U.S. Const. amend. V  
Utah Const. art. I § 12  
Utah Code Ann. 59-19-101  
Utah Code Ann. 59-19-103  
Utah Code Ann. 59-19-105  
Utah Code Ann. 59-19-106.

The constitutional provisions are attached as  
Appendix A. The statutory provisions are attached as Appendix B.

#### **STATEMENT OF FACTS**

On June 4, 1988, five officers from the Utah County Sheriff's Department conducted a driver's license checkpoint. (R. 99, 115, 251). The checkpoint was established on State Road 73 on the main highway leading out of Fairfield. (R. 99). Petitioner Zissi's vehicle stopped at the checkpoint, where one of the officers smelled "a strong odor of marihuana coming from inside the vehicle." (R. 102).

Zissi, Carla Sine, and Darren Reese were in the cab of the truck. (R. 103). Upon questioning, Zissi denied having any marihuana. (R. 102). The officer requested that Zissi pull his vehicle off to the side of the road, where he was asked to surrender his marihuana. (R. 102-3). Zissi reached into a pocket seat cover in the vehicle and produced a baggie of marihuana for the officer; he also retrieved from the ashtray the marihuana cigarette that he had just finished smoking. (R. 103)

The officer, feeling that probable cause had been established, searched Zissi's vehicle for other illegal contraband. (R. 103). A shaving bag was found directly behind Zissi's seat that contained amphetamine tablets and a flashlight that Zissi later identified as his flashlight. (R. 104, 149, 259, 264). Darren Reese (passenger) in an affidavit given later swore that the amphetamines belonged to Zissi, and that Zissi had told him that they were his. (R. 180).

There were no Utah drug stamps attached or contained with the tablets as required pursuant to Utah Code Ann. § 59-19-105 (Supp. 1988). (R. 94). Behind the middle of the truck seat a briefcase was found that contained \$24,440. (R. 117, 252). Zissi stipulated at the hearing before the Utah State Tax Commission ("Commission") that the briefcase was his. (R. 94).

The Commission, pursuant to the provisions of Title 59, Chapter 01, Sections 701, 702, Utah Code Ann., 1953, served Zissi with "Notice And Demand For Payment Of Tax Under Declaration Of Taxes In Jeopardy". (R. 195-8, 221). They found that the official stamps required under the "Illegal Drug Stamp Tax Act" (the "Act"), Utah Code Ann. § 59-19-101 (Supp. 1988), had not been attached and that the taxes were due and owing.

Tax on eleven units<sup>1</sup> of amphetamine was assessed at

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<sup>1</sup> The total number of pills taxed was 550. The Act provides for assessment "on each 50 units of a controlled substance that is not sold by weight. . . ." Utah Code Ann. § 59-19-103(1)(c)

\$2,000 per gram for a total of \$22,000 due in taxes, with an additional \$22,000 penalty to be collected as part of the tax as required by the statute, Utah Code Ann. § 59-19-106(1) (Supp. 1988), for a total amount due of \$44,000. (R. 196). Warrants for the delinquent taxes were executed and recorded. (R. 226-9). Zissi petitioned the Commission for redetermination of the taxes and penalty assessed against him. (R. 235).

At the hearing before the Commission, Zissi argued that evidence of his amphetamines should be excluded. (R. 165). The Commission argued that the exclusionary rule should not apply. (R. 175).

Both parties presented witnesses to establish the meaning of "dosage units" as set forth in the Act. Mr. J. Craig Johnson,<sup>2</sup> Director of Pharmacy Services at LDS Hospital, and a pharmacist there since 1970, testified that "[a] dosage unit would be one tablet." (R. 153). Exhibit 3 was entered into evidence in support of Dr. Johnson's testimony. (R. 182). In distinguishing a "dosage unit" from a "dosage," he stated that

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<sup>1</sup> Cont. <sup>1</sup> Cont. (Supp. 1988). Thus, 550 pills divided by 50 dosage units = 11 units of taxable amphetamine.

<sup>2</sup> Johnson graduated from pharmacy school in 1960 and began work for LDS Hospital in 1970. (R. 152). Johnson has qualified as an expert and testified in federal and state courts concerning pharmacy related matters. (R. 152). Johnson also testified that he was the director of pharmacy in four different hospitals. (R. 156). Zissi's counsel did not object to his qualification as an expert. (R. 152).

"[a] dosage would [be] the amount a person took at one time." (R. 153). A "unit dose is the way things are packaged." (R. 155). He further stated that this is common parlance in the medical field. (R. 155).

Detective Kendra Hurlin<sup>3</sup> of the Salt Lake County Sheriff's Department testified that a dosage unit is an individual tablet or capsule. (R. 159-60). She also testified that she has never seen amphetamine tablets sold by weight, but had seen them sold as individual units. (R. 158). She further testified that amphetamines sold in powder form are different chemically and in color to amphetamines sold in tablet form. (R. 159). Contrary to the other two witnesses, Loni Deland,<sup>4</sup> a defense attorney, testified that a dosage unit is equivalent to a dose, i.e. the amount a person would shoot into his arm at one time. (R. 143). Deland also testified, however, that he did not recall ever purchasing any amphetamines by weight when they were

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<sup>3</sup> Hurlin, at the time of the hearing, had been employed with the Sheriff's office for over 11 years, and had been a detective assigned to narcotics for almost 3 years. (R. 158). She has received narcotics training at "POST" from the DEA, and on-the-job training from other officers with prior experience. (R. 158).

<sup>4</sup> At the time of the hearing, Deland had been a member of the Utah State Bar for 11½ years. (R. 136). Prior to that he had worked 6 years for the United States Treasury, Bureau of Customs as an agent. (R. 136). For the three years prior to that he worked as a narcotics agent for the State of Utah, and the year before that he had worked as a Salt Lake County Deputy Sheriff. Id.

in pill form. (R. 138).

Based on this testimony, the Commission found that the tax assessment of \$44,000 was correct. It entered factual findings that 550 tablets of amphetamine, an illegal substance, belonged to Zissi (R. 96); no drug stamps were attached to the amphetamines (R. 96); the term dosage unit is equivalent to one pill (R. 7); amphetamines such as ones at issue are sold as pills and not by weight. (R. 7). The Commission further found that the controlled substance was in pill form, and when in pill form it is "sold by pill and not by weight." (R. 10).

It is under these facts that this appeal comes before the Court.

#### **SUMMARY OF THE ARGUMENT**

Zissi's hearing before the Commission was a civil tax proceeding. Zissi argues that it was a quasi-criminal hearing. The respondent contends criminal protections do not apply to a civil tax proceeding. Case law and rules of statutory construction show that tax portions of the Illegal Drug Stamp Tax Act are civil in nature.

