1990

Hercules Incorporated v. Salt Lake County and West Valley City Corporation v. Salt Lake County : Brief of Respondent

Utah Supreme Court

BRIEF

IN THE UTAH SUPREME COURT

Hercules Incorporated, Plaintiff, vs. SALT LAKE COUNTY, et. al. Defendants and Appellees.	)	Appellate Court No. 900542 Priority No. 16

WEST VALLEY CITY CORPORATION, a Utah Municipal Corporation, Plaintiff and Appellant, vs. SALT LAKE COUNTY, et. al. Defendants and Appellees.	)	Appellate Court No. 900542 Priority No. 16

APPEAL FROM A FINAL JUDGMENT OF THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
THE HONORABLE DAVID S. YOUNG PRESIDING

BRIEF OF THE RESPONDENTS

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LISTING OF ALL PARTIES TO THE PROCEEDINGS IN THE DISTRICT COURT

Pursuant to Rule 24(a)(1) of the Utah Rules of Appellate Procedure, the parties to the action in the District Court captioned Hercules, Incorporated v. Salt Lake County, Arthur L. Monson, Salt Lake County Treasurer, and Salt Lake County Municipal Type Service District No. 1, Civil No. 890903342, in Salt Lake County are as follows:

Plaintiffs:	West Valley City, a Municipal Corporation of the State of Utah
	Hercules, Incorporated, a Delaware Corporation
Defendants:	Salt Lake County, Arthur L. Monson, Salt Lake County Treasurer and Salt Lake County Municipal District No. 1

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JURISDICTION

The jurisdiction over this case dealing with taxation and revenue is vested in the Utah Supreme Court pursuant to Utah Code Ann. §78-2-2 (1953 as amended)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does Utah Code Ann. §11-12-3 (1953 as amended) create a mandatory condition precedent to the amendment of taxing district boundaries for ad valorem tax purposes?

2. Is Utah Code Ann. §11-12-3 (1953 as amended), a constitutional extension of legislative regulation over municipal taxation in accordance with Utah Const. Art. XI §5.

3. Does the unambiguous language of Utah Code Ann. §11-12-3 (1953 as amended) and the long history of administrative interpretation of that provision by the Utah State Tax Commission establish mandatory conditions for changing taxing district boundaries or merely regulate the application of taxing rates to areas affected by political boundaries.

STANDARD OF REVIEW

Respondent agrees with West Valley City's assertion that the issues involved on appeal relate solely to questions of law and that the trial court's conclusions of law are accorded no particular deference but must be reviewed for "correction of error". T.R.F. vs. Felan, 760 P2d. 906 (Utah Court of Appeals, 1988); Bailey vs. Call, 767 P2d 138 (Utah Court of Appeals, 1989).

STATEMENT OF NATURE OF THE CASE AND PROCEEDINGS BELOW

In the Fall of 1987, Hercules Corporation, Plaintiff below, petitioned West Valley City for annexation into West Valley City. West Valley elected to grant the annexation and on or about March 31, 1988, formally completed the annexation. On March 30, 1988, West Valley City, pursuant to Utah Code Ann. §11-12-1 through §11-12-3 (1953 as amended) filed documentation with the State Tax Commission substantiating the annexation and a legal description of the annexed area. Prior to the date the annexation was completed, municipal-type services were provided to the area by Salt Lake County Municipal-type Service District No. 1. Immediately subsequent to the completion of the annexation, West

Valley City began to provide municipal-type services to the annexed area. Immediately upon the completion of the annexation, the annexed area became subject to all West Valley City taxes other than property taxes. 1988 property taxes on the annexed area were levied, collected and distributed to Salt Lake County in accordance with Utah Code Ann. §11-12-3 (1953 as amended). On October 27, 1988, West Valley City submitted a claim to the Board of County Commissioners of Salt Lake County seeking to obtain from Salt Lake County the property taxes imposed upon and collected from the annexed area for tax year 1988. The Board of County Commissioners denied West Valley's claim on or about October 31, 1988. West Valley City filed suit to obtain the disputed property tax revenues. Plaintiff Hercules Corporation (not a party to this appeal) filed suit seeking a refund from Salt Lake County of the difference in taxes paid by it to the Salt Lake County Municipal-type Service District No. 1 and those which it would have paid had the West Valley City tax rate been utilized. The separate suits of Hercules Corporation and West Valley City were combined under Civil No. 89-09-03342 in the Tax Division of the Third Judicial District Court of Salt Lake County. Plaintiffs Hercules Corporation and West Valley City filed Motions for Summary Judgment and the Salt Lake County defendants filed a Cross Motion for Summary Judgment which motions were heard by the Honorable David S. Young on September 10, 1991. By Order entered October 15, 1990, Judge Young denied West Valley City's and

Hercules' Motions for Summary Judgment and granted Salt Lake County's Cross Motion for Summary Judgment. West Valley City has now appealed that decision.

STATEMENT OF FACTS

The Salt Lake County respondents submit to this Court the following undisputed facts:

1. On March 31, 1988, West Valley City, pursuant to §10-2-1 et seq., Utah Code Ann. (1953), annexed into its corporate boundaries certain real property owned by Hercules Incorporated. The northern boundary of this annexed property is at approximately 4100 South and the southern boundary is at approximately 6200 South. The annexed property is bordered on the east at approximately 5600 West and on the west at approximately 8400 West.

2. The Subject Property was annexed into West Valley City from the unincorporated area of Salt Lake County.

3. Prior to the date of annexation the Subject Property was part of Municipal-type Service District No. 1.

4. Pursuant to Utah Code Ann. §11-12-1 et seq. (1953, as amended), Plaintiff West Valley City filed with the Utah State Tax Commission a certified copy of the annexation ordinance and legal description of the annexed area on March 30, 1988.

5. The Utah State Tax Commission, in accordance with Utah Code Ann. §11-12-3 (1953 as amended) established the 1988 taxing district boundaries, and thus the taxing district nomenclature, as those boundaries existed on January 1, 1988. In establishing the January 1, 1988, boundaries, the Utah State Tax Commission relied on boundary descriptions on file as of December 31, 1987. This was in accordance with Utah Code Ann. §11-12-3 (1953, as amended) and the long standing administrative practices of the Tax Commission as set out in the affidavit of Finch Bingham (Exhibit 2).

6. On or about June 1, 1988, the Salt Lake County Auditor submitted to West Valley City a statement of the 1988 assessed valuation for West Valley City. Said valuation statement did not include any value for the property which had been annexed by West Valley City on March 30, 1988.

7. On or before July 22, 1988, the Salt Lake County Auditor issued to each taxpayer, including Plaintiff Hercules Corporation, and all other property owners in the annexed area, a notice clearly identifying that said property was subject to taxation for the year 1988 by the Salt Lake County Municipal-type Service District No. 1. The tax rate assessed by that District for the year 1988 was .002109 per dollar of assessed value.

8. The West Valley City tax rate certified for collection by the State Tax Commission for the 1988 tax year was .001648 per dollar of assessed valuation.

9. No later than November 1, 1988, the Salt Lake County Treasurer issued a final tax notice to all taxpayers in Salt Lake County which included, for properties within the annexed area, the levy imposed by the Salt Lake County Municipal-type Service District No. 1 for the 1988 tax year.

10. Plaintiff Hercules Corporation paid ad valorem taxes which were levied against its property situated within the annexed area under protest. The taxes were paid on or by November 30, 1988.

