

1960

# Members of the Utah State Motel Association through Ralph D. Howe, their president v. The State of Utah Tax Commission : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Walter L. Budge; Ben E. Rawlings; Attorneys for Respondent;

---

## Recommended Citation

Brief of Respondent, *Utah State Motel Ass'n v. Tax Comm. Of Utah*, No. 9201 (Utah Supreme Court, 1960).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/3589](https://digitalcommons.law.byu.edu/uofu_sc1/3589)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

# IN THE SUPREME COURT OF THE STATE OF UTAH

---

MEMBERS OF THE UTAH STATE  
MOTEL ASSOCIATION, through  
RALPH D. HOWE, their President,  
*Plaintiffs,*

— vs. —

THE STATE OF UTAH, through its  
TAX COMMISSION, consisting of  
ORVILLE GUNTHER, Chairman;  
ALLAN M. LIPMAN, ARIAS G.  
BELNAP, and HERBERT F.  
SMART,

*Defendants.*

FILED

Supreme Court, Utah

Case  
No. 9201

---

## RESPONDENT'S BRIEF

---

WALTER L. BUDGE,  
Attorney General,

BEN E. RAWLINGS,  
Special Assistant Attorney  
General

*Attorneys for Respondent*

## TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE.....	1
STATEMENT OF POINTS.....	3
ARGUMENT .....	3
POINT I.	
APPELLANTS HAVE NOT CORRECTLY INTER- PRETED THE MEANING OF SECTION 59-15-4 (f), UTAH CODE ANNOTATED .....	3
POINT II.	
THE CLASSIFICATION PROVIDED FOR IN SUBSEC- TION (f) OF SECTION 59-15-4 IS NOT DISCRIMINA- TORY OR UNREASONABLE .....	7
POINT III.	
THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT BEFORE HEARING EVIDENCE RE- GARDING THE REASONABLENESS OF THE CLAS- SIFICATION .....	12
CONCLUSION .....	13

### Cases Cited

Gaulden v. Kirk (Fla.), 47 So.2d 567.....	8
Norville v. State Tax Commission, 98 Utah 170, 97 P.2d 937.....	6
Parkinson v. Watson, 4 Utah 2d 191, 291 P.2d 400.....	6
Roth Drugs v. Johnson (Calif.), 57 P.2d 1002.....	7
State Water Pollution Board v. Salt Lake City, 6 Utah 2d 247, 311 P.2d 370.....	6
White v. Moore (Ariz.), 46 P.2d 1077.....	10

### Statutes Cited

Section 59-15-4 (f) Utah Code Annotated 1953, as amended....	1, 3, 4, 12
--	-------------

### Regulations Cited

Utah Sales Tax Regulation No. 79.....	5
---------------------------------------	---

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

MEMBERS OF THE UTAH STATE  
MOTEL ASSOCIATION, through  
RALPH D. HOWE, their President,  
*Plaintiffs,*

— vs. —

THE STATE OF UTAH, through its  
TAX COMMISSION, consisting of  
ORVILLE GUNTHER, Chairman;  
ALLAN M. LIPMAN, ARIAS G.  
BELNAP, and HERBERT F.  
SMART,  
*Defendants.*

Case  
No. 9201

---

RESPONDENT'S BRIEF

---

STATEMENT OF FACTS

Respondent substantially agrees with the statement of facts, as stated by the appellants and recognize that this action was initiated by the plaintiffs for the purpose of contesting the constitutionality of subsection (f) of Section 59-15-4, Utah Code Annotated, 1953, as amended. This Section of the Sales Tax Act was passed by the

1959 session of the State Legislature and provides as follows:

“From and after the effective date of this Act there is levied and there shall be collected and paid: . . .

(f) A tax equivalent to 2% of the amount paid or charged for tourist home, hotel, motel, or trailer court accommodations and services, provided that this subsection shall not apply to the amount paid or charged for tourist home, motel, hotel or trailer court where residency is maintained continuously under the terms of a lease or similar agreement for a period of not less than thirty days.”

The action was initiated in the District Court of Salt Lake County, where it was contended that the above subsection was in violation of the 14th amendment of the Constitution of the United States and Article I, Section 24 of the Constitution of Utah, in that it was discriminatory and denied plaintiffs equal protection under the laws.