The question of whether a penalty is civil or criminal is a matter of statutory construction that is analyzed on two levels. First, the Court should examine whether the legislature indicated a preference for one label or the other. Second, the statutory scheme should be examined to see if it is so punitive

in either purpose or effect as to negate the legislative label. The taxes and penalties collected by the Commission are clearly civil tax penalties. The Act is not so punitive in nature as to negate the civil penalties. Where both a civil and criminal penalty are found in a statute, the force of the argument that the civil penalty is really a criminal penalty is diluted. Both civil and criminal penalties are found in the Act.

The exclusionary rule does not apply to a civil tax proceeding. That form of relief is inconsistent with the history and development of the exclusionary rule on both the State and Federal levels. The rule should only be applied where it can deter violations of the Fourth Amendment. In this case, police officers conducted the search. They were not under the control of the Commission. Their primary goal was arrest and prosecution for criminal law violations, not tax law violations. The Commission does not punish for violations of criminal laws. Thus, the deterrent effect would be highly attenuated if the rule were to be applied in this case.

This Court has never articulated a state exclusionary rule for civil cases. Such a rule would be inconsistent with existing precedent. This Court should follow other state courts and reject the exclusionary rule in civil proceedings.

Zissi has not been compelled to provide self-incriminating evidence. His arguments fall outside the scope of

the incrimination privilege. The Act expressly provides that drug dealers need not give their name, address, social security number, or other identifying information on drug stamp purchase forms.

Zissi also argues that the tax is cruel and unusual punishment. His argument is inconsistent with Eighth Amendment jurisprudence. The Eighth Amendment has traditionally been used to prohibit the infliction of cruel and unusual punishment or excessive fines in the criminal context. Zissi has failed to provide Utah case law in support of an extension of Utah or Federal constitutional provisions to the civil arena.

Zissi's taxes were properly calculated according to the statute's language and intent. It is clear as enacted. Zissi has the burden of proving that his taxes were improperly calculated. He has not met that burden. The statute sets forth that amphetamines sold as units are to be taxed as units and not by weight. The Commission found that Zissi's amphetamines were sold as units. This Court has held that deference should be given to administrative agency findings of fact. It is irrelevant that Zissi's drugs could face a different taxing scheme if they were ground into powder form.

The statute taxes tablets by dosage units. The evidence before the Commission clearly showed that the term dosage unit means one tablet. Expert testimony supported the



Commission's finding that dosage unit means one tablet. Knowledge of the term dosage unit is common with anyone legally dealing with drugs. It is self-serving for Zissi to argue that because he has no medical background the term dosage unit is vague and unclear to him.

The Act treats Zissi similarly with all other drug dealers possessing drugs in tablet form. Even Zissi concedes that amphetamines that are in tablet form are sold in tablet form. Thus, the Commission was correct in taxing them in tablet form. Zissi has failed to make a showing that he has been singled out and treated differently than any other drug dealer possessing amphetamines in tablet form.

## ARGUMENT

### ISSUE I

#### The Hearing Before the Commission Was a Civil Proceeding.

The central inquiry to several of the issues presented in this proceeding is whether the penalties for violation of the Illegal Drug Stamp Tax Act, Utah Code Ann. § 59-19-101, ("the Act") are civil or criminal. That determination will govern what procedure applies, and what legal and constitutional standards should be used. Case law and rules of statutory construction establish that the tax portions of the Act are civil.

**A. Guidelines for Determining if Penalties Are Civil or Criminal.**

The U.S. Supreme Court has established guidelines for determining if penalties are civil or criminal. See U.S. v. Ward, 448 U.S. 242 (1980). Their approach is sound and should be followed by this Court. The question is a matter of statutory construction that is analyzed on two levels. Id. at 248. Those levels, as described by the Court are:

First, . . . whether Congress, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. Second, where Congress has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect as to negate that intention. In regard to this latter inquiry, we have noted that 'only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground.'

Id. at 248-9, (emphasis added, citations omitted) (quoting Fleming v. Nestor, 363 U.S. 603 (1960)).

**1. The Act Clearly Implies Both Separate Civil and Criminal Penalties.**

Under the first level of inquiry, the Act clearly implies that the tax penalties are civil penalties. Utah Code Ann. § 59-19-103 (Supp. 1988) sets forth the tax amount. See Utah Code Ann. § 59-19-103 (Supp. 1988). This is the civil portion of the penalty. Utah Code Ann. § 59-19-106(1)

establishes a 100% penalty on the unpaid taxes. This is also a civil penalty that is to be collected as part of the tax. Id.

It is clear that these are both civil penalties because the subsection immediately following them states: "In addition to the tax penalty imposed, a dealer distributing or possessing marihuana or controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a third degree felony and is subject to a fine of not more than \$10,000 . . . ." Id. at § 59-19-106(2) (emphasis added). If the Legislature had intended the entire statute to impose solely a criminal or civil penalty, it would not have distinguished between the two by using the "in addition to the tax penalty imposed" language. Thus, the legislature clearly expressed a separate civil tax assessment.

**2. The Act Is Not So Punitive in Nature as to Negate the Civil Penalties.**

In determining whether a statute was "so punitive in nature to negate the civil penalties", the Supreme Court in U.S. v. Ward, (referring to Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963)), reaffirmed the seven factors, previously established, that have "prove[n] helpful in . . . consideration of similar questions . . . ." Ward at 249.

The seven factors as originally set forth in Mendoza-Martinez are:

[1] Whether the sanction involves an affirmative disability or restraint, [2] whether it has historically been regarded as a punishment, [3] whether it comes into play only on a finding of *scienter*, [4] whether its operation will promote the traditional aims of punishment -- retribution and deterrence, [5] whether the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the inquiry, and may often point in differing directions.

Mendoza-Martinez at 168-9 (emphasis in original, footnotes deleted).

When these factors are applied, it is clear that the Act is more civil in nature than penal. The U.S. Supreme Court has found that where both a civil and criminal penalty are found in the same statute, that fact dilutes the force of an argument that the civil penalty is really a criminal penalty. Ward at 250 (discussing Helvering v. Mitchell, 303 U.S. 391 (1938) (a 50% penalty for tax fraud was held to be civil)).

