

1960

# University Heights, Inc. v. State Tax Commission of The State of Utah : Brief of Petitioner and Appellant

Utah Supreme Court

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Ronald C. Barker; Attorney for Petitioner and Appellant;

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In the Supreme Court  
of the State of Utah

FILED

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Clerk, Supreme Court, Utah

UNIVERSITY HEIGHTS, INC.,  
a Utah Corporation,

*Petitioner and Appellant,*

—vs.—

STATE TAX COMMISSION OF  
THE STATE OF UTAH,

*Respondent.*

Case No.  
9313

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BRIEF OF PETITIONER AND APPELLANT

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# In the Supreme Court of the State of Utah

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UNIVERSITY HEIGHTS, INC.,  
a Utah Corporation,

*Petitioner and Appellant,*

—vs.—

STATE TAX COMMISSION OF  
THE STATE OF UTAH,

*Respondent.*

Case No.  
9313

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## BRIEF OF PETITIONER AND APPELLANT

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### STATEMENT OF FACTS

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Petitioner, University Heights, Inc., was at all times pertinent hereto, a corporation owning and operating an apartment house in Salt Lake City, Utah.

Because of the net operating loss sustained by petitioner in 1956 and the small profits earned in 1957 and 1958 as indicated below, the corporation franchised tax liability to the State of Utah was computed as 1/20th

of one per cent of the “*Fair Value*” of the tangible property owned by petitioner in accordance with the provisions of Title 59, Chapter 13, Section 3, Utah Code Annotated, 1953.

Petitioner determined the “*Fair Value*” of its assets for the years in question by multiplying the assessed value of said property, for property tax purposes, by two and one half since if the assessed value of said property were 40% of its value, the full value could thus be determined. In so doing petitioner relied upon Title 59, Chapter 5, Section 1, Utah Code Annotated, 1953 which states “that all taxable property must be assessed at forty per cent of its reasonable fair cash value.”

During December, 1959, the State Tax Commission audited the corporation franchise tax returns of petitioner for the years 1956, 1957 and 1958, and the Tax Commission assessed additional tax, shown below, against the petitioner as the result of its refusal to recognize the method used by petitioner in fixing the value of its property.

The Tax Commission determined the value of petitioner’s property by reference to the historical cost of said property less allowances for depreciation recorded on petitioner’s records, as reflected in the balance sheets shown on the tax returns filed by petitioner.

The following schedule details the gain or (loss) of petitioner for each of the years in question, the tax that was reported and paid by petitioner, and the tax assessed by the State Tax Commission for each year:

Year	Gain or (Loss)	Tax Paid	Tax Assessed
1956 .....	(\$3,178.23)	\$246.50	\$ 462.40
1957 .....	2,226.82	237.26	436.97
1958 .....	3,017.73	224.03	428.12
Totals .....	\$2,066.32	\$707.79	\$1,327.49

The sole question to be answered by this appeal is what is the correct basis for determining the value of the tangible property owned by petitioner during the years in question.

## STATEMENT OF POINTS

### POINT I

THE HISTORICAL COST OF PETITIONER'S TAXABLE PROPERTY LESS ARBITRARY DEPRECIATION RECORDED ON PETITIONER'S BOOKS DOES NOT REPRESENT THE "FAIR VALUE" OF SAID ASSETS WITHIN THE MEANING OF TITLE 59, CHAPTER 13, SECTION 3, UTAH CODE ANNOTATED, 1953.

### POINT II

THE PROVISIONS OF TITLE 59, CHAPTER 5, SECTION I, UTAH CODE ANNOTATED, 1953, WHICH ATTEMPT TO QUALIFY THE CASH VALUE AT WHICH PROPERTY IS TO BE ASSESSED BY THE ADDITION OF THE WORDS "REASONABLE" AND "FAIR" ARE A VIOLATION OF ARTICLE XIII, SECTION 3 OF THE CONSTITUTION OF UTAH.

## POINT III

THE PROVISIONS OF TITLE 59, CHAPTER 5, SECTION 46, SUBSECTION (9) WHICH ATTEMPT TO REQUIRE THE STATE TAX COMMISSION TO ASSESS ALL PROPERTY "AT TRUE VALUE" IS A VIOLATION OF ARTICLE XIII, SECTION 3 OF THE CONSTITUTION OF UTAH.

