

1958

Vrontikis Bros, Inc. et al v. Utah State Tax Commission : Brief of Plaintiffs

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

NOV 13 1958

VRONTIKIS BROS, INC., a corporation,
NICK VRONTIKIS and PETE VRON-
TIKIS, d/b/a VRONTIKIS BROTH-
ERS, a partnership,

Plaintiffs,

vs.

THE UTAH STATE TAX COMMISSION,

Defendant.

Clerk, Supreme Court, Utah

Case
No. 8962

BRIEF OF PLAINTIFFS

COTRO-MANES & COTRO-MANES
Attorneys for Plaintiffs

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Plaintiffs,

vs.

THE UTAH STATE TAX COMMISSION,

Defendant.

Case
No. 8962

BRIEF OF PLAINTIFFS

STATEMENT OF FACTS

The plaintiff, Vrontikis Bros., Inc., is a Utah corporation organized on the 1st day of June, 1953. Prior to the 1st day of June, 1953, Nick Vrontikis and Pete Vrontikis, the other plaintiffs herein, were doing business under the name and style of Vrontikis Brothers, a co-partnership.

The plaintiffs are and have been for several years last past engaged in the retail selling of home appliances, sporting

goods and other merchandise, with their principal place of business located at 21st South and State Streets in Salt Lake City.

The plaintiffs compete with other merchants in the area selling like merchandise by allowing discounts and trade-ins on the retail price of the merchandise, and rely upon greater volume of sales to compensate for the lower sales price.

The plaintiffs have been and are now advertising in the daily newspapers of Salt Lake City, and the folio of advertising marked Exhibit 5 and attached to the stipulated facts illustrates the method of advertising practiced by the plaintiffs.

The State Tax Commission of the State of Utah, by an amended report dated the 20th day of September, 1956, assessed the plaintiffs for sales tax allegedly due the state for merchandise taken as trade-ins. It is the contention of these plaintiffs that the amount allowed for trade-ins is not the fair market value of the items taken in, and that the amended report of the Tax Commission is erroneous, said report being based not upon the fair market value of the goods taken as trade-ins but upon the agreed value of the merchandise.

For the purpose of clarification, we beg to present a hypothetical case:

The plaintiffs advertise in the daily newspapers a Brand X Washing Machine for \$499.00. The advertisement contains a statement that \$199.00 will be allowed on any trade-in that the purchaser may have thus the purchaser will pay an actual price for Brand X Washing Machine of only \$300.00.

In writing up the sale of a Brand X Washing Machine, the plaintiffs place on the sales ticket:

Brand X Price	\$499.00
Less Trade-In	199.00
	<hr/>
Price	\$300.00
Sales Tax of 2%	6.00
	<hr/>
Total Sale Price to Customer.....	\$306.00

It is the contention of the plaintiffs that when the item taken as the trade-in is sold as used merchandise that the sales price of the trade-in should be the basis for computing the fair market value of the item when it was taken in by the plaintiffs on the Brand X Washing Machine, and that the plaintiffs should then be charged or pay the State of Utah 2% of the amount for which the item is sold as the balance of the sales tax due on the original transaction. In addition thereto, the plaintiffs are bound by law to collect from the purchaser of the used trade-in and pay to the State of Utah 2% of the sales price as sales tax on that transaction.

The plaintiffs maintain adequate books of account and records which show not only the sales of new merchandise but also the sales of all merchandise taken as trade-ins and later sold. The books and records reflect the daily, monthly and quarterly sales of all used merchandise.

All merchandise accepted as trade-ins by the plaintiffs which has no resale value and cannot be disposed of by sale within 30 days is donated to various charitable organizations such as the Deseret Industries, Disabled Veterans, etc.

The State Tax Commission, however, by its amended report assessed the plaintiffs for sales tax on such merchandise given away to charitable organizations, based on the price

which the plaintiffs allowed for the merchandise when it was taken as trade-ins on new merchandise, which we contend is erroneous and contrary to the law made and provided.

STATEMENT OF POINTS

1. The State Tax Commission, in assessing sales tax, is bound by the statutes as passed by the State Legislature, and all assessments for sales tax must be made in accordance with the language of the statutes.

2. The State Tax Commission has promulgated administrative rules and regulations dealing with sales tax which are contrary to the state statutes and are therefore null and void.