First, no affirmative disability or restraint applies. Tax on controlled substances is similar to taxes on alcohol and tobacco. See Utah Code Ann. at §§ 59-15-101, 59-16-101, 59-14-205. Second, there is no case law in support of the proposition that payment of tax has historically been viewed as a form of criminal punishment. Third, *scienter* is unnecessary under the Act for imposition of taxes. The statute requires

"transportation,"<sup>5</sup> but not "knowing" transportation for a civil tax violation to occur. Utah Code Ann. § 59-19-105(1) (Supp. 1988). Fourth, the traditional aims of retribution and deterrence are not served by the Act. The Act imposes statutorily fixed taxes and penalties on specific substances. See Utah Code Ann. at § 59-19-103. The taxes are imposed on the substances, and are not affected by a criminal conviction for distribution of a controlled substance. Fifth, the behavior to which the penalty applies is only a crime if the felony and fine aspect of § 59-19-106(2) (Supp. 1988) of the Act is applied. That provision is not within the jurisdiction of the Tax Commission. The tax is imposed on the substances; it is not related to a conviction for distribution of a controlled substance. Sixth, assessing a substance that clearly evades taxation is a proper legislative function.

The alternative purpose assigned to the civil penalty clearly is not excessive. The South Dakota Supreme Court was faced with a similar question in determining if a \$750 civil penalty was excessive for possession of less than one ounce of marijuana. See State v. Barber, 427 N.W.2d 375 (S.D. 1988).

That court reasoned:

[W]e find that the civil penalty . . . [for possession of marijuana] is not so clearly

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<sup>5</sup> Alternatives to transportation are purchasing, acquiring, or importing. Utah Code Ann. § 59-19-105(1) (Supp. 1988).

excessive as to bear no relationship to the purpose for which it is imposed. Drug abuse is a peril to society and particularly to our youth. The costs to society in terms of the health and mental well-being and lost potential of young people involved in such activity are incapable of estimation. Further, in attempting to curb drug abuse, society is required to expend ever increasing financial resources in law enforcement and drug awareness and prevention campaigns. The civil penalty . . . for possession of marijuana is of but little recompense to society for these costs.

Id. at 377.

Only the clearest proof is sufficient to establish that the Act is so punitive as to be unconstitutional. Ward at 249. For these reasons, the Court should conclude that the Act's civil penalties are not criminal in nature. Thus, the hearing before the Commission was a civil proceeding.

## ISSUE II

### THE EXCLUSIONARY RULE DOES NOT APPLY TO A CIVIL PROCEEDING

#### A. Application of the Exclusionary Rule Would Be Incorrect in This Case.

The relief sought by the Petitioner is inconsistent with the history and development of the exclusionary rule on both the State and Federal levels. The exclusionary rule has never been applied to a civil case by the U.S. Supreme Court, nor does any precedent from that Court or the Utah Supreme Court exist stating that it should be applied to a civil proceeding on the state level.

1. History and Development of the Exclusionary Rule in the Utah State and Federal Courts.

Prior to the rule's creation, courts would not suppress pertinent evidence, although illegally obtained. See Adams v. New York, 192 U.S. 585, 595 (1904). This changed when the exclusionary rule was announced in Weeks v. U.S., 232 U.S. 383 (1914). The Court reasoned that without this judicial protection the Fourth Amendment right against unreasonable searches and seizures would become meaningless. Id. at 393. It stated that "The Fourth Amendment is not directed to individual misconduct of . . . officials. Its limitations reach the Federal Government and its agencies." Id. at 398.

However, because Weeks was not then binding on the states, the Utah State Supreme Court expressly rejected its application to state court proceedings. State v. Aime, 220 P. 704, 708 (Utah 1923); see also State v. Fair, 353 P.2d 615 (Utah 1960). The Utah Court reasoned that this constitutional right would be protected by subjecting the individual conducting the unreasonable search and seizure "to all consequences and penalties provided by law." Id. at 707. This rationale was directly contrary to the federal rule that was not directed at "individual misconduct".

However, this state independence came to an end when the U.S. Supreme Court announced that the exclusionary rule would

be binding on state courts. Mapp v. Ohio, 367 U.S. 643 (1961). The underpinnings of that decision were that the exclusionary rule would protect "the imperative of judicial integrity" by compelling the government to comply with the "charter of its own existence". Id. at 658-9 (quoting Elkins v. U.S., 364 U.S. 206, 222 (1960)). In a later case, the Court made clear that "[j]udicial integrity clearly does not mean that the courts must never admit evidence obtained in violation of the Fourth Amendment." U.S. v. Janis, 428 U.S. 433, 458 n.35 (1976).

The Utah State Supreme Court was thus compelled to apply the rule it had expressly rejected in Aime. See State v. Jasso, 439 P.2d 844 (Utah 1968).

The rationale of "the imperative of judicial integrity," expressed by the Court in Mapp, was later eclipsed by a policy of deterrence. In Stone v. Powell, 428 U.S. 465 (1976) the Supreme Court specified that "[t]he primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment Rights." Id. at 486. The Court restricted application of the rule "to those areas where its remedial objectives are thought most efficaciously served." Id. at 487-8 (quoting U.S. v. Calandra, 414 U.S. 338, 348 (1974)).

In a corresponding footnote, the Court cited a noted criminal law commentator: "[T]he rule is a needed, but



grud[g]ingly [sic] taken, medicament; no more should be swallowed than is needed to combat the disease . . . so many criminals must go free as will deter the constables from blundering . . . [however] the confines of necessity inflicts gratuitous harm on the public interest." Stone at 487 n.24 (citing to Amsterdam, Search, Seizure, and Section 2255: A Comment, 112 U. Pa.L.Rev. 378, 388-9 (1964)).

2. Application of the Exclusionary Rule to Civil Matters in Federal Cases.

In United States v. Janis, the U.S. Supreme Court was asked to apply the exclusionary rule to a tax proceeding. In Janis, the Los Angeles police obtained a warrant to search Janis's residence for bookmaking paraphernalia. Id. at 434. Cash and wagering records were seized. Id. at 436. A police officer informed the IRS of these records. Id. Based on this information Janis was assessed wagering taxes. Id. at 437. The IRS levied on Janis's cash that had been seized by the Los Angeles Police. Id.

A subsequent non-federal criminal action was brought, where Janis successfully suppressed the evidence seized by the Los Angeles Police Department; the judge ordered all items returned except the cash levied by the IRS. Id. at 437-8. Janis filed for a refund of the cash. Id. at 438. The IRS denied the request and a subsequent U.S. District Court action was filed by

Janis where he sought to suppress all evidence from which the assessment had been made. Id.