11. Tax revenues received by the Salt Lake County Treasurer in payment of the Municipal-type Service District No. 1 tax levy for the year 1988 were distributed by the Salt Lake County Treasurer to the Salt Lake County Municipal-type Service District No. 1 and expended by it on services to the unincorporated area of Salt Lake County including the area annexed by West Valley City during the period prior to annexation.

12. On October 27, 1988, West Valley City made a written request to the Salt Lake County Commission for remittance to West Valley City of taxes levied and assessed by the Municipal-type Service District No. 1 upon the Subject Property for the tax year 1988.

13. On October 31, 1988, Salt Lake County denied West Valley City's request or claim to a portion of the taxes assessed, levied and expended by the Salt Lake County Municipal-type Service District No. 1 for tax year 1988.

14. Plaintiff West Valley City Corporation filed suit on or about April 26, 1989. Plaintiff Hercules, Inc., filed suit on or about May 30, 1989. Both actions were consolidated by order of the District Court under Case No. 890903342.

15. All parties filed Motions or Cross Motions for Summary Judgment and on September 10, 1990, the Honorable David S. Young granted the County defendants' Cross Motion for Summary Judgment and denied West Valley City's and Hercules' Motions. The Findings of Facts, Conclusions of Law, Decision and Order reflecting Judge Young's determination were executed by Judge Young on October 15, 1990, and filed in the office of the Court Clerk, Third Judicial District that same day. (Exhibit 1)

SUMMARY OF ARGUMENT

Utah Code Ann. §11-12-1 et seq. (1953 as amended) provides a comprehensive framework within which the boundaries of political subdivisions can be modified for property tax purposes. This statutory framework is one of general application to all political subdivisions and constitutes a legislative regulation of local property taxation, pursuant to the authority granted the legislature under Utah Const. Art. XI, §5. Failure of West Valley City to comply with the provisions of Utah Code Ann. §11-12-3 (1953 as amended) in connection with its 1988 annexation precluded it from levying property taxes against the annexed area for 1988.

Tax revenues were appropriately distributed to the Municipal-type Services District of Salt Lake County as recompense to Salt Lake County for the costs of providing municipal-type services to the annexed area at all times prior to annexation. Additionally, the long-standing administrative interpretation of the statutory provisions by the Utah State Tax Commission are reasonable, consistent with the language of the statute, and provide the only framework under which the other statutory deadlines and obligations of the property tax system can be met by both the Utah State Tax Commission and the local county auditors and assessors. The judgment of the trial court should be affirmed.

ARGUMENT

POINT I.

THE FAILURE OF WEST VALLEY CITY TO PROVIDE NOTIFICATION TO THE TAX COMMISSION AS REQUIRED BY UTAH CODE ANN. §§11-12-1 AND 11-12-3 BY DECEMBER 31, 1987, PRECLUDED TAXATION OF THE ANNEXED TERRITORY BY WEST VALLEY CITY FOR TAX YEAR 1988.

The imposition of property taxes by any local government and the process by which properties are included or excluded in any government's tax base are closely regulated by statute. In Salt Lake County for example, the multiple layers of County, municipalities, school districts, library districts, water and sewer districts and other special districts each with its own geographical boundaries are

superimposed over 240,000 individual pieces of property. The modification of any taxing entity's boundaries affects not only its boundaries but the boundaries of several adjacent and overlapping taxing districts. Each change of boundaries requires the reallocation of assessed valuation (tax base) among all the affected districts. This allocation is performed by both the County Assessor and the State Tax Commission. The County Assessor allocates the values of all locally assessed real and personal property. The State Tax Commission allocates the value of all centrally assessed property, including mines, utilities, and inter-county and inter-state tax payers among all the counties of the state and all the taxing entities located within each county. Under Utah law, this allocation must be completed no later than May 22 of each year. The County Auditor then distributes those allocated values to each taxing entity such as West Valley City, on or by June 1 of each year. Based upon this allocation of value, each taxing entity then establishes a budget and tax rate. These tax rates must be initially set by June 15 of each year and must be finalized no later than August 17 of each tax year.

Responsibility for identifying the exact boundaries of each tax unit rests with the State Tax Commission. The identification process and the resulting product (which is referred to as the taxing district nomenclature) is reviewed

and revised annually. In 1963, the Utah State Legislature, for property tax purposes, created a comprehensive and exclusive process by which political subdivisions may be incorporated, established or the boundaries thereof modified. This process is codified at Title 11, Chapter 12 of the Utah Code Annotated. Utah Code Ann. §11-12-1 (1953 as amended) provides:

> "No county service area, special purpose district, city, or town may be incorporated, established, or the boundaries modified, without a notification of the change being filed with the State Tax Commission within ten (10) days after the conclusion of the proceedings in connection with the changed ... ."

The statute sets out the specific contents of the notification and requires certification by the officers of the district or entity that all necessary legal requirements have been completed. All of these elements form the substantive basis for the Tax Commission modifying any taxing entity's boundaries.

Under Utah law, all property must be assessed at its fair market value as of January 1 of the tax year. [Utah Code Ann. §59-2-103 (1953 as amended)]. The situs of the property must also be determined as of January 1 [Utah Code Ann. §59-2-104 (1953 as amended)]. For property tax purposes, the

situs of all taxable property is the tax area where it is located. That allocation of value to tax area forms the sole and exclusive basis for property taxation for all political subdivisions in the state [Utah Code Ann. §59-2-302 (1953 as amended)]. Since the allocation of value is the sole basis upon which a political subdivision can levy property taxes, accuracy and predictability are vital. Utah Code Ann. §11-12-3 (1953 as amended) sets out the specific requirements for implementing changes in property tax boundaries as a result of changes in political boundaries. This section provides "property annexed to any taxing entity or property in any new taxing entity shall carry any tax rate imposed by that taxing entity if notification, as required by Section 11-12-1, is made to the State Tax Commission not later than December 31 of the previous year." (emphasis added) In the present case, West Valley City did not give notification to the Tax Commission until March 30, of 1988, of its 1988 annexation. It is settled law in this state that statutes allowing the imposition of taxes or prescribing tax procedures generally are construed strictly against the taxing authority. Strict compliance with the taxing statutes is required as a condition precedent to the lawful imposition of a tax. Builders Components Supply Company v. Cockayne, 22 Utah 2d 172, 452 P2d 97 (1969); County Board of Equalization of Salt Lake County v. Nupetco Associates, 779 P2d 1138, 1139 (Utah, 1989). Utah

Code Ann. §11-12-3 (1953 as amended) clearly provides that a taxing entity may not levy taxes on annexed property unless it completed the annexation in the previous calendar year and filed the notification with the Tax Commission by December 31 of that previous year. West Valley City did not complete the annexation and file with the Tax Commission until March 30, 1988. It failed to meet the clear terms of the statute and thus was not entitled to levy ad valorem taxes on the annexed property until 1989. To construe the statute in any contrary fashion would create an unnecessary conflict with those provisions imposing duties on the Tax Commission and the County Assessor to assign situs to property as of January 1 of each tax year.

POINT II.

THE CLEAR LANGUAGE OF UTAH CODE ANN. §11-12-1 ET SEQ. (1953 AS AMENDED) AND THE CONSISTENT HISTORY OF ADMINISTRATIVE INTERPRETATION BY THE UTAH STATE COMMISSION PRECLUDE TAXATION OF THE ANNEXED PROPERTY BY WEST VALLEY CITY FOR 1988.