3. As a matter of law, the proper computation of sales tax is 2% of the consideration paid by the purchaser in cash, plus 2% of the fair market value of the article traded in.

4. The State Tax Commission erred in ruling that the measure of sales tax is 2% of the consideration paid by the purchaser in cash, plus 2% of the allowance given for the article traded in.

5. The State Legislature, in establishing "fair market value" as the basis of sales taxation, intended to protect both the state and the taxpayer from injustice.

ARGUMENT

POINT ONE

THE STATE TAX COMMISSION, IN ASSESSING
SALES TAX, IS BOUND BY THE STATUTE AS PASSED

BY THE STATE LEGISLATURE, AND ALL ASSESSMENTS FOR SALES TAX MUST BE MADE IN ACCORDANCE WITH THE LANGUAGE OF THE STATUTES.

The State Tax Commission, in regulating and collecting taxes from the residents of the State of Utah, is bound by the statutes as passed by the State Legislature. The measure of the tax and the method of computation, if set forth in the statutes, must be followed to the letter of the statute.

The Supreme Court of Utah, in the case of Fivas vs. Petersen, 5 U. 2d 280, 300 P. 2d 635, Footnote 2, stated:

“Strict compliance with taxing procedures is required and a mandatory interpretation of the provisions of such statutes is preferred.” Citing authority.

In the case of sales tax, the state legislature has expressly stated how sales taxes will be assessed where the sale of merchandise entails the “exchange of property,” or, in the words of modern merchandising, sales involving a trade-in.

“Excise Tax—Rate.— * * * (a) a tax * * * or in the case of retail sales involving the exchange of property, equivalent to two percent of the consideration paid or charged, including the *fair market value* of the property exchanged at the time and place of the exchange, * * * .” (Emphasis ours.)

59-15-4, Utah Code Annotated, 1953

The Utah legislature has stated that the “fair market value” of the trade-in will be the basis for computing the sales tax. As the legislature has set forth how the tax will be computed, the Tax Commission is bound by the prescribed method.

The Supreme Court of Utah, in the case of State Tax Commission vs. City of Logan, 88 U. 406, 54 P. 2d 1197, stated:

"It is a cardinal principle in the construction of legislative enactments that, when possible, effect must be given to all the language of the act being construed."

The Tax Commission cannot enlarge on what the legislature set forth as the criterion for tax computation.

"Having in mind the general rule that taxation statutes are strictly construed against the state and in favor of the taxpayer, the language of the statute permits the collection of the tax at the rate specified and no more."

W. F. Jensen Candy Co. v. State Tax Commission, 90 U. 359, 61 P. 2d 629
107 A.L.R. 261

POINT TWO

THE STATE TAX COMMISSION HAS PROMULGATED ADMINISTRATIVE RULES AND REGULATIONS DEALING WITH SALES TAX WHICH ARE CONTRARY TO THE STATE STATUTES AND ARE THEREFORE NULL AND VOID.

The Tax Commission has adopted as the criterion for assessing sales tax "the allowance for the article traded in"; in other words, the agreed price between the parties to the transaction of the property traded in, valued in money. The commission has voiced its opinion that it would create a great burden upon the commission to look behind each transaction

to see if the amount of allowance for the trade-in is the fair market value, and has promulgated administrative regulations to carry out its views.

“Trade-Ins. * * * retail sale and ‘purchase price’ includes not only cash or money received but also the *value in money* of any property of any kind or nature received in exchange.” (Emphasis ours.)

Sales Tax Regulation No. 72

State Tax Commission Regulations

“Purchase Price Defined (Applies to Sales Tax and Use Tax).—The term ‘purchase price’ means the price to the consumer and includes not only the amount of money paid but also the *value in money* of any property of any kind or nature given in exchange for the article purchased.” (Emphasis ours.)

Sales Tax Regulation No. 30

State Tax Commission Regulations

While it is conceded that the State Tax Commission has the legal right to make rules and regulations, we submit that such rules and regulations must conform to existing law.

“Administration vested in Tax Commission.—The administration of this act is vested in and shall be exercised by the state tax commission which may prescribe forms and rules and regulations in conformity with this act and for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder.”