The Supreme Court held "that the judicially created exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign." Id. at 459-60. The Court expressly stated: "In the complex and turbulent history of the rule, the Court never has applied it to exclude evidence from a civil proceeding, federal or state." Id. at 447 (footnote omitted, emphasis added). The Court expressly left the question open of the rules application where "intrasovereign" violations have taken place.<sup>6</sup> Id. at 456.

In reaching its conclusion, the court weighed the "likelihood of deterring the conduct of the state police . . . [against] the societal costs imposed by the exclusion . . . ." Id. at 454.

The Court reasoned that "the deterrent effect of the exclusion of relevant evidence is highly attenuated when the 'punishment' imposed upon the offending criminal enforcement officer is the removal of that evidence from a civil suit by or against a different sovereign." Id. at 458. The Court went on

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<sup>6</sup> The Court stated: "[t]he seminal cases that apply the exclusionary rule to a civil proceeding involve "intrasovereign" violations,[] a situation we need not consider here." Janis at 456 (footnote omitted).

to state:

This attenuation, coupled with the existing deterrence effected by the denial of use of the evidence by either sovereign in the criminal trials with which the searching officer is concerned, creates a situation in which the imposition of the exclusionary rule sought in this case is unlikely to provide significant, much less substantial additional deterrence. It falls outside the offending officer's zone of primary interest.

Id. (Emphasis added).

The Court decided that the societal costs imposed by the rule were too severe because "the enforcement of admittedly valid laws would be hampered by so extending the exclusionary rule, and, as is nearly always the case with the rule, concededly relevant and reliable evidence would be rendered unavailable."

Id. at 447.

This appeal is similar to the Janis case. A criminal action was brought against Zissi for possession of illegal drugs. County law enforcement officers conducted the roadblock. However, these law enforcement officers were not being controlled by the Commission, nor does the Commission have any authority to control their activities. The County is a different sovereign than the State Tax Commission. Their relationship is extremely attenuated. Application of the rule here is unlikely to provide significant or substantial additional deterrence because enforcement of tax laws falls outside the arresting officers zone of primary interest.

In a subsequent case, the Supreme Court resolved any questions of application of the exclusionary rule between related governments.

In INS v. Lopez-Mendoza, 468 U.S. 1032 (1984), the U.S. Supreme Court addressed the issue it had expressly left open in Janis: Whether the exclusionary rule applies in a civil case involving intrasovereign violations. In Lopez-Mendoza, Lopez-Mendoza challenged the deportation order of an immigration judge because his alien status had come to the attention of officials of the Immigration and Naturalization Service (INS) by illegal means. Id. at 1034. The Court found that a "deportation proceeding is a purely civil action . . . ," id. at 1038, although it "is a civil complement to a possible criminal prosecution . . . ." Id. at 1042. The immigration judge could not "adjudicate guilt or punish . . . for any crime related to unlawful entry into or presence in this country. Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing." Id. at 1038.

The Court, in applying the balancing test of Janis concluded that exclusion would not deter the INS from Fourth Amendment violations because of a comprehensive scheme by the INS to prevent this type of conduct. Id. at 1046. On the other side of the equation, the Court found that the social cost was "both

unusual and significant." Id. It stated that ongoing violations of immigration law would occur, Id., that the "streamlined" deportation hearing would become cumbersome, Id. at 1048, and that administration of the exclusionary rule by the Board of Immigration Appeals would become costly. Id. at 1048-9. Thus, the Court found the exclusionary rule inapplicable in civil cases involving intrasovereign violations where the balancing test of Janis is satisfied.

The Lopez-Mendoza case is substantially similar to this appeal. The tax proceedings held before the Commission are purely civil actions. They are civil complements to possible criminal prosecutions held before a court with proper jurisdiction. The Commission may not adjudicate guilt, nor may it punish for violations of any criminal drug statutes. Consistent with these civil proceedings, it would be inappropriate for criminal protections to apply.

Exclusion of evidence by the Commission would not deter county and other law enforcement agencies from Fourth Amendment violations. Their primary goal is arrest and prosecution for criminal law violations, not tax law violations. Application of the rule would have both unusual and significant social costs. Evidence of drugs and drug sales that escape taxation would be barred, leaving the community to bear the burdens of the social ills they cause. Administrative hearings before the Commission

would become cumbersome. Additional costs, time requirements, and hearings would be required to resolve the issue of admissibility and judicial review could be required whenever the rule was brought into play. This court should apply the reasoning of Lopez-Mendoza and Janis to this case.

### 3. Application of the Exclusionary Rule by State Courts.

This Court should reject Zissi's argument that the exclusionary rule should apply in state civil actions. Zissi cites no Utah case law in support of his proposition. This Court has never articulated a state exclusionary rule for civil cases.

Some state courts have rejected the application of the rule in civil proceedings. Prior to the Mapp decision, that was the posture of this Court. See State v. Aime, 220 P. 704, 708, (1923). Because Mapp is only applicable in criminal proceedings, this Court's decision in Aime should still govern application of the exclusionary rule in state civil cases. Aime was not overruled, even though Mapp was made applicable on the states and became the supreme law of the land in criminal cases.

The Aime Court expressly rejected the exclusionary rule for the following reasons:

The law cannot be justly administered without a knowledge of the facts in dispute. The purpose of evidence is to establish the truth in legal tribunals, in order that justice may be done. The facilities for accomplishing this purpose ought not to be diminished

without cogent reasons. In determining the competency of evidence, the essential test is its credibility and its value in discovering the truth.

Aime at 707. For these reasons, this Court should not overrule Aime.

Other state courts have refused to apply the exclusionary rule in civil cases. The Supreme Court of Virginia, in County of Henrico v. Ehlers, 379 S.E.2d 457 (Va. 1989) held: "[T]he Fourth Amendment exclusionary rule should not be extended from criminal cases to civil cases." Id. at 462. That court reasoned that deterrence is not served by the rule because "[t]here exists not empirical proof of the exclusionary rule's effectiveness." Id. That court further rejected the rule because "[i]t makes reliable and probative evidence unavailable; it deflects the truth-finding process; it risks engendering disrespect for law by promoting procedure above the fundamental search for truth and justice." Id.