West Valley City asserts an interpretation of Utah Code Ann. §11-12-3 (1953 as amended) that is contrary to nearly thirty years of administrative interpretation and the clear language of the statute. West Valley proposes that the above-cited section merely regulates the application of a particular tax rate and does not affect the acquisition of taxing authority. Specifically, West Valley would assert that any annexation completed prior to the date levies are

certified as final and fixed by the State Tax Commission would allow the annexing jurisdiction to impose taxes for that tax year on the property but require it to utilize the tax rate adopted by the entity from whom the property was annexed. Thus, under West Valley's interpretation, the property which it annexed in March of 1988 would, for tax year 1988, carry Salt Lake County's Municipal-type Services District's tax rate. West Valley would, in effect, be imposing two different tax rates within its political boundaries. Such an interpretation is clearly contrary to the administrative practices of the State Tax Commission developed over the thirty years the statute has been in existence. The record below contained the affidavit of Finch Bingham, Evaluation Analyst with the Utah State Tax Commission, speaking specifically to his five years of experience developing taxing district nomenclature. Paragraphs 5 through 8 of the affidavit clearly establish that the Tax Commission has consistently interpreted this statute to not allow taxation by an annexing or newly created entity except when all legal prerequisites of the annexation or incorporation have been completed, filed and recorded by December 31 of the previous year. Failure to file is a bar to taxation. If ambiguity exists in the statute, this long standing history of administrative interpretation by the body charged with the administration of Utah's tax statutes should be given

considerable weight by the court. Salt Lake City v. Salt Lake County, 568 P2d 738, 741, 742 (Utah 1977); Kennecott Copper Corp. v. Anderson, 30 Utah 2d 102, 514 P2d 217 (1973); Keller v. Thompson, 532 P2d 664 (Hawaii 1975); Schlagel v. Hoelsken, 162 Colo. 142, 425 P2d 39 (1967). This is particularly true if the statute is to be construed in harmony with the other duties imposed upon County Assessors and the State Tax Commission in determining taxable value as of January 1 and allocating of that value according to its situs as of January 1 to the various taxing areas and taxing entities.

POINT III.

UTAH CODE ANN. §11-12-1 ET SEQ. (1953 AS AMENDED) AND ITS REGULATION OF THE PROCESS BY WHICH TAXING AUTHORITY IS MODIFIED IS CONSISTENT WITH UTAH CONST. ART. XI, §5.

Plaintiffs and Defendants draw two different conclusions with respect to the constitutional implications of Utah Code Ann. §11-12-1 et seq. (1953 as amended) as it has been interpreted and applied by the State Tax Commission and the Court below. Plaintiffs contend that allowing the original taxing entity to tax the annexed property in the year of annexation unless the annexing entity provides notification to the Tax Commission by December 31 of the preceding year is an extension of extra-territorial taxing authority contrary to Utah Const. Art. XIII, §10. Contrary to the City's position, Salt Lake County asserts that legislative regulation of the

process and timing by which political subdivision boundaries are modified is strictly and completely within the legislature's authority under Utah Const. Art. XI, §5, which reserves to the Legislature the authority to regulate municipal taxation. The constitutionality of the current interpretation of Utah Code Ann. §11-12-3 (1953 as amended) is a matter of first impression for the courts of this state. In asserting that §11-12-3 (1953 as amended), as currently interpreted, is an impermissible grant of extra-territorial taxing power West Valley City relies on two separate lines of cases. The first of those are cases dealing with the taxability of property acquired by tax-exempt institutions. Utah Parks Company v. Iron County, 14 Utah 2d 178, 380 P2d 924 (1963); Huntington City v. Peterson, 30 Utah 2d 408, 518 P2d 1246 (1974). In each case, a governmental entity exempt from property taxation under Utah Const. Art. XIII, §2 acquired property after January 1 but prior to the date levies were fixed and certified. In each case, the court held that the lien for ad valorem taxes did not attach to the property until it was reduced to a fixed amount through the establishment of various tax rates. At that point it related back to January 1st. The Court noted that if property were transferred to a tax-exempt entity in the period between January 1 and the date the levies were set, that it would be exempt for taxation for the entire year in question. The inter-relationship between

the attachment of a property tax lien and the application of the property tax exemption allowed under Utah Const. Art. XIII, §2, is completely separate and dissimilar from the question presented to the court in the instant case. Such questions do not deal with the authority of the Legislature to regulate the modification of political boundaries for ad valorem tax purposes. Utah Parks and Huntington id., simply provide no guidance with respect to whether the Legislature can create an effective date for imposition of municipal taxes on annexed territory.

The second line of cases presented by West Valley City all predate the enactment of the current statutory scheme found at Utah Code Ann. §11-12-1 et seq. (1953 as amended). Gillmor v. Dale, 75 P. 932 (Utah, 1904) is, on the surface, the most relevant. In that case, property was disconnected by court action from a city after January 1 but prior to the first day of July (the date at which municipal tax rates were set). The Court held that Utah Const. Art. XIII, §10 restricted the power to tax to property within the jurisdiction of the political entity. As the lien for property taxes did not attach until July when the levies were set, the disconnection effectively barred Salt Lake City from taxing the property. As noted above, this case predated the current statutory framework by nearly 60 years. It is not dispositive of the question as to whether Utah Const. Art.

XIII, §10 allows the Legislature, under Utah Const. Art XI, §5, to regulate the power to tax by creating a framework in which boundary modifications can be rationally and effectively completed. Additionally, the processes by which areas are disconnected from cities or special districts are vested with the courts. It is particularly significant that the District Court in disconnection and disincorporation proceedings retains control over the taxation process and may order the imposition or cessation of taxation, control the level of taxation and direct the proceeds of taxation [U.C.A. 10-2-506, 10-2-706 (1953 as amended)]. Judicially mandated or controlled taxation is a radically different process than the orderly flow of boundaries and assessed values that occurs upon annexation. The later case cited by the Plaintiffs, Parry v. Bonneville Irrigation District, 263 P. 751 (Utah 1928) provides little guidance in applying Utah Const. Art. XIII, §10 to the present fact situation. Parry id., dealt solely with the issue of whether an irrigation assessment could lie against lands not properly included within a district. Utah Const. Art. XIII, §10 clearly applies in such a circumstance. The case is silent as to the ability of the Legislature to regulate, for property tax purposes, the effective dates of boundary modifications. A final case involving the application of Utah Const. Art. XIII, §10 is Plutus Mining Co. v. Orme, 289 P. 132 (Utah 1930). In that

case, Utah Const. Art. XIII, §10 was applied to prohibit taxation of property by Mammoth City for the years intervening between the original decree of segregation and the subsequent reversal of that decree on appeal. Where the effect of the order had not been stayed, the Court held that the decree of segregation was valid so as to exclude the segregated properties from the taxing authority of Mammoth City. In that case, the Legislature had provided by specific statute an effective date for segregation actions (the entry of the decree of segregation). On the general question of the authority of the legislature with respect to amendment of political boundaries, the Court noted as follows:

> "In view of the fact, however, that the changing of the territorial limits of the city is primarily a legislative function, courts are bound to confine the exercise of the power conferred upon them by the Legislature within the expressed or necessarily implied language of the Act so conferring such power. When a court shall have exercised the authority so granted by the Legislature and shall have rendered a decree of segregation, it is within the province of the legislature and not the courts to say when such decree shall take effect." id. at 135.

The court further noted that the legislature had inherent authority to provide for an effective date different that from the date the court entered the decree of segregation.

