2009

Summit Water Distribution Company v. Utah Tax Commission, County Board of Equaliztion of Summit County, State of Utah : Reply Brief

Utah Supreme Court

IN THE UTAH SUPREME COURT

SUMMIT WATER DISTRIBUTION COMPANY. Appellee/Cross-Appellant, vs. **UTAH STATE TAX COMMISSION, COUNTY BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH** Appellants/Cross-Appellees.	Appellate No. 20090921-SC

REPLY BRIEF OF CROSS-APPELLANT

On Appeal from the Second District Court, Davis County
Judge John R. Morris
Civil No. 080700032

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ORAL ARGUMENT REQUESTED

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I. SUMMIT COUNTY'S TAXATION OF THE WATER DISTRIBUTION FACILITIES OF SUMMIT WATER AS PERSONAL PROPERTY CONSTITUTES UNCONSTITUTIONAL DOUBLE TAXATION.

The taxation of Summit Water's water distribution facilities as personal property impermissibly subjects Summit Water and its shareholders to double taxation in violation of the Utah Constitution. The water distribution facilities are already taxed as improvements to the real property of both Summit Water and its shareholders and as part of the fair market value of the real property of Summit Water and its shareholders. Summit Water and its shareholders already pay real property taxes for the property on which the water distribution facilities are affixed. Summit County also seeks to tax this same property as personal property and, therefore, tax the same taxpayers twice for this property. Summit County has not disputed that the tax structure applied to Summit Water and its shareholders is not applied to all homeowners and water companies.

A. Summit Water and Its Shareholders are Taxed Twice on the Water Distribution Facilities.

1. The Same Property Has Been Taxed Twice.

Summit County assesses the improved real property of Summit Water and its shareholders according to its fair market value. This is mandated by statute. See Utah Code Ann. § 59-2-103(1). The fair market value of this improved property necessarily includes the value of all improvements to that real property. See Utah Code Ann. § 59-2-102(12). Summit County cannot comply the statutory mandate to assess taxes based on the fair market value of the improved real property unless it takes into consideration all

features and attributes of that improved real property Id The presumption therefore must be that Summit County has considered and assessed the full fair market value of the improved real property, including the characteristics of that property necessary to make that determination [1] This is particularly true given the well-recognized judicial policy that "statutes imposing taxes and prescribing tax procedures should generally be construed favorably to the taxpayer and strictly against the taxing authority " In re West Side Prop. Assocs., 2000 UT 85 ¶21 (Utah 2000)

Despite the statutory mandate to assess taxes based on the fair market value of real property, Summit County curiously argues that Summit Water cannot prove that it actually assessed the full fair market value of the improved real property. Therefore, its argument goes, Summit Water cannot prove double taxation Aside from presuming Summit County complied with its statutory obligation to assess taxes based on fair market value. there is no way for Summit Water to "prove" which characteristics of the real property taxed Summit County considered in making its assessment. Summit County does not itemize those features in its tax assessment notices

The practical effect of Summit County's approach would be to permit Summit County to separately tax a business or homeowner for every property feature it did not include on a tax assessment notice. If, for example, the tax assessment notice did not mention water pipes and irrigation systems that serve the property, then the taxpayer could not prove that this feature was considered as part of the fair market value. Summit

[1] Summit County has not argued that the water distribution facilities constitute escaped tax under Utah Code Ann. § 59-2-102(7)(a)(i), nor do they.

County would then be able to come back after the fact, argue that this was not included in the real property tax assessment, and tax it again as personal property. This simply makes no sense.

In light of the statutory mandate to assess taxes based on the fair market value of improved real property, which takes into account all characteristics of the property and its improvements, the presumption must be that Summit County did precisely that. See Utah Code Ann. § 59-2-102(12). Taxpayers cannot be required to prove a negative in order to challenge a tax assessment. There is no evidence in the record indicating that Summit County did not consider the fact that the property in question had water and the facilities necessary to bring that water to the property. In fact, Summit County assessed the property as having water available; the water infrastructure must also have been included in the assessment. The only possible conclusion is that Summit County complied with its obligations under the governing statutes by assessing taxes based on the fair market value of the real property of Summit Water and its shareholders. That process would necessarily take into account the property and all its improvements, including water infrastructure.[2] These facts are not disputed by either party.

Furthermore, the record evidence shows that the availability of water to property, which necessarily includes the facilities required to bring that water to the property, increases the fair market value of that property by at least 50%. Summit County has not

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[2] The District Court determined that "Summit Water's Water Distribution Facilities are 'improvements' to real property. . ." and that decision has not been appealed. Findings of Fact, Conclusions of Law and Order, October 6, 2009, p. 17, ¶ 1.

disputed this fact. Nor has it disputed the fact that it assesses real property with water at higher rates than it assesses property without water or that it receives increased real property tax revenues as a result of the water distribution facilities. Without Summit Water's water distribution facilities, Summit County would receive less real property tax revenue from taxation of property served by those water distribution facilities, including a reduction of at least 50% in the fair market value of the real property owned by Summit Water shareholders and served by Summit Water. Because Summit County already receives real property tax revenues directly attributable to the water distribution facilities, Summit County cannot tax the water distribution facilities again by also assessing their value as personal property.[3]

2. The Same Taxpayers Have Been Taxed Twice.

The double taxation of the water distribution facilities is borne by the same taxpayers. Summit Water is taxed on the fair market value of its real property, which includes the water distribution facilities and the enhanced value they bring to the property. Summit County has also assessed Summit Water for the value of the water distribution facilities as personal property. This personal property tax assessment burdens Summit Water with double taxation.