This Court should not expand the exclusionary rule to apply to a civil tax proceeding. Zissi's cited federal case law is clearly distinguishable from the facts of this appeal. See Petitioner's Opening Brief at 13-15 (No. 890317). He argues that U.S. v. Blank, 261 F. Supp. 180 (N.D. Ohio 1966) holds that the Fourth Amendment exclusionary rule is applicable in a federal civil tax proceeding. That case presents the issues later disposed of in Janis. In Blank, IRS agents were the violators of

the Fourth Amendment; they were also the party attempting to introduce the illegally seized evidence. Blank at 181. Thus, the deterrence rationale in that case provided a safeguard for violations of the rule. Id. at 182. For these same reasons, Vander Linden v. U.S., 502 F. Supp. 693 (S.D. Iowa 1980) is also inapplicable. In that case, the IRS was also the violator of the Fourth Amendment and the party attempting to introduce the illegally seized evidence. Id. at 697. Pizzarello v. U.S., 408 F.2d 579 (2d. Cir. 1969) and Suarez v. Commissioner, 58 T.C. 792 (1972), cited by Zissi, are distinguishable because the Commission was not involved in seizing Petitioner's amphetamines. Pizzarello arose prior to both Janis and Lopez-Mendoza, when "[w]idespread uncertainty [was] prevalent on the issue of whether evidence, inadmissible in a criminal case, can be used for other purposes . . . ." Pizzarello at 585. The uncertainties of that case have been resolved by Janis and Lopez-Mendoza. Thus, Pizzarello has been refined and replaced by these later holdings.

Suarez likewise does not apply. The Tax Court has expressly overruled its holding in Suarez. See Guzzetta v. Commissioner, 78 T.C. 2724 (1982). The deterrence rationale, articulated in Janis, has made the rule inapplicable under the facts of Suarez.

Zissi also argues that the Act functions similarly to a forfeiture proceeding. He claims that One 1958 Plymouth Sedan v.



Pennsylvania, 380 U.S. 693 (1965) should apply. In that case, the state asked for the forfeiture of the automobile in question as a penalty for the violation of a criminal statute. The Pennsylvania statute in One 1958 Plymouth Sedan required an alcohol "bootlegger" to forfeit any rights in property used in illegal liquor activities such as transportation. Id. at 694 n.2. As noted in One 1958 Plymouth Sedan, a forfeiture proceeding is instituted, in civil form, for violations of the criminal law. Id. at 697. The penalties are affixed to the criminal acts and are thus viewed as quasi-criminal in nature. Id.

Zissi argues that since the exclusionary rule applies to forfeiture cases which are quasi-criminal, it should also apply to drug stamp cases on the grounds that they are quasi-criminal, the rationale being if the exclusionary rule applies to one set of quasi-criminal cases it should apply to all such cases. The respondent argues that the reasoning of the petitioner is flawed and that the proper test is the two prong test expounded in U.S. v. Ward, supra. (See also U.S. v. One Assortment of 89 Firearms, 465 U.S. 354 (1984) for a discussion of civil versus criminal sanctions.)

The Drug Stamp Act does not function as a forfeiture case. It brings a civil tax assessment independent of criminal drug violations. There is no showing that the Legislature

intended the Drug Stamp Act to be criminal and punitive, it is clearly a civil sanction. The Act requires purchase and display of revenue stamps. The Act taxes a particular activity and substances. It does not impose a penalty for violation of a criminal law. The Commission does not determine whether there has been a criminal conviction, nor must it prove the elements necessary for violation of criminal drug statutes. The Act functions independently of them. The Commission does not enforce criminal law violations; nor do county officials bring civil tax proceedings against the violator. This independence between civil tax and criminal matters shows that both operate on independent grounds and that neither is dependent on the other. This is contrary to the operation of a forfeiture proceeding as described in One 1958 Plymouth Sedan.

### **ISSUE III**

#### **ZISSI HAS NOT BEEN COMPELLED TO PROVIDE SELF- INCRIMINATING EVIDENCE**

This Court has held that the Fifth Amendment privilege against self-incrimination is applicable in civil proceedings if a threat of criminal prosecution exists. See Affleck v. Third Judicial Dist. Court, 655 P.2d 665, 666 (Utah 1982).

Zissi has failed to show that his privilege against self-incrimination was violated. His argument falls outside the scope of the self-incrimination privilege. The Fifth Amendment

to the United States Constitution provides: "No person shall be . . . compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Utah State Constitution is similar: "In criminal prosecutions . . . [t]he accused shall not be compelled to give evidence against himself." Utah Const. art. I § 12.

The Act does not compel self-incriminating information. The U.S. Supreme Court has held, absent coercion, information freely given is harmonious with the Fifth Amendment:

Voluntary statements remain a proper element in law enforcement. Indeed, far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable . . . absent some officially coerced self accusation, the Fifth Amendment privilege is not violated by even the most damning admissions.

Oregon v. Elstad, 470 U.S. 298, 305 (1984). Zissi's completion of the required forms would have been voluntary and not violative of the privilege against self-incrimination.

The Act explicitly provides: "Dealers are not required to give their name, address, social security number, or other identifying information on the form." Utah Code Ann. § 59-19-105(3)(Supp. 1988). Any incriminating evidence would have been given voluntarily. There is no showing that incriminating information is required; therefore, compulsion is absent for a finding of violation of the U.S. or Utah Constitutions.

Even if the Act could be viewed as compulsory, the information would not incriminate, which is a requirement of these constitutional provisions. The purchase of drug stamps is a benign act, not a crime. Stamp collectors or anyone else may purchase them. Hypothetically, employees of the Commission could provide law enforcement officials with a purchaser's physical description or automobile license plate number, but that did not happen here. Until it does, the court need not address that argument. This Court has held that complaints in the abstract are insufficient to make a statute unconstitutional. Greaves v. State, 528 P.2d 805, 808 (Utah 1984).

The United States Supreme Court addressed the scope of incriminating evidence in Marchetti v. U.S., 390 U.S. 39 (1968). In Marchetti, a taxpayer was convicted for failing to pay an occupation tax and obtain a revenue stamp. He was convicted of failing to complete the IRS form required of all persons in the business of accepting wagers. Id at 41. The forms required the gambler's residence, business addresses, whether the registrant was in the business of accepting wagers, and the names and addresses of agents and employees. Id. at 42. The registrants were obliged to post the stamp in their place of business, or, if they had none, to carry it for display upon demand of a treasury officer. Id. at 43. The Statute required that a list of all registrants be provided upon the request of any state or local

prosecuting officer. Id. The statute gave no immunity from prosecution to registrants. Id. at 44. A former Commissioner of the IRS "...acknowledged that the Service 'makes available'" to law enforcement agencies the names and addresses of those who have paid the wagering taxes, and that it is in "full cooperation" with the efforts of the Attorney General of the United States to suppress organized gambling. Id. at 48.

