

1957

Pacific Intermountain Express Co. v. State Tax Commission and the State of Utah : Brief of Respondent

Utah Supreme Court

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E. R. Callister; Ben E. Rawlings; John G. Marshall; Attorneys for Respondents;

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In the
Supreme Court of the State of Utah

FILED

JUL 31 1957

PACIFIC INTERMOUNTAIN EX-
PRESS COMPANY, a Corporation,
Plaintiff and Appellant,

Clerk, Supreme Court, Utah

vs.

Case No.
8659

STATE TAX COMMISSION and THE
STATE OF UTAH,
Defendants and Respondents.

RESPONDENT'S BRIEF

E. R. CALLISTER,
Attorney General,

BEN E. RAWLINGS,
JOHN G. MARSHALL,

Attorneys for Respondents.

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RESPONDENT'S BRIEF

Respondent agrees substantially with the statement of facts as they appear on pages 3 and 4 of appellant's brief.

STATEMENT OF POINTS

POINT I.

**THE UTAH SALES TAX ACT SUBJECTS TO
TAXATION ALL SALES OF MOTOR VE-
HICLES.**

POINT II.

SEMI-TRAILERS ARE MOTOR VEHICLES
WITHIN THE SALES TAX ACT.

POINT III.

THE TRIAL COURT PROPERLY DISMISSED
THE ACTION SINCE IT HAD NO JURISDIC-
TION TO HEAR THIS CASE.

ARGUMENT

POINT I.

THE UTAH SALES TAX ACT SUBJECTS TO
TAXATION ALL SALES OF MOTOR VE-
HICLES.

The arguments in points 1 and 4 of appellant's brief seem to center around the following statutory language contained in 59-15-2(e), U. C. A. 1953, as amended:

"But the term 'retail sales' is not intended to include isolated nor occasional sales by persons not regularly engaged in business * * *, provided however, that no sale of a motor vehicle shall be deemed isolated or occasional for the purposes of this act."

It would seem that there are three possible alternatives as to the meaning of this statutory language. They are: (1) that it was meant to tax sales of motor vehicles only by retailers regularly engaged in the business of selling motor vehicles; (2) that it was meant to tax sales of motor vehicles by all retailers and retailers only; or (3) that it

was meant to impose a tax on the sale of all motor vehicles within this state.

The first alternative can be immediately ruled out. If such were the case, the language would add nothing to the Sales Tax Act, as Sec. 59-15-4, U. C. A. 1953, already levies a tax upon "every retail sale of tangible personal property made within the state of Utah." If the wording in question were to be so construed, one of these sections would mean nothing. This court has held several times that proper statutory construction requires that significance be accorded every part of a statute. *Glenn v. Ferrell*, 5 Ut. 2d 439, 304 P. 2d 380; *Dunn v. Bryan*, 77 Ut. 604, 299 Pac. 253.

The second alternative is the one which appellant apparently urges the court to adopt. It argues that the Sales Tax Act is completely restricted to sales by retailers; that therefore the exemption as to isolated or occasional sales also applies only to retailers; and that the language excluding motor vehicles from the classification of isolated or occasional sales is intended to require a tax on all sales of motor vehicles by retailers. Such an interpretation would require a tax on sales of motor vehicles by all regular retailers no matter what line of goods the retailer happened ordinarily to sell. Under this construction, a tax would be required on the sale of a car by a grocer or a service station operator, but not on the sale of a car by a barber or a doctor. It is immediately apparent that such a construction would raise grave doubts as to the constitutionality of the statute. As appellant ably stresses under Point 4 of its brief, such a classification would be unreasonable, arbitrary, oppressive and discriminatory and the distinction would rest on no

reasonable basis. It seems odd that appellant would urge the court to adopt a construction which it admits is unconstitutional, in light of the well recognized and universal rule that where two meanings may fairly be given an act, one rendering it in harmony, and the other in conflict with the constitution, the former must always prevail. *State Water Pollution Board v. Salt Lake City*, ... Ut. 2d ..., 311 P. 2d 370; *Parkinson v. Watson*, 4 Ut. 2d 191, 291 P. 2d 400; *Logan City v. Public Utilities Comm.*, 72 Ut. 536, 271 P. 961; *Norville v. State Tax Commission*, 98 Ut. 170, 97 P. 2d 937; *State v. Packard*, 122 Ut. 369, 250 P. 2d 561.