59-12-20, Utah Code Annotated, 1953

Regulation Nos. 72 and 30, quoted above, set up the standard of “value in money” instead of “fair market value.” The commission has apparently followed the State of California and court decisions decided under the California statutes in

promulgating these rules. The California case of *Hawley v. Johnson*, 58 CA 2d 232, 136 P.2d 638, points out that the sales tax is imposed on property "valued in money." The California statute, however, is completely dissimilar from the Utah statute.

"Gross receipts means the total amount of the sale * * * price, * * * of the retail sales of retailers, * * * *valued in money*, whether received in money or otherwise, including receipts, cash, credits, and property of any kind or nature * * *." (Emphasis ours.)

Sales Tax Axt. Stats, 1933, p. 2599
Deering's Gen. Laws, 1937, Act 8493
Sec. 2(f)

"Excise Tax—Rate.— * * * (a) a tax * * * or in the case of retail sales involving the exchange of property, equivalent to two percent of the consideration paid or charged, including the *fair market value* of the property exchanged at the time and place of the exchange, * * *." (Emphasis ours.)

59-15-4, Utah Code Annotated, 1953

It is to be noted in the *Hawley vs. Johnson* case, the court stated, with regard to "valued in money" and "fair market value":

"Plaintiff argues that the so-called over allowance is no different than a cash discount. It is to be observed that our statute expressly excludes cash discounts from the tax, but imposes the tax on payments in property '*valued in money*.' The parties by bona fide agreement have valued the property in money, under the express terms of the statute have fixed the measure of the tax. *To make market value rather than agreed value the measure* would create almost insuperable administrative difficulties, since the taxing power would

be compelled in every transaction to look behind the agreed value and ascertain the actual market value of the property traded in." (Emphasis ours.)

As the *Hawley v. Johnson* case was decided on the issue of agreed value or value in money and not on "market value," this case does not apply to the instant case and cannot be cited as authority to substantiate the position of the Utah State Tax Commission. This is true of other jurisdictions which have decided this question. Michigan, in the case of *Montgomery Ward & Co. v. Fry*, 277 Mich. 260, 269 N.W. 166, used the standard of the "agreed value." However, in the later case of *Howard Pore, Inc., v. State Comm. of Revenue*, 322 Mich. 49, 33 N.W. 2d 657, 4 A.L.R. 2d 1041, the *Montgomery* case was overruled and the standard of "actual value" was adopted. This case raised the question of administrative difficulties, and the court stated:

"The suggestion made in plaintiff's brief that the enforcement of the amended rule and regulation as adopted by the defendant will lead to administrative difficulties in the enforcement of the act may not properly be considered in construing the statutory provision here involved, which, as above stated, is clear and unambiguous. The suggested condition, if it arises, will be the result of the enforcement of the law as enacted by the legislature. In other words, *the argument should be addressed to the legislature rather than to the court.*" (Emphasis ours.)

*Howard Pore, Inc. v. State Comm.
of Revenue*, 322 Mich. 49, 33 N.W.
2d 657, 4 A.L.R. 2d 1041

"The authorities uniformly sustain the position of

respondents that the value of the 'property traded in' is a part of the selling price as defined in the statute
* * * .”

Olympic Motors v. McCroskey
15 Wash. 2d 665, 132 P. 2d 355
150 A.L.R. 1306

The Utah State Legislature placed in the Sales Tax Statutes the words, “fair market value,” and therefore the Tax Commission cannot vary the express terms of the statute to read “value in money” or “agreed value.”

“Since the power to make regulations is administrative in nature, legislation may not be enacted under the guise of its exercise by issuing a ‘regulation’ which is out of harmony with, or which alters, extends or limits the statute being administered, * * * .”

42 Am. Jur. 358, Public
Administrative Law, Sec. 53

“ ‘If the language of the statute is plain and free from ambiguity, and expresses a single definite and sensible meaning, that meaning is conclusively presumed to be the meaning which the Legislature intended to convey.’ ”

General Tire Co. v. Okla. Tax Comm.
188 Okla. 631, 112 P. 2d 407, quoting
the case of McCanless Motor Co. v.
Maxwell, 210 N.C. 725, 188 S. E.
389, 390.

“The method or yardstick by which the valuation in money is to be determined shall be prescribed by the legislature.”