> "If the Legislature had intended that a district court's decree of segregation should not take effect until the time for an appeal had expired, or, in the case of appeal, until the appeal is disposed of, it would have been a very simple matter to have so provided." id. at 140

In the present case, the legislature has provided a statutory framework for the orderly modification of political boundaries allowing the effective date for property tax purposes to be different from that for political jurisdiction. The power of the legislature to control the taxing authority of local government is clearly set out in Utah Const. Art. XI, §5. Specifically, cities may "levy, assess and collect taxes and borrow money, within the limits prescribed by general law, ..." id. (emphasis added) Additionally, cities have no inherent authority with respect to taxation but must derive that power from an express grant by the legislature. Consolidated Coal Company v. Emery County, 702 P2d 121 (Utah 1985); Mountain States Telephone v. Salt Lake County, 702 P2d 113 (Utah 1985); and Moss v. Board of Commissioners of Salt Lake City, 261 P2d 961 (Utah 1953); also see generally McQuillin, Municipal Corporations, Section 44.05. As the court noted in Moss at 964:

> "The City's power to tax is derived solely from legislative enactment and it has only such authority as is expressly conferred or necessarily implied. This court has

> not favored the extension of the powers of the city by implication, and the only modification of such doctrine is where the power is one which is necessarily implied. Unless this requirement is met, the power cannot be deduced from any consideration of convenience or necessity, or desirability of such result, and no doubtful inference from other powers granted or from ambiguous or uncertain provisions of the law would be insufficient to sustain such authority."

In granting local governments taxing authority the legislature may impose such conditions precedent or procedural requirements as it deems necessary and appropriate for effective administration of the tax laws of the state. Utah Const. Art XIII, §10 is not, as the plaintiffs contend, a grant of taxing authority to local governments. Rather, it is a statement as to the taxable status of tangible property. The actual authority to tax must be found specifically in general law and may be conditioned upon compliance with reasonable procedures. Property taxation is an immensely complicated process involving the coordination of state, county and municipal officials concentrated in brief periods of time. Every change in the territorial boundaries of a political subdivision requires the reallocation of value between that jurisdiction and many others. This reallocation must be completed and transmitted to the County Auditor by May 22 of each year in order that taxing entities can know what their property tax base is prior to setting a tentative budget

(June 15). Plaintiff suggests that as long as the boundary change is completed by the time the final tax levies are set [as late as August 17 - Utah Code Ann. §59-2-920 (1953 as amended)] that taxable values should be moved between jurisdictions. Such an approach would wreak chaos in the budgeting processes of local governments and, as discussed below, completely subvert the strictures of the truth in taxation process. If boundary changes could affect the distribution of assessed values as late as August 17 many entities which had set budgets and tax rates in the normal June/July cycle would be forced to re-set those budgets, adopt new tax rates or make service level adjustments. This is particularly onerous in those circumstances where the affected entity is on a January-December fiscal year and has expended funds or designed programs based on the assessed value it knew it had as of January 1 of that tax year. Plaintiff fails to consider the practical consequences of removing large portions of a taxing entity's tax base as late as August when the entity had issued tax anticipation notes the preceding January or February. Under the Plaintiff's theory, the ability of an entity to repay those debt obligations could be seriously jeopardized or destroyed. It might not have sufficient remaining tax capacity to repay the obligation. This was exactly the sort of disaster the legislature intended to avert with the adoption of Utah Code Ann. §11-12-1 et seq. (1953 as

amended). Finally, the mass recalculation of budgets and tax rates subverts the detailed notice and advertisement provisions of Utah's Truth in Taxation process. Under those statutes the County Auditors of the state issue personalized notices to each property owner identifying which entity levies against his or her property and the actual dollar impact of the current tax rate in comparison with the taxes levied the previous year. These notices go out no later than July 22 of each year [Utah Code Ann. §59-2-919 (2) (1953 as amended)]. The purpose of these notices is to inform a taxpayer of the impact of a taxing entity's proposed budget upon his or her property tax bill and provide detailed information of when public hearings on the proposed budget will occur. West Valley City suggests that this carefully crafted system should be turned on its ear and boundary changes be allowed even after the notice has been mailed to the taxpayers and even after budget hearings have been held and tax rates set. Utah Code Ann. §11-12-3 (1953 as amended) was enacted to provide an orderly transition to tax boundary changes and the reasoned progression of the tax calendar. It is a valid enactment of a general law controlling local property taxation and should be upheld by this court. As the court noted, in Plutus at 139:

> "Public policy requires that the boundaries of cities be certain and definite at all times, not only for the

> purpose of administering local government, but also for the purpose of taxation. Cities are organized to spend money, not to make money. In order that a city may have the proper amount of revenue to meet the demands made upon it during the fiscal year, it is necessary that it be definitely known what property the city may tax."

This argument is equally true with respect to entities whose tax base may be adversely affected by an annexation or incorporation occurring after programs have been established, budgets have been set, bonds issues and revenues expended.

POINT IV.

THE INTERPRETATION OF UTAH CODE ANN. §11-12-3, ADVANCED BY WEST VALLEY CITY VIOLATES UTAH CONST. ART. XIII, §2 (1).

The theory advanced by West Valley City is that property annexed after January 1, but prior to the date of levy, should be subject to the taxing jurisdiction of the annexing city but carry a tax rate different than that applied by the city to all other taxable property in its boundaries. West Valley City would, in effect, impose two separate tax rates for municipal services - each applicable in a different portion of the city. Salt Lake County's contention is that such a scheme and interpretation would be violative of Utah Const. Art. XIII, §§2 and 3. Under those provisions, property must have a

uniform and equal rate of assessment according to its value and money and be subject to taxation at a uniform and equal rate in proportion to its value. This court has repeatedly recognized that such provisions apply to general taxes assessed for general governmental services such as municipal levies. Pearson v. Salt Lake County, 9 Utah 2d 388; 346 P2d 155 (1959). Utah Const. Art. XIII, §§2 and 3 were designed to prevent situations in which owners of identically valued property could be subjected to different taxing rates by the same taxing entity. As the authorities have generally noted, uniformity of taxation means that all property of the same class shall be taxed at the same rate. See generally McQuillin, Municipal Corporations, Section 44.19.

> "This means, for example, that a tax for a state purpose must be uniform and equal throughout the state, a tax for a county purpose must be uniform and equal throughout the county, a tax for a city, village, or township purpose must be uniform and equal throughout the city, village, or township." 71 Am.Jur.2d State and Local Taxation, §152.

The court should reject the interpretation advanced by West Valley and avoid the constitutional conflict between non-uniformity of tax rates and the requirements of uniformity and equality imposed by Utah Const. Art. XIII, §§2 and 3. As the court has noted "our cases have consistently held that if

alternative constructions of a statute are possible, we should adopt the one that leads to a minimum of constitutional conflict." Hansen v. Salt Lake County, 794 P2d 838, 845 (Utah 1990).

POINT V.

THE DISTRICT COURT'S INTERPRETATION OF UTAH CODE ANN. §11-12-3 (1953 AS AMENDED) DOES NOT CREATE DOUBLE TAXATION FOR THE RESIDENTS OF THE ANNEXED AREA.

