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Roderick W. McKendrick dba Salt Lake Artificial Limb Company v. State Tax Commission of the State of Utah : Brief of Appellant

Utah Supreme Court

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In the
Supreme Court of the State of Utah

RODERICK W. McKENDRICK,
d/b/a SALT LAKE ARTIFICIAL
LIMB COMPANY,

Appellant,

vs.

STATE TAX COMMISSION OF
THE STATE OF UTAH,

Respondent.

Case No.
9035

BRIEF OF APPELLANT

ALAN H. BISHOP,
Counsel for Petitioner.

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BRIEF OF APPELLANT

STATEMENT OF FACTS

This is a petition for a Writ of Review of a decision of the State Tax Commission dated February 20, 1959, assessing sales tax deficiencies totaling \$345.28 against petitioner with 6 percent interest from the date said tax was claimed due until paid.

The petitioner fits artificial limbs to handicapped persons and by training the person in the use of the limb restores to them, as much as is possible, the ability to walk normally. Petitioner instructs his clients for quite a period of time in the use and wearing of the prosthetic device and trains them to walk.

In rendering this service the petitioner provides an artificial limb which he makes himself from materials which, in the most complicated artificial leg, cost approximately \$20.00. The price of the complete service rendered to the amputee by petitioner varies from \$200.00 to \$500.00. The costs involved in the material are a very small percentage of the sales price.

The Tax Commission has ruled that this transaction represents a retail sale and is subject to Sales Tax. Petitioner appeals from that decision.

STATEMENT OF POINTS

POINT I

THE TAX COMMISSION ERRED IN FINDING THAT PETITIONER'S SERVICES CONSTITUTED A RETAIL SALE RATHER THAN A PROFESSIONAL SERVICE.

POINT II

THE RULING OF THE TAX COMMISSION WAS CONTRARY TO LAW AND HENCE THE COMMISSION ERRED IN ASSESSING ANY DEFICIENCY.

ARGUMENT

POINT I

THE TAX COMMISSION ERRED IN FINDING THAT PETITIONER'S SERVICES CONSTITUTED A RETAIL SALE RATHER THAN A PROFESSIONAL SERVICE.

The restoration of the power to walk to a person who has suffered an amputation takes years of training on the part of the person who is assisting and training the amputee. The person who does this is not a huckster of a simple contraption but is a professional man who uses skill and training, patience and understanding. He is, to the amputee, as important as a dentist to the person with no teeth or an orthoped to the person with a broken spine. The function performed is the same — that is, restore the lost ability to do something. It is not possible for an amputee to buy a ready made limb and use it. He must be instructed for many hours. This the petitioner does (Page 18 - Transcript).

An artificial limb can be compared in many ways with false teeth. The maker of false teeth is not a retailer. He restores the ability to chew and the intrinsic value of the dentures he provides is negligible. The petitioner, a prosthetist, restores the ability to walk and the device he furnishes is equally valueless. There is no way to determine the value of the materials used in the artificial limb other than to make a guess. The petitioner estimated that the cost of materials in the most complicated prosthetic device he would furnish would be \$20.00. All the rest of the charges would represent a fee for the services rendered in a professional capacity by petitioner.

This Court has held:

* * * In determining whether or not goods used in connection with repairs were resales to ultimate consumer depended upon whether the goods used were mere incidentals as compared to the service performed."

Young Electric Sign Co. vs. Utah State Tax Commission, 4 Utah 2d 242, 291 Pac. 2d 900.

The same reasoning should be used in determining whether the furnishing of an artificial limb and the additional services rendered is a retail sale.

POINT II

THE RULING OF THE TAX COMMISSION WAS CONTRARY TO LAW AND HENCE THE COMMISSION ERRED IN ASSESSING ANY DEFICIENCY.

Section 59-15-4 U. C. A. defines the particular services which are subject to Sales Tax. In no part of that Section are the services rendered by petitioner described in any fashion. It has long been established law in this jurisdiction that taxation statutes are strictly construed against State and in favor of taxpayer (Salt Lake City vs. Christensen Co., 34 Utah 38, 95 P. 523, 17 L.R.A. (N.S.) 898).

The decision of the Commission was clearly contrary to law.

CONCLUSION

Under the law, and the facts set forth in the transcript filed herein, the decision of the Tax Commission should be reversed.

Respectfully submitted,

ALAN H. BISHOP,

Counsel for Petitioner.