The Court based its decision of unconstitutionality on the following principles:

- 1) The area was permeated with criminal statutes.
- 2) Those engaged in the activity were a group inherently suspect of criminal activities.
- 3) Those required, on pain of criminal prosecution, to provide information could reasonably suppose that the information given would be made available to prosecuting authorities to provide a significant link in a chain of evidence that would establish guilt.
- 4) "The central standard [of] the privilege application ... [was] whether the claimant [was] confronted by substantial and 'real,' and not merely trifling or imaginary hazards of incrimination."

Id. at 47-53.

The Court concluded that the area of gambling was permeated with criminal statutes, and that as a group, those accepting wagers were suspect of criminal activity. The Court found that the stamps were to be posted conspicuously, and they had often been admitted at trial in state and federal gambling

prosecutions. It also found that a significant link in a chain of evidence existed because the statute required revenue offices to provide prosecutors with a list of those paying the tax. A former IRS Commissioner admitted that this information was made available to federal prosecutors. The Court also concluded that the registrants were confronted with real, and not trifling or imaginary hazards of incrimination, and the registrants could expect prosecution under state gambling laws.

However, the Court restricted its holding to the facts of the case:

If, in different circumstances, a taxpayer is not confronted by substantial hazards of self-incrimination, or if he is otherwise outside the privileges protection, nothing we decide today would shield him from the various penalties prescribed by the wagering statutes.

Id. at 61.

There are similarities between Marchetti and Zissi's case; however, the distinctions make Marchetti inapplicable. Illegal drug dealing is an area permeated with criminal statutes. Drug dealers would be a group inherently suspect of criminal activities, because their activities are illegal.

However, the information does not provide a link in the chain of evidence. The statute does not require the Commission to provide prosecutors with a list of those purchasing the stamps; the stamps need not be displayed in open view, nor is

there any evidence that the stamps have been admitted in a state or federal drug prosecution. Further, Zissi lacks even a scintilla of evidence that the Commission has ever made or would make drug stamp sale information available to prosecutors.

Here, Zissi is confronted by trifling or imaginary hazards of incrimination, as opposed to the substantial and real ones of Marchetti, even though the purchase of the stamps could be precedent to a criminal act. If Zissi had provided personal data or business information, as was required in Marchetti, it would have been done at his own discretion. The Utah statute provides: "Dealers are not required to give their name, address, social security number, or other identifying information on the form." Utah Code Ann. § 59-19-105(3) (Supp. 1988).

While criminal law enforcement agencies have provided information to the Commission, Zissi has failed to submit evidence showing that the Commission has ever provided information of drug stamp sales to prosecutors.

This case is precisely what the Supreme Court envisioned in Marchetti when they stated that in different circumstances, not confronted by substantial hazards of self-incrimination, the privilege does not apply. Marchetti at 905. The Act preserves the right against self-incrimination; it should be upheld.

Zissi argues that Leary v. United States, 395 U.S. 6 (1969), applies. However, the Federal Marihuana Act is substantially different than the Act at issue here. The Federal Act required a dealer to register and give his name and place of business to the nearest district office of the Internal Revenue Service. Leary at 14. That Act also required all marihuana transfers to be registered with the IRS on a form showing the name and address of the transferor and transferee and the amount of marihuana being transferred. Id. at 15. This information was to be made available to law enforcement officials. Duplicates of the forms were to be open to inspection by "Treasury personnel and state and local officials charged with enforcement of marihuana laws," with the requirement that these officials be furnished with copies of the forms. Id. As discussed supra, the Act fails to make any of these incriminating demands. Thus, Leary does not apply.

#### ISSUE IV

#### **THE EIGHTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I § 9 OF THE UTAH CONSTITUTION ARE NOT APPLICABLE TO A CIVIL TAX PROCEEDING**

The taxes and penalties of Utah Code Ann. § 59-19-106 (Supp. 1988) do not constitute cruel and unusual punishment. The issues before the Commission were issues of taxation. While the statute provides a criminal penalty, that issue is not before the



Commission, nor does it exercise jurisdiction over these criminal matters.

The Eighth Amendment has traditionally been used to prohibit the infliction of cruel and unusual punishment or excessive fines in the criminal context. See Ingraham v. Wright, 430 U.S. 651 (1977).

When the United States Supreme Court has been confronted with claims that the Eighth Amendment applies to cases outside the criminal area on the grounds that the penalties were cruel and unusual punishment, it has found it to be inapplicable. Id. at 667-8. As set forth above, the proceeding before the Commission was a civil proceeding. For this Court to adopt Zissi's position and place taxation within the well-defined limits of the Eighth Amendment would require it to turn its back on Eighth Amendment jurisprudence.

Zissi has failed to provide any Utah case law in support of his argument. His argument should be rejected.

#### ISSUE V

#### Taxes Were Properly Calculated According to the Statutory Scheme.

Zissi was properly assessed on his illegal drugs. The statute was applied as enacted. The fundamental rules governing Commission application of the Act are: 1) any taxes and penalties assessed by the Commission, pursuant to the Act, are

presumed correct; the taxpayer bears the burden to prove otherwise, Utah Code Ann. § 59-19-106(4) (Supp. 1988); 2) "[i]t is the responsibility of the Commission and of the Court to interpret and apply the statutes as enacted," McKendrick v. State Tax Comm'n, 347 P.2d 177, 178 (Utah 1959); and 3) doubts as to the meaning of terms in tax statutes are to be resolved in favor of the taxpayer. Ogden Union Railway and Depot Co. v. State Tax Comm'n, 395 P.2d 57, modified 399 P.2d 145, (Utah 1964).

The statute is clear as enacted. Utah Code Ann. § 59-19-103 (Supp. 1988) establishes the tax on controlled substances:

(1) A tax is imposed on marihuana and controlled substances as defined under this chapter at the following rates:

(a) \* \* \*

(b) on each gram of controlled substance, or each portion of a gram, \$200; and

(c) on each 50 dosage units of a controlled substance that is not sold by weight, or portion thereof, \$2,000.

Thus, in applying these provisions, the issue is whether amphetamines in pill form are sold by weight or in dosage units. This provision of the statute is clear, it requires a factual determination on how amphetamines in pill form are sold. Zissi has not met his burden of proving otherwise.

The Commission found that amphetamines, in pill form, are sold as pills and not by weight. (R. 7). Deference is given to administrative agency findings of fact. Hurley v. Bd. of

Review of Indus. Comm'n, 767 P.2d 524, 527 (Utah 1988).<sup>7</sup> All expert testimony supported this finding. Detective Kendra Hurlin testified that she has never seen amphetamine tablets sold by weight. (R. 158). Attorney Loni Deland testified that he did not recall ever purchasing any amphetamines by weight that were in pill form. (R. 138). Zissi's amphetamines were in pill form. Thus, they were correctly taxed using the non-weight assessment scheme.