West Valley City contends that requiring the residents of the annexed area to pay property taxes to the County Municipal-type Services District constitutes double taxation in violation of this court's ruling in Salt Lake City Corporation v. Salt Lake County, 550 P2d 1291 (Utah 1976). In analyzing this claim, the actual flow of services and tax revenues must be carefully reviewed. The unincorporated area of the County has the obligation to pay for provided municipal-type services at all times prior to the effective date of an annexation. The cost of those services is included in the municipal-type services budget and comprises part of the basis for the municipal-type services levy. At the time that levy is established, in July or August of each year, budget adjustments are made for areas that have been annexed and for which services are no longer required. With respect to the annexing city, from the effective date of the annexation it receives all tax revenues other than those

derived from property taxes. Sales taxes, motor fuel taxes, and utility franchise taxes all flow to the annexing city to defray its costs of providing services. While it is true that the residents of the annexed area may, in some amount and for some period, pay taxes to two separate entities, such an occurrence does not, in and of itself, constitute double taxation. First, the County has actually provided municipal-type services to those residents. Collection of property taxes to defray the costs of those services is not violative of this court's injunction against double taxation. The double taxation arguments survive scrutiny only if it is assumed that there is an absolute quid pro quo between the amount of taxes an individual taxpayer contributes to the general welfare and the value of the service specifically rendered to that taxpayer. Taxation for general governmental purposes is not based upon some hypothetical quid pro quo. Further, it is not consideration for specific value received. The individual taxpayer receives the benefit of his or her taxes not merely through the patching or plowing of the street in front of his or her house but also through the repair and maintenance of facilities throughout the entire governmental entity. As the United States Supreme Court has noted, there is no constitutional requirement that the benefits received from a taxing authority by an ordinary taxpayer or by those living in the community where the taxpayer is located must

equal the amount of its tax obligations. Cotton Petroleum Corp. v. New Mexico, 490 US _____, 104 LEd 2d 209, 109 S Ct _____ (1989). Additionally, a tax is not an assessment of benefits. It is a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Carmichael v. Southern Coal and Coke Company, 301 U.S. 495, 521-523 (1937). Second, with respect to property taxation, the taxpayer faces no double taxation for municipal-type services - only one entity levies property taxes upon it and only one entity receives the property tax payment.

The annexing entity is not disadvantaged by the process. It receives all other tax revenues from the annexed area. Additionally, the scope and timing of annexations and thus the concomitant service obligation are strictly within the power of the municipality to control. The city may annex in December as easily as it annexes in March or July. The extent of its obligations and the cost to its citizens can be carefully evaluated and balanced against the perceived benefits of annexation. No injustice is performed by providing an orderly flow and transition to the property tax process. In summary the taxpayers located in the annexed

area need not receive an absolute quid pro quo in services from the County's Municipal-type Services District in exchange for the taxes paid. They are not double taxed by the payment of property taxes to two separate entities for the same services.Further, the cities receive all other revenues from the annexed areas upon the date of annexation and are fully capable of controlling and mitigating the service obligations imposed upon them by their voluntary annexation.

SUMMARY AND CONCLUSION

Utah Code Ann. §11-12-3 (1953 as amended) establishes a mandatory condition precedent to the amendment of a political subdivision's boundaries for property tax purposes. It is a statute of general application imposed by the legislature under the authority to control municipal taxation set out in Utah Const. Art XI, §5. It recognizes the complicated nature and the chronological inter-relationships inherent in the property tax system and allows an orderly and logical flow to the transfer of assessed valuation between taxing entities. It provides for stability in budgeting, stability in taxation and the guarantee of repayment when tax and revenue anticipation notes are issued. The interpretation consistently and historically adopted by the Tax Commission, and adopted by the District Court in its decision, precludes

the amendment of taxing district boundaries for property tax collection purposes in ways that would conflict with the budgetary, levy setting, and public notification requirements contained in Utah's property tax statutes. To treat the provision as only a rate calculation statute as West Valley suggests, would allow a municipality to impose differential rates within its boundaries for the same general governmental purposes in violation of Utah Const. Art. XIII §§2 and 3. The judgment of the trial court should be affirmed.

RESPECTFULLY submitted this 25th day of April, 1991.

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Salt Lake County Attorney

KARL L. HENDRICKSON
Deputy Salt Lake County Attorney

BILL THOMAS PETERS
Special Deputy Salt Lake County Attorney

By: _____
KARL L. HENDRICKSON

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EXHIBIT 1

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IN THE TAX DIVISION OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

HERCULES INCORPORATED, Plaintiff, -vs- SALT LAKE COUNTY, ARTHUR L. MONSON, SALT LAKE COUNTY TREASURER, and SALT LAKE COUNTY MUNICIPAL TYPE SERVICE DISTRICT NO. 1, Defendants.	:	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER Civil No. 890903342

The Court, upon review of the pleadings, memoranda, authorities and argument of the parties and being fully advised in the premises hereby makes and enters the following Findings of Fact, Conclusions of Law, Decision and Order with respect to the reciprocal Motions for Summary Judgment submitted by the parties.

FINDINGS OF FACT

1. On March 31, 1988, West Valley City, pursuant to §10-2-1 et seq., Utah Code Ann. (1953), annexed into its corporate boundaries, certain real property owned by Hercules

Incorporated. The northern boundary of this annexed property is at approximately 4100 South and the southern boundary is at approximately 6200 South. The annexed property is bordered on the east at approximately 5600 West and on the west at approximately 8400 West.

2. The Subject Property was annexed into West Valley City from the unincorporated area of Salt Lake County.

3. On and prior to the date of annexation and at all times relevant hereto, the Subject Property was part of Municipal Type Service District No. 1.

4. Pursuant to Utah Code Ann. §11-12-1 et seq. (1953, as amended), Plaintiff West Valley City, filed with the Utah State Tax Commission a certified copy of the annexation ordinance and legal description of the annexed area on March 30, 1988.

5. The Utah State Tax Commission, in accordance with Utah Code Ann. §11-12-3, 1953, as amended, established the taxing district boundaries, and thus the taxing district nomenclature, as those boundaries existed on January 1, 1988. In establishing the January 1, 1988 boundaries, the Utah State Tax Commission relied on boundary descriptions on file with the State Tax Commission as of December 31, 1987. This was in accordance with UCA §11-12-3 (1953, as amended) and the long standing administrative practices of the Tax Commission as set out in the affidavit of Finch Bingham.

6. On or about June 1, 1988, the Salt Lake County Auditor submitted to West Valley City a statement of the 1988

assessed valuation for West Valley City. Said valuation statement did not include the property which had been annexed by West Valley City on March 30, 1988.

7. On or before July 22, 1988, the Salt Lake County Auditor issued to each taxpayer, including Plaintiff Hercules Corporation, and all other property owners in the annexed area, a notice clearly identifying that said property was subject to taxation for the year 1988 by the Salt Lake County Municipal Type Service District No. 1. The tax rate assessed by that District for the year 1988 was .002109 per dollar of assessed value.

8. The West Valley City tax rate certified for collection by the State Tax Commission for the 1988 tax year was .001648 per dollar of assessed valuation.

9. No later than November 1, 1988, the Salt Lake County Treasurer issued a final tax notice to all taxpayers in Salt Lake County, including Plaintiff Hercules Corporation which included, for properties within the annexed area, the levy imposed by the Salt Lake County Municipal Type Service District No. 1 for the 1988 tax year.

10. Plaintiff Hercules Corporation paid ad valorem taxes under protest which were levied against its property sited within the annexed area. The taxes were paid on or by November 30, 1988.

11. Tax revenues received by the Salt Lake County Treasurer in payment of the Municipal Type Service District No. 1 tax levy for the year 1988 were distributed by the Salt Lake

County Treasurer to the Salt Lake County Municipal Type Service District No. 1 and expended by it.

12. West Valley City made a written request to the Salt Lake County Commission for remittance to West Valley City of taxes levied and assessed by the Municipal Type Service District No. 1 upon the Subject Property for the tax year 1988.