The final alternative, i. e. that all sales of motor vehicles are subject to the sales tax, is the one which the Tax Commission asserted and the one which the trial court adopted. This interpretation gives effect to all parts of the Sales Tax Act and is in accord with the obvious intention of the legislature (See argument under Point II). No doubts could be raised as to its constitutionality as the act would apply to everyone equally. This interpretation is in full accord with the following statement of this court in the case of *Norville v. State Tax Commission*, 98 Ut. 170, 97 P. 2d 937:

"Moreover, in seeking to give effect to the intent of the legislature the court will adopt that interpretation of a taxing statute which lays the tax burden uniformly on all standing in the same degree with relation to the tax adopted * * * And will avoid an interpretation which would lead to an impractical, unfair, or unreasonable result."

Such interpretation is also supported by the ordinary rules of statutory construction. Sec. 59-15-4, U. C. A. 1953,

imposes a broad and general tax on sales by retailers. However, the legislature did not stop at this point, but more specifically provided that "no sale of a motor vehicle shall be deemed isolated or occasional for the purposes of this act." It is a cardinal rule of statutory construction that specific statutory provisions will prevail over broad general provisions. *Nelden v. Clark*, 20 Ut. 382, 59 P. 524; *University of Utah v. Richards*, 20 Ut. 457, 59 P. 96.

As further support for the trial court's holding that all sales of motor vehicles are subject to the sales tax, we refer to Sec. 59-15-5, U. C. A. 1953, as amended, which deals with the collection of the tax. This section was amended in 1949 by the same act which amended Sec. 59-15-2(e) to exclude motor vehicles from the category of isolated or occasional sales (see Chapter 83, Laws of 1949). Therefore, the two provisions may be considered in *pari materia*. See *Weber v. Pinyan*, (Cal.) 61 P. 2d 954. The 1949 amendment to Sec. 59-15-5 states as follows:

"* * * Provided, however, that on all motor vehicle sales made by other than a regular licensed dealer the tax shall be paid by the purchaser directly to the State Tax Commission upon every sale of a motor vehicle subject to registration and licensing under the laws of this state, and shall be collected by the State Tax Commission at the time of such registration and licensing."

If the tax was not meant to apply to every sale of a motor vehicle there would be no need to require direct payment to the State Tax Commission, as all regular retailers are already collecting agents for the state. When this amendment is considered together with Sec. 59-15-2(e),

U. C. A. 1953, as amended, it appears that the legislature clearly intended that no sale of a motor vehicle, whether made by a retailer or any other person, should be exempt from the sales tax.

POINT II.

SEMI-TRAILERS ARE MOTOR VEHICLES WITHIN THE SALES TAX ACT.

Since the sales tax act provides that "no sale of a motor vehicle shall be deemed isolated or occasional for the purposes of this act" (59-15-2(e) U. C. A. 1953, as amended) it becomes necessary to define the term "motor vehicle." As pointed out by the appellant this term is nowhere defined in the Sales Tax Act. Appellant would have the court apply the definition of motor vehicle as contained in the Motor Vehicle Act of this state. However, this act bears little relationship to the Sales Tax Act and should not be controlling in defining the term as it is there employed. (See *Fruehauf Trailer Co. v. South Carolina Electric & Gas Co.*, 75 S. E. 2d 688, S. C. 1953, where it was held that the definition of motor vehicle in an unrelated statute had no application.)