It is irrelevant that these pills would face a different taxing scheme if they existed in a different physical form. The evidence presented at the hearing showed that amphetamine sold in powder form an altogether different substance than that sold in pill form. (R. 159). Zissi fails to address this difference. Instead he suggests an alternative approach to the problem. Zissi's approach is unworkable; it exalts form over substance, and alters the clear legislative mandate on how illegal drugs should be taxed. The Legislature took a common sense approach. Drugs marketed in non-weight form (e.g. tablets) will be taxed as units. Substances that are not in a unit will be taxed by weight. This approach should be upheld.

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<sup>7</sup> Where constitutional rights are at stake, a court may exercise greater scrutiny. Hurley at 527 n.3. Here, the issue is a factual determination of the form of taxation for amphetamines sold in pill form.

## ISSUE VI

### The Term "Dosage Unit" Is Clear and Understandable For Due Process Purposes. It Was Correctly Interpreted By the Commission.

Dr. J. Craig Johnson, Director of Pharmacy Services at LDS Hospital, and a pharmacist there since 1970, testified that "[a] dosage unit would be one tablet." (R. 153). In distinguishing a "dosage unit" from a "dosage," he stated that "[a] dosage would [be] the amount a person took at one time." (R. 153). Exhibit 3 was introduced into evidence in support of Dr. Johnson's testimony. (R. 182). It showed that the term "unit dose" is the equivalent of "tablet." (R. 182). Zissi has attempted to redefine this term. However, he makes no understandable distinction between "dosage" and "dosage unit".

Dr. Johnson further stated that the term dosage unit is common parlance in the medical field to mean "the way it comes packaged." (R. 155). "Be it one suppository or one tablet." (R. 155). The terms dosage unit and unit dose are used interchangeably. (R. 156). Thus, the evidence shows that the Commission correctly interpreted the Act.

Zissi argues that the term "dosage units" is unclear and so the statute is vague. See Petitioner's Opening Brief at 35 (No. 890317). He argues that the term "dosage unit" really means "dosage." See Petitioner's Opening Brief at 39 (No. 890317). He contends that "[a] person of ordinary intelligence

would understand the statute that way." Id. at 39-40. He goes on to say that a dosage could be either "5 pills" or somewhere between "50-100 pills." Id. at 40. This attempt to confuse an otherwise clear statutory provision should be rejected. As Dr. J. Craig Johnson clearly testified, and supported with evidence, (R. 182), the term "dosage unit" means "the way something comes packaged," (R. 155), "[b]e it one suppository or one tablet." (R. 155). The statutory language provides a clear, understandable standard for assessing drugs. As Zissi concedes, his approach could mean anywhere from 5 to 100 tablets. The Commission's interpretation of the statute should not be replaced with Zissi's effort to confuse it.

## ISSUE VII

### The Act Operates Equally Upon Each Individual In Each Legislatively Designated Class.

"Equal protection protects against discrimination within a class." State Tax Comm'n v. Dep't of Fin., 576 P.2d 1297, 1298 (Utah 1978). The general principle being that "persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same." Malan v. Lewis, 693 P.2d 677, 669 (Utah, 1984).

Several factors govern equal protection. First, the legislature is given considerable discretion to designate classes

as long as these designations operate equally on all persons situated similarly. Department of Finance at 1298; see also Malan at 670. Second, when there are differences in treatment, "the classes must be based on differences that have a reasonable tendency to further the objectives of the statute." Malan at 670. Administrative convenience has been identified as a valid reason for difference in treatment. See Hansen v. Pub. Employees Retirement Bd. of Admin., 246 P.2d 591, 598 (Utah, 1952); see also Carmichael v. Southern Coal Co., 301 U.S. 495, 511 (1937).

The Act establishes three classes of drugs to be taxed:

1. Marihuana;
2. Controlled substances sold by weight; and
3. Controlled substances not sold by weight.

Utah Code Ann. §59-19-103(1) (Supp. 1988).

Zissi argues that he is being discriminated against because his amphetamines could be ground into powder form and taxed as a substance sold by weight. However, the evidence shows that amphetamine sold in powder form is a different substance than amphetamines sold in tablet form. (R. 159). Zissi fails to address the distinction between crystallized amphetamine and that in tablet form like he possessed. His argument on amphetamine in powder form is misleading. He lumps all amphetamines into one class where clearly more than one class exists.

Even if these substances were identical, the equal protection rules cited supra are consistent with the Commission's application of the Act. The Act situates Zissi similarly with all other drug dealers possessing drugs in tablet form. This group of dealers is taxed at a rate of \$2,000 per 50 dosage units. Utah Code Ann. §59-19-103(1) (Supp. 1988). This legislative designation operates equally on all dealers selling drugs in units. Even Zissi concedes that "amphetamines are sold by the pill or quantity of pills when in pill form." Petitioner's Opening Brief at 32 (No. 890317). Thus, Zissi's drugs should be taxed according to the rate set forth for drugs sold as units.

The three separate classes established by the legislature distinguish between marihuana, drugs sold by weight and drugs sold in units. All drug dealers within these classes are treated similarly to all other drug dealers within the same class. The differences between these classes allow the taxation objectives of the statute to be accomplished. Without these classifications, the statute would be impossible to administer. Clearly these classifications accomplish the legislative purpose of taxing illegal substances.

Zissi argues that he is being treated as the State Insurance Fund was in State Tax Comm'n v. Dep't of Fin., supra. There, the State Insurance Fund was singled out from among all

other insurers to bear a special tax. Zissi has failed to make a showing that he has been singled out and treated differently than any other drug dealer possessing amphetamines in tablet form. Thus, he has failed to show a due process violation.

### CONCLUSION

The Commission correctly interpreted the Drug Stamp Act in determining the tax and penalty that is due and owing.

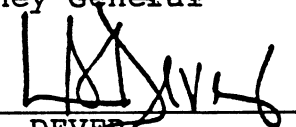
The Commission further asserts that the matter is a civil matter not subject to the exclusionary rule, that there is no showing of a violation of petitioner's right against self-incrimination or his being subjected to cruel and unusual punishment.

Finally, this Court should uphold the constitutionality of the Utah Illegal Drug Stamp Act, Utah Code Ann. §59-19-101, et seq., and affirm the order of the Commission.

DATED this 16<sup>th</sup> day of January, 1990.