13. Salt Lake County denied West Valley City's request or claim to a portion of the taxes assessed, levied and expended by the Salt Lake County Municipal Type Service District No. 1 for tax year 1988.

14. Plaintiff West Valley City Corporation filed suit on or about April 26, 1989. Plaintiff Hercules, Inc., filed suit on or about May 30, 1989. Both actions were consolidated by order of the Court under Case No. 890903342.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court hereby enters the following Conclusions of Law:

1. The Legislature possesses inherent authority to limit the power of municipalities to tax for corporate purposes. Utah Const. Art. XI, Sec. 5 allows cities to "levy, assess and collect taxes and borrow money, within the limits prescribed by general law...."

2. Cities have no inherent authority to tax but must derive that power from an express grant of the Legislature. In extending that grant of authority, the Legislature may impose such procedural and substantive restrictions as it deems necessary or desirable.

3. Utah Const. Art. XIII, Sec. 10, makes all real and personal property sited within the boundaries of a municipality subject to taxation by the municipality for municipal purposes.

4. UCA §11-12-1 through 11-12-3 (1953, as amended) are general laws prescribed by the Legislature regulating the imposition of local ad valorem taxation. They provide a mechanism by which the boundaries of any taxing district are established or modified. In addition, they establish January 1, of each year as the effective date for determining taxing district boundaries. As such they compliment and implement the provisions of Utah Const. Art. XIII, Sec. 10.

5. UCA §§11-12-1 through 11-12-3 (1953, as amended) create mandatory conditions precedent to the establishment or modification of taxing district boundaries and thus the lawful imposition of ad valorem taxation by taxing entities. As such, compliance with the statutes is mandatory and not merely directory.

6. The failure of West Valley City to file the notification of boundary change required by UCA §11-12-3 (1953, as amended) until March 30, 1088 precluded it from levying ad valorem taxes on the taxable property located within the annexed area until 1989.

7. The Salt Lake County Municipal Type Service District No. 1 was legally entitled to levy ad valorem taxes on taxable property located within the annexed area for tax year 1988.

8. Plaintiff Hercules Inc., is not entitled to a refund for the difference in ad valorem taxes between the amount it

paid to the Salt Lake County Municipal Type Service District No. 1 for its property located in the annexed area for 1988 and the amount it would have paid West Valley City for tax year 1988 on the same property.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Court that UCA §11-12-3 (1953, as amended) imposes a mandatory condition precedent to the establishment and modification of local taxing district boundaries. In creating an effective date for establishing or modifying taxing district boundaries for property tax purposes it is the view of the Court that these matters should be resolved by having a consistent determination of the boundary lines made. It is the Court's opinion that determination is controlled by UCA Sec. 11-12-3 (1953, as amended). The mandatory nature of that provision allows all taxing entities to rely on the Tax Commission nomenclature and the assessed value transmitted to the entities for budgeting purposes. Local taxing entities must be allowed to rely on the boundaries established by the State Tax Commission if they are to commit to tax anticipation bonding, service levels, budgets and the expenditures made in reliance thereon. In addition, allowing taxing district boundaries to be changed at any time prior to the final establishment of tax rates would defeat the notice requirements of Utah's Truth in Taxation statutes. The Court is convinced that the imposition of the requirements of UCA

§11-12-3 are in the best public interest and the interest of the State and its political subdivisions.

The Motions for Summary Judgment filed by West Valley and Hercules are denied and the Cross-Motion of the Salt Lake County parties is granted.

JUDGMENT

Based on the foregoing Findings of Fact, Conclusions of Law and Decision, Judgment is hereby granted in favor of Salt Lake County; Arthur L. Monson, Salt Lake County Treasurer; and the Salt Lake County Municipal Type Services District No. 1 and against West Valley City and Hercules, Inc. for no cause of action.

MADE and ENTERED this 15th day of October, 1990.

DAVID S. YOUNG, JUDGE

MAILING CERTIFICATE

I certify that on this 20th day of September 1990, I mailed a true and correct copy of the foregoing to:

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

TAX DIVISION

WEST VALLEY CITY A Municipal corporation, and HERCULES, INC., Plaintiff, SALT LAKE COUNTY, ARTHUR L. MONSON, SALT LAKE COUNTY TREASURER, and SALT LAKE COUNTY MUNICIPAL TYPE SERVICE DISTRICT NO. 1, Defendants.	:	AFFIDAVIT OF FINCH BINGHAM SUBMITTED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT Consolidated under: Case No. 89-0903342 Judge Leonard H. Russon

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

FINCH BINGHAM, being first duly sworn upon his oath, and having personal knowledge of the following, deposes and testifies as follows:

1. That I am a valuation analyst in the office of the Utah State Tax Commission;

2. That I have been employed for a period of five years;

3. That during the course of my employment as a valuation analyst with the Utah State Tax Commission, I have been involved

with the determination of the make-up of taxing districts within the various counties of the state of Utah;

4. That during the past five years I have been involved with allocating property values to various taxing entities within each of the respective counties of the state of Utah, based upon annexations and/or disincorporations that have taken place during the previous year;

5. During that period of time I have never allocated property tax values for purposes of obtaining revenue for the current year to any annexation that took place after December 31 of the previous year;

6. That in order for an annexation to trigger a shift in the tax base, said annexation has to have been completed, filed, recorded in the office of the county in which said annexation takes place, and notice of said annexation being given to the Tax Commission by December 31 of the previous year;

7. That if such annexation was completed, filed, recorded and notice given after December 31, the revenues from the annexed properties would not be available for the annexing entity until the following year;

8. That in my capacity as valuation analyst with the Utah State Tax Commission, and the person who is involved with allocating property tax values and therefore revenues to and among taxing entities, I have always considered filing, recordation and notification prior to December 31 of the previous year, as conditions precedent to an allocation of the

taxable value of the annexed properties to the annexing entity for the subsequent year;

9. That in my normal practice as the person in the Tax Commission who deals with the annexations and the allocation of taxable property, if an annexation that took place on March 31, 1988, of which the Tax Commission was advised, by a certified copy of the annexation ordinance and legal description of the annexed area on March 30, 1988, would require that the revenues derived from the annexed properties would not be available to the annexing entity until after January 1, 1989.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 3 day of May, 1990.

Finch Bingham

FINCH BINGHAM
Valuation Analyst, Utah State Tax Commission

NOTARY PUBLIC
L. KAY THORESON
160 East 300 South
Salt Lake City, Utah 84145-0801
COMMISSION EXPIRES
MAY 20, 1993
STATE OF UTAH

On this 3rd day of May, 1990, personally appeared before me FINCH BINGHAM, the signer of the foregoing Affidavit, who duly acknowledged to me that he executed the same.

L. Kay Thoreson

My Commission Expires:

May 20, 1993

NOTARY PUBLIC
Residing at: Utah County

EXHIBIT 3

Sec. 5. [Municipal corporations — To be created by general law — Right and manner of adopting charter for own government — Powers included.]

Corporations for municipal purposes shall not be created by special laws. The legislature by general laws shall provide for the incorporation, organization and classification of cities and towns in proportion to population, which laws may be altered, amended or repealed. Any incorporated city or town may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may, by two-thirds vote of its members, and upon petition of qualified electors to the number of fifteen per cent of all votes cast at the next preceding election for the office of the mayor, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election. The ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation. Such candidates shall be nominated in the same manner as required by law for nomination of city officers. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving a majority of the votes cast at such election, shall constitute the charter commission, and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be not less than sixty days subsequent to its completion and distribution among the electors and not more than one year from such date. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provisions for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city, not less than sixty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon, shall become an organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are now in conflict therewith. Within thirty days after its approval a copy of such charter as adopted, certified by the mayor and city recorder and authenticated by the seal of such city, shall be made in duplicate and deposited, one in the office of the secretary of State and the other in the office of the city recorder, and thereafter all courts shall take judicial notice of such charter.