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[3] Contrary to the reasoning of the district court and Summit County, the fact that nearby facilities and buildings may increase a property's fair market value is completely irrelevant to a double taxation analysis. Although a well-kept home may increase the fair market value of a neighbor's property, this "enhanced value" does not result in double taxation because the tax is not borne by the same taxpayers. One homeowner pays real property taxes for the fair market value of his home, and his neighbor pays real property taxes for the fair market value of his home, as enhanced by the adjacent property.

Summit Water shareholders are likewise taxed on the fair market value of their real property, which includes the water distribution facilities that bring water to their land. Summit County has also assessed Summit Water for the value of the water distribution facilities as personal property. This personal property tax assessment burdens Summit Water's shareholders with double taxation.

Summit Water is not like a typical corporation. Unlike other corporations or utilities, Summit Water shareholders own "an actual proportionate ownership interest in the water rights of the corporation, as well as a corresponding interest in the diverting facilities, distribution works and water storage facilities." (R. at 746 ¶ 2.) Summit Water provided clear and undisputed testimony that its water distribution facilities are owned solely and proportionately by Summit Water's Class B shareholders. According to Summit Water's Bylaws and Articles of Incorporation, all of the real and personal property of Summit Water, including specifically the water distribution facilities, is owned by the shareholders who are connected to and using water, i.e., the Class B shareholders. Id. Accordingly, the value of Summit Water's system is directly proportionate to the market value of the lands served by the system. The taxes assessed to Summit Water are likewise passed on proportionately to the shareholders according to their ownership interests.

Summit County argues for the first time that Summit Water's argument of double taxation is improper because it is really the shareholders who must bring the claim of double taxation. Summit County also argues for the first time on appeal that Summit Water could only challenge the unconstitutional double taxation of its property as a

contested valuation. Because these issues are raised for the first time on appeal, the Court need not consider them. Jacob v. Bezzant, 2009 UT 37 ¶34.

Regardless, the arguments are implausible. Summit Water is not contesting the real property tax assessment of its real property or the valuation thereof; it has already paid those based on the full fair market value of these facilities.[4] Rather, Summit Water is contesting the personal property tax assessment of Summit Water's water distribution facilities as double taxation. This tax was assessed to Summit Water, not its individual shareholders. Therefore, its individual shareholders could not have contested this assessment or the resulting double taxation. Summit County's argument is without merit.

3. Summit Water and its Shareholder Have Been Treated Differently.

Summit Water alleged throughout these proceedings that it was treated differently than other taxpayers who paid no personal property tax on their water distribution facilities. Summit County has not denied this.[5] Summit County has not disputed the fact that it has not taxed the water distribution facilities of Mountain Regional, the Park City Municipal Water Special Service District, or other private water companies or privately

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[4] The case cited by Summit County in support of their contention, Woodbury AmSource, Inc. v. Salt Lake County, 2003 UT 28 ¶190, 73 P.3d 362, is simply not on point. This case construed Utah Code Ann. § 59-2-1321, which is a narrow statute providing a method for seeking tax refunds. That is not what Summit Water or its shareholders are doing, and this statute and resulting case law are inapposite.

[5] In fact, Summit County first began assessing personal property taxes only against Summit Water in conjunction with an unsuccessful eminent domain proceeding to seize Summit Water's water, one of the actions giving rise to Summit Water's claims against Summit County for antitrust violations. Summit Water v. Summit County, 2005 UT 73, ¶4

owned water distribution facilities as personal property, while assessing personal property taxes against Summit Water's water distribution facilities. Contrary to Summit County's claims, this differential treatment is not solely attributable to tax exemptions. Because Summit Water and its shareholders are treated differently than similarly situated water companies and owners of water distribution facilities, the double taxation of its water distribution facilities is unconstitutional.

CONCLUSION

For the above reasons, this Court should affirm the ruling of the district court that Summit Water's water distribution facilities are exempt from taxation under Article XIII Section 2 of the Utah Constitution to the extent those facilities provide water for the artificial watering of land. This Court should reverse the district court's decision on double taxation and find that the personal property tax imposed violates the prohibitions against double taxation in Article XIII Sections 2 and 3 of the Utah Constitution.

DATED this 18th day of January, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I caused two (2) true and correct copies of the within and foregoing REPLY BRIEF OF CROSS-APPELLANT to be mailed, postage prepaid, this 18th day of January, 2011, to the following:

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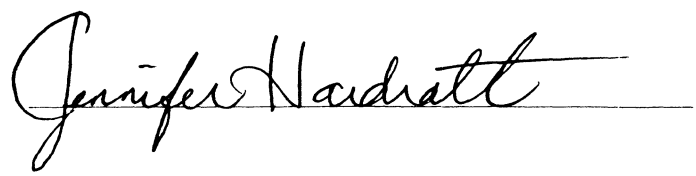

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