In interpreting a statute, the primary obligation of the court is to give effect to the intention of the legislature. *Norville v. State Tax Commission*, 98 Ut. 170, 97 P. 2d 937; *West Beverage Co. v. Hansen*, 98 Ut. 332, 96 P. 2d 1105; *Utah Light & Traction Co. v. State Tax Commission*, 92 Ut. 404, 68 P. 2d 759. As stated in the *Norville* case, supra:

"In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of

the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt, and the remedy in view; and this intention is to be taken or presumed according to what is consonant with reason and good discretion."

It is the contention of respondent that the obvious legislative intent was to tax vehicles of the type required to be licensed and registered in this state. Such category would include semi-trailers, as 41-1-19, U. C. A. 1953, as amended, specifically requires them to be registered.

When the Utah Legislature decided to create a sales tax, it was necessary to do so in a practical manner. The Legislature, therefore, laid down a general policy of taxing only those sales by regular retailers, and exempted isolated and occasional sales. The reason for this exemption was plainly because of the collection problem. It would be grossly impractical, if not absolutely impossible, to tax isolated and occasional sales by persons not regularly engaged in business; the Tax Commission would have no way of finding out about such sales, nor could there be any economical method of collecting sales tax. The Sales Tax Act, therefore, was primarily made to apply only to sales by retailers from their inventories of goods held for resale. The retailer is made the collector for the Tax Commission, and in this manner the act is efficiently administered.

The same considerations, however, do not apply to sales of vehicles which are subject to the registration laws

of the state of Utah. Here there exists a practical and efficient method for collecting sales tax, even though the vehicle is not sold by a regular retailer. Since it is necessary for the owner to register the vehicle, it is both practical and convenient to collect the tax at that time.

Further considerations also make it apparent that the legislature intended to impose the tax upon all vehicles subject to registration. On August 25, 1950, pursuant to Section 59-15-20, U. C. A. 1953, which confers upon the State Tax Commission the authority to administer the Sales Tax Act, the commission promulgated and published a regulation which reads as follows:

“No sale of a vehicle subject to the registration laws of this state shall be deemed an isolated or occasional sale.” (See Sales Tax Regulation 38.)

Respondent recognizes that no administrative body can by regulation supersede the will of the legislature. However, since this regulation was promulgated, the legislature of this state has had occasion to meet four times not counting special sessions. In spite of the fact that the legislature has had the Sales Tax Act brought to its attention and amended it in various places, no change has been made in the language interpreted by this regulation. It is submitted that where a law which is susceptible of interpretation has been given a particular construction by administrative regulation, and the legislature has allowed the same to stand for a period of time, it is entitled to great respect as being a true expression of the legislative purpose. *State v. Alta Club*, 120 Ut. 121, 232 P. 2d 759; *Olsen v. State Tax Commission*,

109 Ut. 563, 168 P. 2d 324; *Utah Power & Light v. Public Service Commission*, 107 Ut. 155, 152 P. 2d 542; *In re Cowan's Estate*, 98 Ut. 393, 99 P. 2d 605; *Decker v. New York Life Ins. Co.*, 94 Ut. 166, 76 P. 2d 568; *Murdock v. Mabey*, 59 Ut. 346, 203 P. 651; *State Board of Land Com'rs v. Ririe*, 56 Ut. 213, 190 P. 59.

Also the Sales Tax Act itself refers in several places to vehicles subject to registration. Section 59-15-5 (U. C. A. 1953, as amended), which deals with the collection of the tax, states as follows:

"However, that on all motor vehicle sales made by other than a regular licensed dealer the tax shall be paid by the purchaser directly to the State Tax Commission upon every sale of a *motor vehicle subject to registration and licensing*, under the laws of this state, and shall be collected by the State Tax Commission at the time of such registration and licensing." (Emphasis added.)

As recently as 1957 the legislature has dealt with the Sales Tax Act. At 59-15-6, U. C. A. 1953, as amended, it exempted from sales tax certain vehicles purchased in Utah by nonresidents for use outside the state. This exemption applied to "all sales of vehicles of a *type required to be registered* under the provisions of the Motor Vehicle Laws of this state." This is but another indication that the legislature originally intended the sales tax to apply to "vehicles of the type required to be registered" and the term motor vehicles should be so construed.