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided for making of charters, or may be proposed by the legislative authority of the city upon a two-thirds vote thereof, or by petition of qualified electors to a number equal to fifteen per cent of the total votes cast for mayor on the next preceding election, and any such amendment may be submitted at the next regular municipal election, and having been approved by the majority of the electors voting thereon, shall become part of the charter at the time fixed in such amendment and shall be certified and filed as provided in case of charters.

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

The power to be conferred upon the cities by this section shall include the following:

(a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.

(c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than [that] needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

History: Const. 1896.

Compiler's Notes. — The bracketed word "that" in Subsection (c) of the last paragraph appeared in this section as published in the Revised Statutes of 1933.

Cross-References. — Incorporation of cities and towns, § 10-2-101 et seq.

Local improvements, § 10-7-20.

Miscellaneous powers of cities and towns, § 10-1-202.

Municipal Code, home rule exceptions to, §§ 10-1-106, 10-3-818.

Powers and duties of all cities, § 10-8-1 et seq.

NOTES TO DECISIONS

Analysis

Classification of cities.

The power of the legislature to classify cities according to population is expressly conferred by this section, and statute passed to enable cities of first class to meet needs and requirements of larger municipalities was general, in

NOTES TO DECISIONS

Bond issue.

City ordinance authorizing bond issue for improvement of waterworks and specifying that for purpose of servicing bonds fiscal year should continue same as calendar year was not invalid as attempting to fix fiscal year other than that provided by this section. Fjeldsted v. Ogden City, 83 Utah 278, 28 P.2d 144 (1933); Wadsworth v. Santaquin City, 83 Utah 321, 28 P.2d 161 (1933).

COLLATERAL REFERENCES

C.J.S. — 84 C.J.S. Taxation § 357.
Key Numbers. — Taxation ⇐ 318.

Sec. 2. [Tangible property to be taxed — Value ascertained — Exemptions — Remittance or abatement of taxes of poor — Intangible property — Legislature to provide annual tax for state.]

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

(a) The property of the state, school districts, and public libraries;

(b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;

(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

(d) Places of burial not held or used for private or corporate benefit; and

(e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m., held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or livestock raiser may be deemed for purposes of ad valorem property taxation to be exempted.

(5) Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall be exempted from taxation to the extent that they shall be owned and used for such purposes.

(6) Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for

furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the Legislature may prescribe.

(7) The taxes of the poor may be remitted or abated at such times and in such manner as may be provided by law.

(8) The Legislature may provide by law for the exemption from taxation: of not to exceed 45% of the fair market value of residential property as defined by law; and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family.

(9) Property owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the Legislature may provide.

(10) Intangible property may be exempted from taxation as property or it may be taxed as property in such manner and to such extent as the Legislature may provide, but if taxed as property the income therefrom shall not also be taxed. Provided that if intangible property is taxed as property the rate thereof shall not exceed five mills on each dollar of valuation.

(11) The Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the Legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt.

History: Const. 1896; L. 1930 (Spec. Sess.), S.J.R. 2; 1945, H.J.R. 3; 1957, H.J.R. 7; 1961, S.J.R. 6; 1963, S.J.R. 5; 1967, S.J.R. 1; 1982, S.J.R. 3; 1986, H.J.R. 18.

Compiler's Notes. — Laws 1959, Senate Joint Resolution No. 5 proposed a constitutional amendment to be voted on by the electors at the general election in 1960. The proposed amendment failed to pass because it did not receive the necessary majority.

The 1979 proposed amendments to this section by House Joint Resolutions Nos. 23 and 25 were repealed and withdrawn by Senate Joint Resolution No. 6, Laws 1980.

Laws 1986, Senate Joint Resolution No. 4, proposed to amend Subsection (2)(c) of this section. The proposed amendment was submitted to the electors at the general election in 1986 and failed to pass because it did not receive the necessary majority.

Cross-References. — Armories exempt from taxation, § 39-2-1.

Civil Air Patrol equipment exempt, § 2-1-41.

County service area property exempt, § 17A-2-429.

Disabled veteran's exemption, §§ 59-2-1104, 59-2-1105.

Exemptions generally, § 59-2-1101 et seq., Chapter 23 of Title 78.

Indigent persons, abatement or deferral of taxes, §§ 59-2-1107 to 59-2-1109.

Industrial facilities development property exempt, § 11-17-10.

Mine and mining claim improvements, machinery or structures not exempt, § 59-5-64.

Privilege tax on possession and use of tax-exempt properties, § 51-4-101.

Property of higher education institutions exempt, § 53B-20-106.

Property tax relief, § 59-2-1201 et seq.

Rate of assessment of property, § 59-2-103.

School property exempt from taxation, § 53A-3-408.

Tangible personal property held for sale on January 1 exempt, § 59-2-1114.

Sec. 3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

(2) Land used for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes.

History: Const. 1896; Nov. 6, 1900; Nov. 6, 1906; L. 1930 (S.S.), S.J.R. 2; 1946 (1st S.S.), H.J.R. 2; 1967, S.J.R. 2; 1982, S.J.R. 3.

Compiler's Notes. — The 1979 proposed amendment of this section by House Joint Resolution No. 23 was repealed and withdrawn by Senate Joint Resolution No. 6, Laws 1980.

Cross-References. — Uniform School Fund, taxes allocated to, § 53A-16-101.

Sec. 10. [All property taxable where situated.]

All corporations or persons in this State, or doing business herein, shall be subject to taxation for State, County, School, Municipal or other purposes, on the real and personal property owned or used by them within the Territorial limits of the authority levying the tax.

History: Const. 1896.

Cross-References. — Statutory provisions, § 59-2-104.

History: C. 1953, 10-2-505, enacted by L. 1977, ch. 48, § 2.

10-2-506. Taxes to meet municipal obligations.

The court shall order the levy of taxes from time to time on the property included with the disconnected territory which may be required for the purpose of paying the territory's proportionate share of the municipal obligations. Any tax levy so ordered by the court shall be levied by the board of county commissioners on the disconnected territory and collected by the county treasurer in the same manner as though the disconnected territory were a municipality and the revenue received from such tax levy shall be paid to the court or as the court shall direct.

History: C. 1953, 10-2-506, enacted by L. 1977, ch. 48, § 2.

NOTES TO DECISIONS

Payment of bonded indebtedness.

This section vests in the court the power to impose taxes to be levied on the detached territory in proper cases, but it does not impose an obligation to pay any portion of town's bonded indebtedness as a condition to withdrawal, at least where the commission decides in favor of severance without imposition of terms, and where the indebtedness for the water and sewer system was incurred after filing of petition for withdrawal and the sewer system was not available to petitioner, and the water system was less available than a privately owned system which ran through the land and in which the petitioner was a large owner. In re Peterson, 92 Utah 212, 66 P.2d 1195 (1937).

10-2-507. Decree — Filing of documents.

On the entering of the order disconnecting the territory, the court shall cause to be filed a certified copy of the order and findings of the court together with a transparent reproducible copy of the map or plat in the office of the county recorder of the county in which the disconnected land is located. The municipality from which the territory is disconnected shall cause to be filed in the office of the lieutenant governor and in the office of the recorder in the county in which the municipality is located, articles of amendment to the articles of incorporation of the municipality which shall describe the geography of the municipality after the disconnection of territory together with the population of the municipality after the disconnection of the territory. Any cost incurred by the municipality from which the territory is disconnected in this section, may be charged against the territory disconnected.