## POINT IV

THE TERM "FAIR VALUE" USED IN THE UTAH CORPORATION FRANCHISE TAX ACT HAS THE SAME MEANING FOR TAXATION PURPOSES AS THE TERMS "VALUE IN MONEY" USED IN THE CONSTITUTION; THE TERM "TRUE VALUE" AND THE TERM "REASONABLE FAIR CASH VALUE" USED IN THE CODE IN DEFINING THE MEASURE OF VALUE TO BE USED IN DETERMINING THE ASSESSED VALUE OF PROPERTY FOR PROPERTY TAX PURPOSES.

## POINT V

STATE TAX COMMISSION IS REQUIRED BY LAW TO ASSESS ALL PROPERTY AT 40% OF ITS VALUE. TAX COMMISSION MUST FIRST DETERMINE FULL VALUE BEFORE THEY CAN ARRIVE AT 40% OF THE VALUE OF PROPERTY, AND ACCORDINGLY THE FULL VALUE IS  $2\frac{1}{2}$  TIMES THE ASSESSED VALUE.

## POINT VI

STATE TAX COMMISSION IS BOUND BY ITS DETERMINATION OF THE VALUE OF PROPERTY FOR PROPERTY TAX PURPOSES AND IT CANNOT CLAIM THAT SAME PROPERTY HAS A VALUE 185% HIGHER FOR FRANCHISE TAX PURPOSES THAN FOR PROPERTY TAX PURPOSES.

## POINT VII

THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION 184 BEFORE THE STATE TAX COMMISSION OF UTAH ARE CONTRARY TO THE LAW AND THE FACTS.

## ARGUMENT

## POINT I

THE HISTORICAL COST OF PETITIONER'S TAXABLE PROPERTY LESS ARBITRARY DEPRECIATION RECORDED ON PETITIONER'S BOOKS DOES NOT REPRESENT THE "FAIR VALUE" OF SAID ASSETS WITHIN THE MEANING OF TITLE 59, CHAPTER 13, SECTION 3, UTAH CODE ANNOTATED, 1953.

In paragraph 4 of the findings of fact in decision 184 of the State Tax Commission of Utah, the Tax Commission states that it determined the value of petitioner's property for the years in issue "by reference to depreciated book values as shown by the balance sheets on returns filed by the taxpayer." (The petitioner herein.)

Chapter 59, Title 13, Section 3, of Utah Code Annotated, 1953, provides in part as follows:

"Every bank or corporation . . . shall annually pay to the state a tax . . ., or one-twentieth of one per cent of the *fair value* during the next preceding taxable year of the tangible property in this state . . ." (Italics added.)

The only indication in the foregoing statute of the measure of value of the petitioner's property is that the

value shall be the "fair value." Nothing is stated in said statute about book value or depreciated value being the measure of value for purposes of this statute.

The United States Supreme Court repudiated the book value test as the measure of value in stating that present or future "value," however ascertained, was single in substance, being the money equivalent of the property as a whole which could not be arrived at by mere summation of actual or estimated cost of constituent elements, new or depreciated. (*M. E. Blatt Co. v. U. S.*, Ct. Cl., 59 S. Ct. 186, 190.)

The Utah Supreme Court has stated that "The word 'value' standing by itself can have only one meaning, viz. the full worth or actual value — not a fractional share thereof." (*Board of Education of Rich County School District v. Passey*, 122 Ut. 102, 246 P. 2d 1078.)

Reproduction cost less depreciation is more dependable method of fixing fair value than historical cost less depreciation. (*City of Richmond v. Henrico County*, 37 S.E. 2d 873, 883, 185 Va. 176.)

Determination of the value of property by reference to book value alone is unrealistic in that it fails to take into consideration such factors as the method and rate of depreciation used, the policy as to adding certain items to the assets or charging them to expense when purchased, the market conditions, the state of repair of the property, use to which property is employed, profit potential, obsolescence, demand for the property and other

such factors. Book value is only one of many factors to be considered in determining "fair value."

Modification of the term "value" by addition of the word "fair" does little to provide a guide as to value except to indicate that the value used shall not be unfair.

The term "fair value" used in the statute mentioned above is usually held to mean the same as "reasonable value," "actual value," "market value," and like terms, and is generally the figure fixed by sales in ordinary business transactions. See 16 Words and Phrases, permanent edition page 167 for cases which define the term "fair value."