In response to plaintiffs' complaint, the State Tax Commission made a motion to dismiss, setting forth nine separate grounds (R-4), one of which was, that the plaintiffs' complaint failed to state a claim upon which relief could be granted. The trial court requested briefs on this one point only, and later, in a memorandum decision (R-21), properly dismissed the action on this point. Although respondent feels that there was merit in the other eight grounds alleged for dismissal of said case, in the interest of bringing said matter to a conclusion and having the case decided on its merits, it is the Tax Com-

mission's desire to have said case decided upon the grounds for dismissal applied by the District Court in making its decision.

## STATEMENT OF POINTS

### POINT I.

APPELLANTS HAVE NOT CORRECTLY INTERPRETED THE MEANING OF SECTION 59-15-4 (f), UTAH CODE ANNOTATED.

### POINT II.

THE CLASSIFICATION PROVIDED FOR IN SUBSECTION (f) OF SECTION 59-15-4 IS NOT DISCRIMINATORY OR UNREASONABLE.

### POINT III.

THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT BEFORE HEARING EVIDENCE REGARDING THE REASONABLENESS OF THE CLASSIFICATION.

## ARGUMENT

### POINT I.

APPELLANTS HAVE NOT CORRECTLY INTERPRETED THE MEANING OF SECTION 59-15-4 (f), UTAH CODE ANNOTATED.

Appellants have contended in Point II of their brief that Section 59-15-4 (f) is unconstitutional because it does not include certain businesses of a similar nature to hotels, motels, tourist homes and trailer courts. Among

those businesses which appellants claim to be excluded are apartment houses, guest houses, dude ranches, resorts and rooming houses.

It would follow from appellant's highly restrictive interpretation that the requirement of collecting said sales tax is to be determined by the name a business gives itself. Thus, if a business which for a long time has operated as a motel were to call itself an apartment house or guest house, but continued to provide the same services as before, then, such business would not be required to collect the tax.

We do not believe their interpretation to be correct or substantiated in the law. It is completely unreasonable, contrary to the regulations of the Tax Commission, contrary to the plain meaning of the statute and contrary to the intention of the Legislature.

Let us examine the statute:

(f) A tax equivalent to 2% of the amount paid or charged for tourist home, hotel, motel, or trailer court *accommodations and services* . . . (emphasis added)

It is apparent from the italicized words that the Legislature intended to place the tax on a certain class of *accommodations and services*. The reference in connection therewith to hotels, motels and tourist homes was not meant to restrict the tax to them as such, but was a designation of a type of services and accommodations to be subjected to the tax. The fact that these services



may be afforded by someone not specifically designating itself as a hotel, motel, or a tourist home, would not alter any responsibility to collect the tax. If in fact an apartment or dude ranch were to offer hotel or motel accommodations, then such transactions would be subject to the tax.

Prior to the effective date of subsection (f), the Tax Commission adopted Sales Tax Regulation No. 79, which reads as follows:

“TOURIST HOME, HOTEL, MOTEL OR TRAILER COURT ACCOMMODATIONS AND SERVICES DEFINED. The terms, tourist home, hotel and motel means any place that is known to the public as having rooms, apartments or units to rent, either by the day, week, or month. The term trailer court means any place that is known to the public as having house trailers or space to park a house trailer for rent, either by the day, week or month. The terms accommodations and services mean any charge made for the room, apartment, unit, house trailer or space to park a house trailer, including any charges made for local telephone, electricity, propane gas, or similar services.

“The tax is imposed on all of the above charges with the exception that the tax shall not apply where residency is maintained continuously under the terms of a lease or similar agreement for thirty days or more. For the purpose of this regulation, where continuous residence is maintained for thirty days or more, and the charge is a monthly rate, it will be assumed to constitute a lease or similar agreement (Effective July 1, 1959).”

It is noted that the above regulation was formulated in accordance with the logical interpretation of the act.



Inasmuch as the Legislature did not see fit to define the words, hotel, motel, and tourist home, the Tax Commission adopted a regulation based upon the guidance given by the Legislature in said act.