United States Smelting, Refining &
Mining Co. v. Haynes, 111 U. 172,
176 P. 2d 622

While it is conceded that the Tax Commission has the power to interpret a statute where there is some ambiguity and the courts will give consideration to this interpretation depending on the circumstances, it is the law that the court will give no weight to such interpretation where it is "against the plain meaning of the statute." *E. C. Olsen Co. vs. State Tax Commission*, 109 U. 563, 168 P.2d 324, 332.

"Regulations are valid only as subordinate rules and when found to be within the framework of the policy which the legislature has sufficiently defined."

42 Am. Jur. 428, Public
Administrative Law, Sec. 99

Therefore, there is but one conclusion that can be reached, and that is that the administrative regulations setting up "valued in money" as the basis of tax computation are null and void, being contrary to Utah law.

"Administrative regulations which go beyond what the legislature has authorized have been said to be void and may be disregarded."

42 Am. Jur. 429, Public Administrative Law, Sec. 99, Citing *Utah Power and Light Co. v. United States*, 243 US 389, 61 L. Ed. 791, 37 S. Ct. 387

POINT THREE

AS A MATTER OF LAW, THE PROPER COMPUTATION OF SALES TAX IS 2% OF THE CONSIDERATION PAID BY THE PURCHASER IN CASH, PLUS 2% OF THE FAIR MARKET VALUE OF THE ARTICLE TRADED IN.

If there is any doubt as to the meaning of the term, "fair market value," it must be construed in favor of the taxpayer. The Utah Supreme Court has ruled that doubt must be resolved in favor of the taxpayer when authority to impose taxes is involved. *Moss v. Board of Commissioners of Salt Lake City*, 1 U. 2d 60, 261 P. 2d 961.

"Statutes levying taxes 'are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer'."

Standard Oil Co. v. State Tax Comm.
71 N.D. 196, 299 N.W. 447, 135
A.L.R. 1481

"Fair market value" has been defined as that sum a purchaser, willing but not obliged to buy, would pay an owner willing but not obliged to sell. *Words and Phrases*, Vol. 16, p. 82.

Black's Law Dictionary defines "market value" as:

"The market value of an article or piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take that particular article or piece of property."

The Utah Supreme Court has cited Webster's Unabridged Dictionary definition of "fair market value," which is, "The

price which would induce a willing seller to sell and a willing buyer to buy." *Utah Assets Corporation v. Dooley Bros. Assn.*, 92 U. 577, 70 P.2d 738, 741.

"The price at which property would sell under special and extraordinary circumstances is not to be considered, but its fair cash market value if sold in the market under ordinary circumstances, and assuming that the owner is willing to sell and the purchaser willing to buy." Citing case.

Watt v. Nevada Central R. Co.
23 Nev. 154, 44 P. 423, 429

"The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell."

Federal Estate and Gift Tax Regulations, Sec. 81.10

"Market value means, generally, the price for which an article is bought and sold and is ordinarily best established by sales in the ordinary course of business."

15 Am. Jur. 531
Damages, Sec. 122

"In order for it to be said that a thing has a market value, it is necessary that there shall be a market for such commodity—that is, a demand therefor and an ability from such demand to sell the same when a sale thereof is desired."

15 Am. Jur. 531
Damages, Sec. 122

The facts in the instant case show that the plaintiffs, in selling their merchandise, advertise that they will accept like merchandise as trade-ins for a fixed allowance, regardless of

condition or worth, on the purchase of a new piece of merchandise. This fixed allowance cannot, under the definitions of "fair market value," be said to be the item's fair market value, as the purchaser (Vrontikis) of the item cannot reject, but is compelled by its own advertising, to accept the item as a trade-in at the fixed price.

How, then, is the "fair market value" of the item taken in trade determined? Accepting the definition as set forth in Black's Dictionary that "fair market value" may be determined by the price a buyer is willing to pay and a seller is willing to accept, neither being compelled, the fair market value may be determined when the plaintiffs (Vrontikis) put the trade-in up for sale and sell it to a third party purchaser. This price would meet the criterion of the definition of "fair market value," and would be the actual worth of the item, as the plaintiffs do not have to sell the item and neither does the third party purchaser have to buy it.

"Market value is determined by actual sales, and not by the asking prices."