History: C. 1953, 10-2-507, enacted by L. 1977, ch. 48, § 2; L. 1983, ch. 69, § 2.

Amendment Notes. — The 1983 amendment inserted "transparent reproducible" in the first sentence; substituted "lieutenant governor" for "secretary of state" in the second sentence; and made minor changes in phraseology.

Cross-References. — Disconnection complete on filing of articles, § 10-2-508.

be filed in the court within a time fixed in the notice, not exceeding six months, and all claims not so filed shall be forever barred. At the expiration of the time so fixed the court shall adjudicate claims so filed, which shall be treated as denied, and any citizen of the municipality at the time the vote was taken may appear and defend against any claim so filed, or the court may in its discretion appoint some person for that purpose.

History: C. 1953, 10-2-705, enacted by L. 1977, ch. 48, § 2.

Cross-References. — Dissolution of municipality by county commission, § 10-2-711.

NOTES TO DECISIONS

Claims against dissolved municipality.
Before allowing a claim against a dissolved municipality, the court should give notice allowing the citizens a hearing, and an order allowing claims on an ex parte hearing would be set aside. Nielsen v. Utah Nat'l Bank, 40 Utah 95, 120 P. 211 (1911).

10-2-706. Taxes to meet municipal obligations.

The court shall have power to wind down the affairs of the municipality, to dispose of its property as provided by law, and to make provisions for the payment of all indebtedness thereof and for the performance of its contracts and obligations, and shall order such taxes levied from time to time as may be requisite therefor, which the board of county commissioners shall levy against the property within the municipality. The taxes shall be collected by the county treasurer in the manner for collecting other property taxes and shall be paid out under the orders of the court, and the surplus, if any, shall be paid into the school fund for the district in which the taxes were levied. All municipal property remaining after the winding down of the affairs of the municipality, shall be transferred to the board of education of such school district, which board hereby is empowered to enforce all claims for the same and to have the use of all property so vesting.

History: C. 1953, 10-2-706, enacted by L. 1977, ch. 48, § 2.

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. §§ 92, 94-97.

Key Numbers. — Municipal Corporations ⇐ 46-48.

10-2-707. Disposition of records.

The books, documents, records, papers and seal of any dissolved municipality shall be deposited with the county clerk for safekeeping and reference. All court records of justices of the peace shall be deposited with a justice of the county to be designated by the court, and other records with the district court, and they shall respectively have authority to execute and complete all unfinished business standing on the same.

11-12-1. Incorporation, establishment or modification of boundaries of political subdivisions — Notice to tax commission.

No county service area, special purpose district, city, or town may be incorporated, established, or the boundaries modified, without a notification of the change being filed with the State Tax Commission within ten days after the conclusion of the proceedings in connection with the change.

The notice shall include an ordinance or resolution with a map or plat that delineates a metes and bounds description of the area affected and evidence that the information has been recorded by the county recorder. The notice shall also contain a certification by the officers of the county service area, special purpose district, city, or town that all the necessary legal requirements relating to incorporation, establishment, or modification have been completed.

History: L. 1963, ch. 31, § 1; 1988, ch. 3, § 21.

Amendment Notes. — The 1988 amendment, effective February 9, 1988, deleted "From and after the effective date of this act" at the beginning of the section; divided the former first sentence of the second paragraph into the present first and second sentences and rewrote the provisions which had read "Such notice shall include a metes and bounds description of the area affected and shall contain a certification by the officers of the county service area, special purpose district, city or town that all necessary legal requirements relating to such incorporation, establishment or modification have been fully completed"; and made minor stylistic changes.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

11-12-3. Imposition of taxes on property in new or modified taxing district — Notification.

Property annexed to any existing taxing entity or property in any new taxing entity shall carry any tax rate imposed by that taxing entity if notification, as required by Section 11-12-1, is made to the State Tax Commission not later than December 31 of the previous year.

History: L. 1963, ch. 31, § 3; 1975, ch. 112, § 1; 1977, ch. 33, § 1; 1978 (2nd S.S.), ch. 1, § 1; 1988, ch. 3, § 22.

Amendment Notes. — The 1988 amendment, effective February 9, 1988, rewrote the section which formerly read "From and after the effective date of this act, property annexed to any existing taxing unit or property in any new taxing units shall carry any levy imposed by said taxing unit if notification, as required by Section 11-12-1, is made to the State Tax Commission not later than December 31st of the previous year."

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

59-2-103. Rate of assessment of property — Residential property.

(1) All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(2) The fair market value of residential property shall be reduced by 25% representing a residential exemption allowed under Article XIII, Sec. 2, Utah Constitution.

(3) No more than one acre of land per residential unit may qualify for the residential exemption.

History: C. 1953, 59-2-103, enacted by L. 1987, ch. 4, § 50; 1988, ch. 3, § 91.

Amendment Notes. — The 1988 amendment, effective February 9, 1988, substituted "as valued on January 1" for "adjusted for intangibles under Section 59-2-304 for real property assessed by the county assessor" in Subsection (1).

59-2-104. Situs of property for tax purposes.

(1) The situs of all taxable property is the tax area where it is located.

(2) Personal property, unless assessed by the commission, shall be assessed in the tax area where the owner is domiciled in this state on January 1, unless the owner demonstrates to the satisfaction of the county assessor that the personal property is usually kept in a tax area other than that of the domicile of the owner, in which case that property shall be assessed in the other tax area.

(3) Land shall be assessed in parcels or subdivisions not exceeding 640 acres each, and tracts of land containing more than 640 acres, which have been sectioned by the United States government, shall be assessed by sections or fractions of sections.

(4) The following property shall be listed and assessed in the county where the property is located:

(a) public utilities, when operated wholly in one county;

(b) bridges and ferries which are not public utilities, when operated wholly in one county;

(c) electric light lines and similar improvements; and

(d) canals, ditches, and flumes when separately taxable.

History: C. 1953, 59-2-104, enacted by L. 1987, ch. 4, § 51; 1988, ch. 3, § 92.

Amendment Notes. — The 1988 amendment, effective February 9, 1988, divided former Subsection (1) into present Subsections (1) and (2) and rewrote the provision which formerly read "All taxable property shall be assessed in the county, city, town, or district in which it is located. Motor vehicles and aircraft, except those assessed by the commission, shall be assessed in the county, city, town, or district in which the owner is domiciled in this state on January 1. Motor vehicles and aircraft usually used or kept in a taxing unit other than that of the domicile of the owner shall be assessed in the other taxing unit"; redesignated former Subsection (2) as present Subsection (3); and added Subsection (4).

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

59-2-302. Basis of property taxation for county and subdivisions.

The assessments made by (1) the county assessor, as equalized by the county board of equalization and the commission, and (2) the commission, as apportioned to each city, town, school, road, or other district in their respective counties, are the only basis of property taxation for political subdivisions of the state.

History: C. 1953, 59-2-302, enacted by L. 1987, ch. 4, § 70.

Compiler's Notes. — Former § 59-5-2, as last amended by Laws 1931, ch. 53, § 1, contained provisions similar to this section.

Effective Dates. — Laws 1987, ch. 4, § 308 makes the act effective on February 6, 1987.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides: "This act has retrospective operation to January 1, 1987, except for Sections 59-2-201, 59-2-205, and 59-2-207, which take effect January 1, 1988."