There is no substantial difference in meaning between "fair value" and "full cash value." (*Sears Roebuck & Co. v. State Tax Comm.*, 136 A.2d 567, 570, 214 Md. 550.)

See further discussion under Point IV concerning the meaning of "fair value" and relationship between value of property as defined in property tax and corporation franchise tax laws.

## POINT II

THE PROVISIONS OF TITLE 59, CHAPTER 5, SECTION I, UTAH CODE ANNOTATED, 1953, WHICH ATTEMPT TO QUALIFY THE CASH VALUE AT WHICH PROPERTY IS TO BE ASSESSED BY THE ADDITION OF THE WORDS "REASONABLE" AND "FAIR" ARE A VIOLATION OF ARTICLE XIII, SECTION 3 OF THE CONSTITUTION OF UTAH.

Article XIII, Section 3 of the Constitution of Utah provides in part as follows :

“The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the State, according to its *value in money . . .*” (Italics added.)

From territorial days until 1957 the statutes required that all taxable property be assessed at its “full cash value.” (See 80-5-1, UCA, 1943.) In <sup>1962</sup>~~1957~~ this statute was amended to read that “All taxable property must be assessed at forty percent of its *reasonable fair cash value*. . . .” (Italics added.)

The Constitution of Utah clearly states that property shall be assessed and taxed according to its cash value. The addition of the words “reasonable” and “fair” to modify the value in money or cash value standard set by the Utah Constitution is unconstitutional and renders said statute void.

### POINT III

THE PROVISIONS OF TITLE 59, CHAPTER 5, SECTION 46, SUBSECTION (9) WHICH ATTEMPT TO REQUIRE THE STATE TAX COMMISSION TO ASSESS ALL PROPERTY “AT TRUE VALUE” IS A VIOLATION OF ARTICLE XIII, SECTION 3 OF THE CONSTITUTION OF UTAH.

The provisions of Title 59, Chapter 5, Section 46, Subsection (9) pertaining to the general powers and duties of the State Tax Commission provides in part that property will be assessed :

“. . . to the end that all assessments of property be made relatively just and equal, *at true value*, and . . .” (*italics added*)

Clearly the use of the term “at true value” as used in this statute is contrary to the plain wording of the constitution, quoted in point II above, and accordingly said statute is void since the constitution requires that all property be assessed according to “its value in money.”

#### POINT IV

THE TERM “FAIR VALUE” USED IN THE UTAH CORPORATION FRANCHISE TAX ACT HAS THE SAME MEANING FOR TAXATION PURPOSES AS THE TERMS “VALUE IN MONEY” USED IN THE CONSTITUTION; THE TERM “TRUE VALUE” AND THE TERM “REASONABLE FAIR CASH VALUE” USED IN THE CODE IN DEFINING THE MEASURE OF VALUE TO BE USED IN DETERMINING THE ASSESSED VALUE OF PROPERTY FOR PROPERTY TAX PURPOSES.

Title 59, Chapter 13, Section 3, Utah Code Annotated, 1953, imposes a franchise tax upon petitioner based upon the “fair value” of its assets. Petitioner arrived at the “fair value” of its assets by reference to the assessed value of its property. The sole question to be determined by this appeal is whether petitioner erred in so doing. The Utah Constitution, Article XIII, Section 3 provides that property shall be assessed “according to its value in money.” Chapter 59, Title 5, Section 1, Utah Code Annotated, 1953, provides that property must be assessed at 40% of “its reasonable fair cash value,” and

Title 59, Chapter 5, Section 46(9), provides that property shall be assessed at “true value.”

Petitioner contends that the only correct method of valuation of property for proper tax purposes is its “value in money” as defined in the constitution, and that the other statutes which attempt to vary the method of valuation of property are unconstitutional and void.

If we concede, for purposes of argument, that the aforesaid terms used to define how property shall be valued for property tax purposes are accurate, then the question remains whether the term “fair value” used in the franchise tax act has substantially the same meaning as “value in money,” “reasonable fair cash value” and “true value,” used in the property tax act.