20 Am. Jur. 341, Evidence, Sec. 375

The facts show that the plaintiffs maintain books and records which show the sales of used merchandise, daily, monthly and quarterly. From these books, the Tax Commission could ascertain the sales tax due on the actual "fair market value" of the merchandise taken as trade-ins, and the plaintiffs admit that this figure would be in conformity with the state statutes dealing with sales tax and would be the amount due the Tax Commission. Those items taken as trade-ins which

are donated to charitable institutions have no market value, and therefore no sales tax should be assessed.

"Evidence of the price at which property, the value of which is an issue, brought bona fide at a voluntary sale at some time near the time as of which value is to be determined is competent evidence of its value and is one of the best and most satisfactory standards of estimating actual value, * * * ."

20 Am. Jur. 340, Evidence, Sec. 373

The Utah statute sets forth that the "market value of the property exchanged at the time and place of the exchange" is the basis for the sales tax. In the case now before the court, the place of exchange in all cases is the stores of the plaintiffs, which are located at the same place (21st South and State Streets, Salt Lake City). Likewise, the subsequent sale or donation of the trade-ins takes place at the same location, so the "place" requirement is met. As to the "time" requirement, the stipulated facts show that all of the merchandise taken in as trades is disposed of either by sale or donation within a thirty day period. This period of time is a reasonably short one, and within this time the market value can be fixed by definite sale.

"Where there have been no general sales in the market of the article in question at the exact time when the contract called for the delivery, it is proper to show the price of it immediately before and after that time."

46 Am. Jur. 806, Sales, Sec. 678

In the used car business, the courts have recognized that dealers' pricing indexes may be used as a means of establishing "market value" at the time of the transaction, and therefore

a sale need not be made to show the "fair market value" of the trade-in.

However, in the appliance field, there is no standard or index of what a particular model of appliance is worth. The only method by which the "fair market value" can be determined is by actual sale of a like piece of merchandise or of the sale of the actual trade-in. In the business of appliances, it is to be noted that it is the general custom of the consumer not to trade in his appliances until such time as they are in need of repair or replacement. This distinguishes this particular business from the used car business, the business which has been involved in the majority of sales tax cases dealing with the same problem as the case at hand.

In the appliance business, the majority of trade-ins are years old, discontinued models, and in need of a varying degree of repair and reconditioning. Therefore, no one piece of merchandise can be used as a standard of "market value," but each piece itself must stand as to its value on its condition, age, and salability. This value can be ascertained only by its sale on a "free market." The books of the plaintiffs show these sales, and show the actual "fair market value" of the merchandise taken as trade-ins which are resold. The merchandise which is donated to the Deseret Industries and to veterans' organizations has no market value at the time and place of the exchange between the plaintiffs and the customer. After repairs are made and willing purchasers are found for the merchandise, these items may have a market value, but any purchaser of these items pays the sales tax to the organization from which he purchases.

The court may well ask: Why not give a cash discount and save the effort and bother? Modern merchandising calls for methods of salesmanship which were unknown twenty years ago. "Impulse Buying" and "High Pressure Selling" are the watchwords of today's merchandising. "Deals," "Bargains," "Sales," "Discounts" and "Trade-Ins" are everyday words and are the methods employed by virtually all businesses today.

The case of *Hawley v. Johnson*, 58 CA2d 232, 136 P.2d 638, one of the leading cases on sales tax and its computations, brings out this trend in the automobile business. In that case, testimony was quoted by the court:

"Q. Well, why don't you sell at an actual cash discount? Why go through all this process of alleged overallowance on used cars?

"A. Because we are forced to on account of horse trading. * * *

"Q. In other words, you are trying to fool the public on what they are actually getting, is that right?

"A. Absolutely, and every other dealer is too * * * .

"Q. In other words, you take it on the other side. You say you allow more on the used car rather than giving a discount on the selling price, is that it?

"A. It is the element of least resistance."

A number of jurisdictions have had similar cases to this one now before the court. However, the majority of the cases involved used cars taken as trade-ins. It is to be noted by the court that none of the other jurisdictions deciding this issue

of sales tax computation have statutes which are similar to the Utah statute.

As stated in 135 A.L.R. 1485:

" * * * no general rule as to the computation of sales tax may well be given, owing to the dissimilarity of the questions involved in the various cases where such computation has been considered."