All of the foregoing considerations clearly show that the term "motor vehicle" as used in the Utah Sales Tax Act

was meant to include all vehicles subject to registration in this State.

Even if the court should find that the Sales Tax Act was not necessarily intended to tax all vehicles subject to registration, still we submit that a semi-trailer is a "motor vehicle" within the contemplation of the Sales Tax Act. The semi-trailer is merely a part of the truck or unit. This unit would consist of a tractor and one or more trailers or semi-trailers. All are combined together to form the motor vehicle. The fallacy of appellant's argument becomes apparent when carried to its logical conclusion. They could just as reasonably argue that a spare tire, or the motor, or the body, or any other part of the truck is not in and of itself a "motor vehicle" and we would have to agree. However, when all these component parts are put together, the product clearly becomes a motor vehicle under any definition. It would seem that the back end is just as much a part of the truck as the front end.

Contrary to the statement made on page 16 of appellant's brief, many cases involving a variety of fact situations have held that semi-trailers or trailers are motor vehicles.

The case of *State v. Schwartzman Service, Inc.*, 40 S. W. 2d 479 (Mo. 1931) involved a conviction for the operation of a "motor vehicle" having excess gross weight. The court in stating that the intention of the legislature should prevail over the literal sense of terms, held that a semi-trailer was a motor vehicle. See also *Eddleman v. City of Brazil*, 166 N. W. 1 (Ind. 1929), which held to the same effect.

In *Department of Motor Transportation v. Trailer Convoys, Inc.*, 279 S. W. 2d 815 (Ky. 1955) it was held that semi-trailers were "motor vehicles" within a statute giving tax advantages to transportation of new motor vehicles, notwithstanding that trailers were not self propelled.

In *Prudential Insurance Co. of Great Britain v. Associated Employers, Lloyds*, 250 S. W. 2d 477 (Texas 1952) the court was called upon to construe an insurance policy which insured only accidents involving two or more motor vehicles. In an accident where a truck and semi-trailer overturned, it was held that the accident did not involve two motor vehicles, however, it was noted by the court that a trailer pulled by a motor vehicle may become part of said motor vehicle in spite of the fact that no statute provides that a trailer is a motor vehicle.

In *Fruehauf Trailer Company v. South Carolina Electric & Gas Co.*, 75 S. E. 2d 688 (S. C. 1953) a trailer was held to be a "motor vehicle" under a statute providing for a lien on motor vehicles in favor of one injured or damaged through negligence or reckless operation thereof.

In *Vest v. Kramer*, 106 N. E. 2d 105 (Ohio 1955) it was held that a two-wheeled utility trailer designed for and employed in general highway transportation and attached to and operated as a unit with an automobile, which provides the motive power for the unit, is a motor vehicle within the Ohio statute.

And in *Grendreau v. State Farm Fire Insurance Co. of Bloomington*, 288 N. W. 225 (Minn. 1939) an automobile trailer was held to be a "motor vehicle" under a statute

dealing with insurance on "automobiles, motorcycles and other motor vehicles."

Even though the Motor Vehicle Act in Utah appears to exclude trailers and semi-trailers from the definition of a motor vehicle, yet the same act for some purposes treats trailers and semi-trailers as a unit with the tractor which pulls it, which clearly falls within the definition of a "motor vehicle." See, for example, Sec. 41-1-88, U. C. A. 1953, as amended which provides as follows:

"* * * provided that no such fee or any other registration fee shall be required with respect to any semi-trailer or trailer registered outside the state where it is shown to the satisfaction of the state tax commission that such semi-trailer or trailer is being pulled by a tractor * * * *which is registered within the state of Utah in conjunction with a semi-trailer* or trailer likewise registered within the state of Utah." (Emphasis added.)

It therefore appears that the Sales Tax Act when considered in its entirety clearly manifests the intention of the legislature that semi-trailers and all other vehicles of a type subject to the registration and licensing provisions of the Utah law are to be classified as motor vehicles within the meaning of the Sales Tax Act.