In connection with this point, we wish to refer the Court's attention to some of the numerous cases which support the proposition that acts of the Legislature are presumed to be constitutional unless clearly shown to be otherwise. To cite them all would needlessly burden the brief with quotations familiar to the Court. The Utah cases of *Parkinson v. Watson*, 4 Utah 2d 191, P. 2d 400; *State Water Pollution Board v. Salt Lake City*, 6 Utah 2d 247, 311 P. 2d 370; and *Norville v. State Tax Commission*, 98 Utah 170, 97 P. 2d 937, hold that where two meanings can be given an act, one constitutional and the other unconstitutional, the Court will interpret the law to make it constitutional.

Appellants have referred to situations where construction workers or others may reside temporarily in private homes and escape paying the tax. It may possibly be true, as in the administration of any tax law, that there may be isolated instances not known to the Tax Commission where the tax is not charged. It is also possible that appellants could scout around and find a few such instances; but to claim that such would make the act unconstitutional, is like claiming the entire sales tax law is unconstitutional because a huckster parks his truck along the road to sell oranges and then makes it out of the state without reporting and paying the tax.

## POINT II.

THE CLASSIFICATION PROVIDED FOR IN SUBSECTION (f) OF SECTION 59-15-4 IS NOT DISCRIMINATORY OR UNREASONABLE.

Respondent agrees with the holdings in all of the cases cited in Point I. of appellant's brief and has no dispute with the recognized body of law forbidding the enactment of discriminatory, capricious, or arbitrary statutes.

With respect, however, to the reasonableness of taxing statutes, the following statement from the case of *Roth Drugs v. Johnson* (Cal.) 57 P. 2d 1002, clearly summarizes the existing law:

“The Supreme Court of the United States has definitely held that the Fourteenth Amendment of the Federal Constitution, which guarantees to all citizens equal protection to personal privileges and property rights, does not forbid reasonable discriminaions in matters involving taxation. Classifications for the purpose of taxation are recognized as necessary and valid. In making such classifications a sound discretion is accorded the Legislature; every reasonable presumption in support of the classification will be indulged in and if it can be reconciled on any reasonable and natural theory it will be upheld.”

As to the particular statute under consideration it is to be noted that Utah is not the only state to have laws imposing a sales tax upon the type of accommodations and services in question. At least eight of our sister states have similar statutes.

These states are: Washington, Section 82-04-020, Revised Code of Washington; Missouri, Section 144-020, Revised Statutes of Missouri; North Carolina, Section 104-164-4, General Statutes of North Carolina; Arizona, Section 42-1314, Arizona Revised Statutes, Annotated, as amended; Florida, Section 212-03, Florida Statutes, 1957; Tennessee, Section 67-3002, Tennessee Code Annotated, as amended; Kansas, Section 79:3603(g), Kansas General Statutes, Supp of 1957; and Louisiana, Section 47:301 (14) (a), Louisiana Revised Statutes.

An examination of the above laws seems to indicate that they are intended primarily to tax accommodations to tourists and transients. Although the tax base is broader in some states than in others, and the time or period used as a breaking point for distinguishing a resident from a tourist does in some cases differ, the widespread adoption by states of such acts, points up the general recognition of such laws as a legal source of state revenue.

In two of the above-named states, Florida and Arizona, the constitutionality of the statutes have been questioned, and in both instances upheld. Appellants have cited these cases in their brief but respondent submits that a reading of the same will clearly indicate that they support the contentions of the State Tax Commission.

In the case of *Gaulden v. Kirk* (Florida) 47 So. 2d, 567, the Court, in answering the alleged claim of unconstitutionality because of discrimination, stated at page 567 of the Southern Reporter, as follows:

“Certainly it was appropriate for the Legislature to place the business of the landlord who rents to transients in a different class from that of the landlord who rents to permanent guests or tenants. These landlords may be in the same general class — assuredly both of them are engaged in renting living accommodations — but the distinction made between their respective businesses for the purpose of taxation under the provision of this Act is permissible classification and is not unreasonable, arbitrary, or unjustly discriminatory. The landlord who rents to transients rather than permanent tenants charges higher per diem prices, must (because of the very nature of his trade or enterprise) give strict daily attention and supervision to his business and guests and operates in a special, distinct class — possibly a more lucrative field. It was necessary to establish some period of time which would mark the difference between a transient and a permanent guest. In its wisdom the legislature saw fit to establish six months’ residence as the criterion. Such period of time constitutes a reasonable basis for the cleavage of the two classes of tenants and this distinction is ample justification for the difference in classification of the businesses engaged in by the landlords. Such division or classification is recognized generally throughout the business world; indeed, in the hotel and apartment trade the difference between the business of furnishing living accommodations to transients and the business of supplying living accommodations to permanent guests or tenants is well known and accepted. Many hotels cater largely, if not exclusively, to so-called commercial or transient guests. Moreover, we take judicial notice of the fact that the tourist business in this State is one of our greatest economic assets. Our winter, and for that matter our summer, visitors usually enjoy the famed