POINT FOUR

THE STATE TAX COMMISSION ERRED IN RULING THAT THE MEASURE OF SALES TAX IS 2% OF THE CONSIDERATION PAID BY THE PURCHASER IN CASH, PLUS 2% OF THE ALLOWANCE GIVEN FOR THE ARTICLE TRADED IN.

The State Tax Commission in ruling upon the matter of the assessments levied against the plaintiffs held:

"Conclusions of law.— * * * 2. That the proper method for the petitioners to compute and collect the sales tax is to take 2 per cent of the consideration paid by the purchaser in cash, plus 2 per cent of the allowance for the article traded in, regardless of what either party deems to be the actual worth of the article traded in."

Decision of the State Tax Commission of Utah, In the Matter of the Sales Tax Liability of Vrontikis Brothers, Inc., a corporation, and Nick and Pete Vrontikis, a partnership.

This conclusion of law does not take into consideration the "fair market value" standard, but relies upon the "agreed value."

The State Tax Commission ruled further in this matter, under its third conclusion of law:

"That the petitioners under the laws of the State of Utah are liable to the State Tax Commission for the collection of sales tax on items sold by them as computed in paragraph 2 above."

This is erroneous and contrary to the clear meaning of the Utah statutes cited heretofore.

As pointed out in Point Three of this brief, the proper computation of sales tax under the statutes of this state is 2% of the sales price paid in cash or charged, plus 2% of the fair market value of the property taken as a trade-in. This computation is in accord with the language and clear import of the statute as enacted by the legislature. The State Tax Commission, in ruling otherwise, has erred, and its ruling should be reversed.

POINT FIVE

THE STATE LEGISLATURE, IN ESTABLISHING "FAIR MARKET VALUE" AS THE BASIS OF SALES TAXATION, INTENDED TO PROTECT BOTH THE STATE AND THE TAXPAYER FROM INJUSTICE.

The "fair market value" of items taken as trade-ins is the most equitable and realistic basis upon which a sales tax can be based. It is fair to the state, which receives a sales tax based on the actual worth of the item traded in, and it is fair to the merchant and customer who pay a sales tax based on the actual worth of the item traded in. Neither the state nor the individual who pays the tax can complain.

However, as the situation now exists, a double standard could be practiced by the State Tax Commission. That double standard is "agreed value" in conformity with the commission's rules, and "fair market value" in conformity with the State statutes.

In the case now before the court, the State Tax Commission has assumed the value of the articles received by the plaintiffs as trade-ins to be the amount advertised by the plaintiffs, ignoring the statute providing, inter alia, the "fair market value" of such articles.

Assuming that the plaintiffs received a trade-in article and gave the purchaser of the new article a credit of \$10.00 for the trade-in, and this article had a market value of \$100.00, then the question arises:

Would the State Tax Commission accept for tax purposes the value fixed by the plaintiffs, or would the State Tax Commission look to the market value of the article?

It is fair to assume that if the shoe were on the other foot, the Commission would take the higher value rather than the price fixed by the plaintiffs. Thus the double standard.

We believe the lawmakers took this contingency into consideration, and enacted the law of "fair market value" as the basis for computing taxes so that neither the state nor the individual could suffer at the hands of an administrative body.

CONCLUSION

The Tax Commission of the State of Utah has illegally assessed sales tax against the plaintiffs, Vrontikis Bros., Inc.,

and Nick and Pete Vrontikis, by setting up as the basis of taxation on merchandise taken as trade-ins, the agreed value instead of the fair market value.

The State Tax Commission is bound by the laws of this state as passed by the legislature and it should not be permitted to enact its own law by administrative rules and regulations which are opposed to the law as enacted by the legislature. If the law as enacted is difficult to administer, then it is the duty of the Tax Commission to take this matter to the legislature, but in the meantime the taxpayers should not be subjected to illegal assessment and collection of taxes.

It is respectfully submitted that the plaintiffs are entitled to a new audit based upon the fair market value of the merchandise taken as trade-ins, and that the Tax Commission should be required to examine all of the books of the plaintiffs in making the new audit, and not merely the books dealing with the sales of new merchandise. The Tax Commission should be required to refund to the plaintiffs that amount paid heretofore by plaintiffs over and above that to which the Tax Commission is entitled.

Respectfully submitted,

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