The definitions all use the word “value” qualified by various adjectives. In the case of *Board of Education of Rich County School District v. Passey*, supra, the court held that “The word ‘value’ standing by itself can have only one meaning viz. the full worth or actual value—not a fractional share thereof.” The court also cited with approval *Hansen v. City of Hoquiam*, 95 Wash. 132, 163 P. 391. The Utah Court used the terms “actual values,” “reasonable fair cash value,” “fair cash value,” and “full value” in said case interchangeably, in the following sentence, thus indicating that the meaning of each term is similar: “Where an assessor is directed by law to assess property at a percentage or fraction of its *fair cash value*, as is the case in this state, he must nevertheless first determine the *actual value* of the property

and then take a percentage or fractional share thereof as the “assessed valuation” for tax purposes. It would seem impossible for an assessor to determine what is a certain percentage or fractional share of the *actual value* of a piece of property without first determining what is the *full or actual value*. (Italics added.)

The term “fair value” used in the franchise tax act (supra) has been defined by many courts in just about the same manner as the various terms used in the afore-said constitutional and statutory provisions in the Utah Law. See 16 Words and Phrases, Perm. Ed., 167, for definitions of the phrase “fair value.”

In *Sears Roebuck & Co. v. State Tax Comm.*, supra, the court stated that there is no substantial difference in meaning between “fair value” and “full cash value.”

In *re Ouellette*, D.C. Me., 98 F. Supp. 941, 943 the court stated that “fair value” means such a price as a capable and intelligent business man could presently obtain for property from a ready and willing buyer accustomed to buying such property.

In *re Aranoff & Son*, D.C. Ga., 1 F. Supp. 708, 710 the court stated that “fair value” is value upon which willing purchaser and seller would likely agree.

In *Taylor v. Lubetich*, 97 P.2d 142, 144 Wash. 2d 6 court stated that “fair value” has meaning of “reasonable value.”

In *Kerr v. Clinchfield Coal Corp.*, 192 S.E. 741, 169

Va. 149 the court stated that "actual value," "market value," "fair value" and the like may be used as convertible terms and may mean practically the same under same circumstances.

In *National Folding Box Co. v. City of New Haven, Conn.*, 153 A.2d 420, 424 and *Town of Middlefield*, 120 A.2d 77, 80, 143 Conn. 100 the court stated that for tax purposes, the expressions "actual valuation," "actual value," "market value," "market price," and "fair value" are synonymous and usually mean the figure fixed by sales in the ordinary business transactions.

In the case of *Burke v. Fidelity Trust Co.*, 96 A.2d 254, 259, 202 Md. 178 the court stated that the terms "value," "fair value," and "fair cash value" are practically synonymous.

The wording of the Utah constitution, Article XIII, Section 3 is clear and unambiguous in stating that property shall be assessed and taxed according to its "value in money." 6 Words and Phrases Perm. Ed. 271 cites many cases wherein the term "cash value," which is the equivalent of the term "value in money" used in the constitution, is defined.

In *State v. Central Pac. Ry. Co.*, 10 Nev. 47, 48, 68, the court stated that the "cash value" of an article is measured by the amount of cash into which it can be converted.

In *Fort Worth & D. Ny. Ty. Co. v. Sugg*, Tex. Civ. App., 68 S.W. 2d. 570, 572 the court stated that the terms "market value," "fair market value," "cash market

value,” and “fair cash market value” are synonymous expressions.

In *Helin v. Grosse Point Tp.*, 45 N.W. 2d 338, 341, 432, 329 Mich. 396 the court stated that the words “cash value” as respects valuation of property for taxation purposes is the usual selling price that could be obtained at the time of the assessment but not the price that could be obtained at a forced or auction sale.

In *State v. Woodward*, 93 So. 826, 208 Ala. 31 the court construed a statute similar to the Utah Statute in issue, which in that case provided that taxable property be assessed at 60% of its “fair and reasonable value,” and the court held that this meant the best price obtainable at a voluntary sale, to be paid at once in money, and excluding any additional amount that might be had were credit or terms allowed; “value” meaning the fair and reasonable value determinable by what the property would bring at a voluntary sale; “cash” being the antonym of credit, meaning not merely money, but money in hand, readily available, paid down, especially coin or government or bank notes; “cash sale” being a sale for ready money, goods, or stocks, for immediate delivery and payment, as distinguished from a credit sale or for future delivery; “cash value” importing value in money presently paid.