POINT III.

THE TRIAL COURT PROPERLY DISMISSED
THE ACTION SINCE IT HAD NO JURISDICTION
TO HEAR THIS CASE.

The legislature in adopting the Sales Tax Act set up an administrative procedure by which unsatisfied taxpay-

ers could object to tax assessments made by the commission. The applicable statutory provisions which set up this procedure are as follows:

59-15-12. *Objection to Assessment — Petition — Hearing.* —

“If any person having made a return and paid the tax provided by this act, feels aggrieved by the assessment made upon him by the tax commission, he may apply to the tax commission by a petition in writing within 10 days after the notice is mailed to him for a hearing and a correction of the amount of tax so assessed, in which petition he shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The tax commission shall notify the petitioner of the time and place fixed by it for such hearing. After such hearing, the tax commission may make such order in the matter as may appear to it just and lawful and shall furnish a copy of such order to the petitioner.”

59-15-13. *Decision of Commission, When Final.*—

“Every decision of the Tax Commission shall be in writing and notice thereof shall be made to the vendor within ten days, and all such decisions shall become final upon the expiration of 30 days after notice of such decision shall have been mailed to the vendor, unless proceedings are taken within said time for review by the Supreme Court upon writ of certiorari as herein provided, in which case it shall become final, (1) when affirmed or modified by the judgment of the supreme court; (2) if the Supreme Court remands the case to the tax commission for rehearing, when it is thereafter determined as hereinabove provided with respect to the initial proceeding.”

59-15-14. *Review by Supreme Court.* —

“Within 30 days after notice of any decision of the tax commission, any party affected thereby may apply to the Supreme Court for a writ of certiorari for review for the purpose of having the unlawfulness of such decision inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the tax commission to certify its records, which shall include all the proceedings and the evidence taken in the case to the court. Upon the hearing, no new or additional evidence may be introduced, but the case shall be heard on the record before the tax commission as certified to by it. The decision of the tax commission may be reviewed both upon the law and fact and the provisions of the code of civil procedure of this state relating to appeals so far as applicable and not in conflict with this act apply to the proceedings in the Supreme Court under the provisions of this section.”

59-15-15. *Exclusive Jurisdiction of Supreme Court.*

“No court of this state, except the Supreme Court, shall have jurisdiction to review, reverse, or annul any decision of the tax commission or to suspend or delay the operation or execution thereof; provided, that a writ of mandamus shall lie from the Supreme Court in all proper cases.”

The taxpayer in the instant case, ignoring the above provisions, simply paid the tax under protest then brought an action for recovery in the district court. Never at any time did it apply to the tax commission for a hearing of this matter.

Apparently appellant justifies its manner of procedure by Section 59-11-11, U. C. A. 1953, which provides as follows:

“In all cases of levy of taxes, licenses or other demands for public revenue which is deemed unlaw-

ful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may pay under protest such tax or license, or any part thereof deemed unlawful, to the officers designated and authorized by law to collect the same; and thereupon the party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit on whose behalf the same was collected, to recover said tax or license or any portion thereof paid under protest."

It should be pointed out that Sec. 59-11-11, U. C. A. 1953 is not part of the Sales Tax Act. On the contrary, it was adopted long before the sales tax ever came into existence. Chapters 1 to 10 of Title 59, U. C. A. 1953, deal with the property tax. Chapter 11 of Title 59, U. C. A. 1953, is entitled "Miscellaneous Provisions," and it directly follows the property tax provisions. An analysis of many of the other sections in this miscellaneous chapter reveals that they apply only to the property tax. Admittedly the procedure outlined in Section 59-11-11, U. C. A. 1953 has been followed with respect to some taxes other than the property tax, but no instance has been found where it has ever been applied to the sales tax.