R. PAUL VAN DAM  
Attorney General

By

  
L.A. DEVER  
Assistant Attorney General  
Attorneys for Respondent



CERTIFICATE OF MAILING

I hereby certify that on the 16<sup>th</sup> day of January,  
1990, four copies of the foregoing Brief of Respondent were  
mailed, first class postage prepaid, to the following:

David J. Bird #0334  
RICHARDS, BIRD & KUMP  
333 East 400 South  
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read 'L. J. Bird', is written over a horizontal line.

## CONSTITUTIONAL PROVISIONS

### **U.S. CONSTITUTION AMENDMENT V**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

### **UTAH CONSTITUTION ARTICLE I § 12**

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

# CHAPTER 19

## ILLEGAL DRUG STAMP TAX ACT

Section		Section	
59-19-101.	Short title.		— Anonymity provided when purchasing stamps.
59-19-102.	Definitions.	59-19-106.	Civil penalty — Criminal penalty — Statute of limitations — Burden of proof.
59-19-103.	Tax imposed on marihuana and controlled substances.	59-19-107.	Commission to administer tax — No criminal immunity for dealers.
59-19-104.	Stamps, evidencing tax paid to be provided and sold by the commission.		
59-19-105.	Stamps to be affixed to marihuana and controlled substance		

Compiler's Notes. — Laws 1988, ch. 11, §§ 1 to 14, also enacted a new § 59-19-101 et seq. Because of the enactment of § 59-19-101 et seq. by Laws 1988, ch. 246, §§ 1 to 7, the provisions enacted by Laws 1988, ch. 11, were renumbered as § 59-20-101 et seq.

### 59-19-101. Short title.

This chapter is known as the "Illegal Drug Stamp Tax Act."

History: C. 1953, 59-19-101, enacted by L. 1988, ch. 246, § 1.

Effective Dates. — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

### 59-19-102. Definitions.

As used in this chapter:

(1) "Controlled substance" means any drug or substance, whether real or counterfeit, as defined in Section 58-37-2, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Utah laws. It does not include marihuana.

(2) "Dealer" means a person who, in violation of Utah law, manufactures, produces, ships, transports, or imports into Utah or in any manner acquires or possesses more than 42½ grams of marihuana, or seven or more grams of any controlled substance, or ten or more dosage units of any controlled substance which is not sold by weight.

(3) "Marihuana" means any marihuana, whether real or counterfeit, as defined in Section 58-37-2, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Utah laws.

History: C. 1953, 59-19-102, enacted by L. 1988, ch. 246, § 2.

Effective Dates. — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

### 59-19-103. Tax imposed on marihuana and controlled substances.

(1) A tax is imposed on marihuana and controlled substances as defined under this chapter at the following rates:

(a) on each gram of marihuana, or each portion of a gram, \$3.50;

(b) on each gram of controlled substance, or each portion of a gram, \$200; and

(c) on each 50 dosage units of a controlled substance that is not sold by weight, or portion thereof, \$2,000.

(2) For the purpose of calculating the tax under this chapter, a quantity of marihuana or other controlled substance is measured by the weight of the substance, whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

**History:** C. 1953, 59-19-103, enacted by L. 1988, ch. 246, § 3.

**Effective Dates.** — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

#### **59-19-104. Stamps, evidencing tax paid to be provided and sold by the commission.**

(1) The commission shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marihuana and controlled substances on which a tax is imposed.

(2) A dealer may not possess any marihuana or controlled substance upon which a tax is imposed by this chapter, unless the tax has been paid on the marihuana or other controlled substance as evidenced by a stamp or other official indicia.

(3) Official stamps, labels, or other indicia to be affixed to all marihuana or controlled substances shall be purchased from the commission. The purchaser shall pay 100% of face value for each stamp, label, or other indicia at the time of the purchase.

**History:** C. 1953, 59-19-104, enacted by L. 1988, ch. 246, § 4.

**Effective Dates.** — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

#### **59-19-105. Stamps to be affixed to marihuana and controlled substance — Anonymity provided when purchasing stamps.**

(1) When a dealer purchases, acquires, transports, or imports into this state marihuana or controlled substances, he shall permanently affix the official indicia on the marihuana or controlled substances evidencing the payment of the tax required under this chapter. No stamp or other official indicia may be used more than once.

(2) Taxes imposed upon marihuana or controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by a dealer.

(3) Payments required by this chapter shall be made to the commission on forms provided by the commission. Dealers are not required to give their name, address, Social Security number, or other identifying information on the form. The commission shall collect all taxes imposed under this chapter.

History: C. 1953, 59-19-105, enacted by L. 1988, ch. 246, § 5. Effective Dates. — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

**59-19-106. Civil penalty — Criminal penalty — Statute of limitations — Burden of proof.**

(1) Any dealer violating this chapter is subject to a penalty of 100% of the tax in addition to the tax imposed by Section 59-19-103. The penalty shall be collected as part of the tax.

(2) In addition to the tax penalty imposed, a dealer distributing or possessing marihuana or controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a felony of the third degree and is subject to a fine of not more than \$10,000, notwithstanding Section 76-3-301.

(3) Notwithstanding any other provision of the criminal laws of this state, an information, indictment, or complaint may be filed upon any criminal offense under this chapter within six years after the commission of this offense.

(4) Any tax and penalties assessed by the commission are presumed to be valid and correct. The burden is on the taxpayer to show their incorrectness or invalidity.

History: C. 1953, 59-19-106, enacted by L. 1988, ch. 246, § 6. Effective Dates. — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

**59-19-107. Commission to administer tax — No criminal immunity for dealers.**

(1) The commission shall administer this chapter and may adopt rules necessary to enforce this chapter.

(2) Nothing in this chapter requires persons lawfully in possession of marihuana or a controlled substance to pay the tax required under this chapter.

(3) Nothing in this chapter provides immunity of any kind for a dealer from criminal prosecution under Utah law.

History: C. 1953, 59-19-107, enacted by L. 1988, ch. 246, § 7. Effective Dates. — Laws 1988, ch. 246, § 8 makes the act effective on April 1, 1988.

## CHAPTER 20

### ENTERPRISE ZONE ACT

Section	Short title.	Section	Quarterly consideration.
59-20-101.	Definitions.	59-20-107.	Duration of designation.
59-20-102.	Powers of the Department of Community and Economic Development.	59-20-108.	Contingent designations.
59-20-103.	Criteria for designation of enterprise zones — Application.	59-20-109.	Revocation of designations.
59-20-104.	Qualifying local contributions — Employee categories.	59-20-110.	Disqualifying transfers.
59-20-105.	Eligibility review.	59-20-111.	Businesses qualifying for tax incentives.
		59-20-112.	State tax credits.
		59-20-113.	Annual report.
		59-20-114.	