year-around climate with which we fortunately have been endowed, for less than six months in each year. If they remain longer, they should be extended the privilege of being classified as permanent guests or tenants and the landlord's business thereby removed from the classification of furnishing living accommodations to transients. The six months basis of differentiation is reasonable and does not amount to unjust or arbitrary discrimination."

From the above case we learn that the Florida act has a broader base in that it includes some rentals paid for apartment house accommodations and that it extends to six months the time in which the tax applies. This would not be unreasonable in view of the fact that Florida, with its mild winter climate, caters to a tourist trade in which the tourist remains for several months rather than a short period of time as is the case in the State of Utah. The thirty-day period in Utah, in view of the nature of our tourist trade, is just as logical and reasonable as a six-month period for the State of Florida.

It should also be noted that in Utah a motel owner is not required to collect tax from guests who rent on a monthly basis. It is generally recognized that motels in the State of Utah will often rent their accommodations for longer periods of time during the winter months. When doing so, such guests then fit into a class similar to those who rent apartments on a monthly basis. As to this class, the Legislature did not intend this sales tax.

In the Arizona case of *White v. Moore*, 46 P. 2d 1077, the question arose as to the taxability of office space, under the statute imposing a tax upon hotels, guest

houses, dude ranches, and resorts, rooming houses, apartment houses, automobile rental services, automobile storage garages, parking lots, tourist camps, or any other business or occupation, charging storage fees or rents. It was contended that the Act would be discriminatory unless office space was so included. In rejecting this contention the Court stated as follows:

“A mere reading . . . suggests that in selecting the businesses the Legislature had in mind occupations through which runs a common thread or purpose . . . Those supplying accommodations, either wholly or in part, for tourists or transients, such, for instance, as guest houses, dude ranches and resorts, hotels or tourist camps. One reading . . . finds it difficult, if not impossible to escape the conclusion that only businesses possessing these respective characteristics were intended to be included in these groups.

“It must be kept in mind that a privilege tax is not a tax on property, but a tax on the right to engage in business and that the Legislature may impose it on any any class or classes of business it cares to and decline to apply it to others, its only limitation in this respect being that the classification it makes must be reasonable, not arbitrary or discriminatory, and such that all those falling within the same class will be treated alike. We are unable to see a violation of this requirement in a statute imposing a tax on the gross income of those engaged in the business of furnishing living accommodations to tourists or transients and not imposing it on the income of those who rent offices and storerooms. The former are activities or businesses of a particular type, and it is plain that their common characteristic, the one that guided the Legislature in naming them, is not possessed by the latter.”

Respondents have been unable to find any cases holding a statute similar to the one under consideration unconstitutional, and no such authorities have been cited in appellant's brief. The weight of authority clearly supports the position of the Tax Commission.

### POINT III.

THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT BEFORE HEARING EVIDENCE REGARDING THE REASONABLENESS OF THE CLASSIFICATION.

If the trial Court interpreted Section 59-14-4 (f) in the manner contended by the respondent to impose a tax upon a type of service or accommodation, rather than upon any specific business, then there would be no exemption for competitors in the same type of business and thus no need for the introduction of any evidence.

Appellants have never at any time indicated how, or what type of evidence could possibly help their position.

Further the appellants never objected to the trial Court's hearing and ruling upon respondent's motion without evidence, until this appeal was taken. Both parties argued the constitutional issue on its merits in the District Court and both parties submitted briefs on this issue. Appellant cannot now bring up a point which was never raised in the lower Court.



## CONCLUSION

It is respectfully submitted by the Tax Commission that the decision of the District Court in granting the Defendants' motion to dismiss should be affirmed.

Respectfully submitted,

WALTER L. BUDGE,  
Attorney General,

BEN E. RAWLINGS,  
Special Assistant Attorney  
General

*Attorneys for Respondent*