In the case of *State Tax Commission v. Katsis*, 90 Ut. 406, 62 P. 2d 120, the Tax Commission, proceeding under what is now Section 59-15-11, U. C. A. 1953, brought an action in the district court to recover unpaid delinquent sales tax. After the action was commenced, Katsis questioned the validity of the assessment. In noting that he had never

applied to the commission for hearing or a correction the court stated:

"If a person assessed fails to apply for a hearing and correction within ten days, he has barred himself from further review of the commission's assessment, and he cannot open up the question of proper amount or validity of the assessment when the processes of the court are used by the commission to obtain a judicial declaration of indebtedness."

Although the outcome of the case turned on other grounds, the above-quoted language would seem to imply that a tax assessment must stand unless attacked in the proper statutory manner.

The *Katsis* case was cited with approval in *State Tax Commission v. Spanish Fork*, 99 Ut. 177, 100 P. 2d 575, where the Supreme Court in speaking about the sales tax stated:

"There are administrative provisions for a hearing and for a determination of the justness of this claim which may be invoked by the taxpayer, who may also bring certiorari to the Supreme Court. * * * Only by invoking the above mentioned administrative procedure may the tax debtor question the tax or deficiency as assessed. He cannot collaterally attack the tax or deficiency so found, except in limited respects * * * He cannot sit by and wait for the tax commission to sue him and then raise all the questions which he might have raised if he had taken advantage of his rights under the law. *He must exhaust his administrative remedies.*" (Emphasis added.)

In 1937, at the first session of the legislature subsequent to the decision in the *Katsis* Case, the legislature

amended Sec. 59-15-11 to its current form, which greatly facilitates the collection remedies of the Tax Commission.

At the same session the legislature enacted the Use Tax Act, which is the correlative of the Sales Tax Act, the former applying only to sales of tangible personal property made outside the state where the goods were purchased for use in Utah. As part of the Use Tax Act the legislature provided in Sec. 59-16-23, Utah Code Annotated 1953, that the person paying the tax may pay under protest and sue in court to recover. However, the legislature added some limitations which are peculiar to the Use Tax Act, e. g. that only the courts of Salt Lake County should have jurisdiction, and that the period of limitation of actions should be six months. In spite of the fact that the Sales and Use Tax Act are closely associated in purpose, and that the legislature passed an amendment to the Sales Tax Act at the same time it enacted the Use Tax Act, no provision for payment under protest and suit to recover was then or later included in the Sales Tax Act, while such a provision was included in the Use Tax Act.

Similar provisions for payment under protest with suit to recover are found in connection with other taxes. For example, with relation to the Mine Occupation Tax the legislature set up an administrative procedure very similar to that provided in the Sales Tax Act (See 59-5-74 to 77, U. C. A. 1953). However, in the Mine Occupation Tax the legislature after vesting exclusive jurisdiction in the Supreme Court to review decisions of the tax commission further provided in Section 59-5-77, U. C. A. 1953:

“Any taxpayer may pay his occupation tax under protest and thereafter bring an action in any

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court of competent jurisdiction for the return thereof as provided by 59-11-11, Utah Code Annotated, 1953."

Some taxes, such as the franchise and privilege taxes levied against corporations have provisions similar to those contained in the Sales Tax Act, giving exclusive jurisdiction to the Supreme Court to review the decisions of the Tax Commission. Other taxes, such as the individual income tax, tobacco and oleomargarine taxes, motor fuels tax, etc. make no mention at all of any procedure to review a tax commission determination. It is submitted that Sec. 59-11-11, Utah Code Annotated 1953, was meant to provide relief only where the legislature did not set out any specific procedure to be followed, but that it would not apply where the legislature as in the Sales Tax Act has specifically provided for an exclusive method of review. Particularly is this the case where the latter enactment is the later expression of the legislative will. *Becker Products Co. v. State Tax Commission*, 89 Ut. 587, 58 P. 2d 36; *Nelden v. Clark*, 20 Ut. 382, 59 P. 524.

CONCLUSION

It is respectfully submitted that the trial court's dismissal of plaintiff's complaint should be sustained.

Respectfully submitted,

E. R. CALLISTER,
Attorney General,

BEN E. RAWLINGS,
JOHN G. MARSHALL,

Attorneys for Respondents.