In *Montesano Lumber & Mfg. Co. v. Portland Iron Works*, 186 P. 428, 432, 94 Or. 677 the court stated that “reasonable value,” or “fair cash value,” and “actual cash value” are practically synonymous terms, and mean

the fair or reasonable cash price for which the property can be sold on the market.

See also 44 Words & Phrases, Perm. Ed. 47 and 63, for definitions of "value," and 36 Words & Phrases, Perm. Ed., 407 for definitions of "reasonable value."

It appears conclusive, from the cases cited above and other cases too numerous to mention, that the term "fair value" used in the corporation franchise act (*supra*) has essentially the same meaning as the terms used in the property tax act (*supra*), and accordingly that if the tax assessor has assessed property in the manner that the law makes mandatory, the assessed value of property for property tax purposes was properly used by petitioner to determine the "fair value" of its property for franchise tax purposes.

#### POINT V

STATE TAX COMMISSION IS REQUIRED BY LAW TO ASSESS ALL PROPERTY AT 40% OF ITS VALUE. TAX COMMISSION MUST FIRST DETERMINE FULL VALUE BEFORE THEY CAN ARRIVE AT 40% OF THE VALUE OF PROPERTY, AND ACCORDINGLY THE FULL VALUE IS 2½ TIMES THE ASSESSED VALUE.

Title 59, Chapter 5, Section 1, Utah Code Annotated, 1953, provides in part as follows:

"RATE OF ASSESSMENT OF PROPERTY. — All taxable property must be assessed at forty percent of its reasonable fair cash value.  
..."

*In Board of Education of Rich County School Dis-*

*trict v. Passey*, supra, the Utah Supreme Court stated in part as follows:

“Where an assessor is directed by law to assess property at a percentage or fraction of its fair cash value, as is the case in this state, he must nevertheless first determine the actual value of the property and then take a percentage or fractional share thereof as the ‘assessed valuation’ for tax purposes. It would seem impossible for an assessor to determine what is a certain percentage or fractional share of the actual value of a piece of property without first determining what is the full or actual value. Thus the actual value is determined by the assessor in making his assessment even though the ‘assessed valuation’ upon which taxes are computed is less than the actual or full value, and from the last assessment the full ‘value of the taxable property’ could be ascertained as readily as the assessed valuation.”

The Utah Court also cited with approval the case of *Hansen v. City of Hoquiam*, supra, wherein the court staed in part as follows:

“So, that, when we have a statute which requires the assessing officers to assess property for taxation ‘not to exceed 50 per cent of its true and fair value in money’ and the assessing officer do in fact assess it at 50 per cent of its true value, then by a simple rule of arithmetic its real value is as certainly ascertained by the assessment as if it had actually been assessed at its real value.”

From the foregoing citations, and from the clear wording of the statute in question, the conclusion seems

inescapable that petitioner did not err when it multiplied the assessed valuation of its property, as determined by the tax assessor, by  $2\frac{1}{2}$  to convert the assessed value of 40% to 100% of the full value of the petitioner's property.

## POINT VI

STATE TAX COMMISSION IS BOUND BY ITS DETERMINATION OF THE VALUE OF PROPERTY FOR PROPERTY TAX PURPOSES AND IT CANNOT CLAIM THAT SAME PROPERTY HAS A VALUE 185% HIGHER FOR FRANCHISE TAX PURPOSES THAN FOR PROPERTY TAX PURPOSES.

Title 59, Chapter 5, Section 1, Utah Code Annotated, 1953, states that all “property *must* be assessed at forty percent of its reasonable fair cash value. . . .” (Italics added.)

The foregoing statute makes it mandatory that all property be assessed at 40% of its “reasonable fair cash value.”

Title 59, Chapter 5, Section 46(9), Utah Code Annotated, 1953, concerning the general powers and duties of the State Tax Commission provides in part as follows:

“To have and exercise general supervision over the administration of the tax laws of the state, over assessors and over county boards in the performance of their duties as county boards of equalization and over other county officers in the performance of their duties in connection with assessment of property and collection of taxes, to the end that all assessments of property be made relatively just and equal, at true value, and

that the tax burden may be distributed without favor of discrimination.”

The foregoing statute indicates that the State Tax Commission shall have the last word and direct control over the assessment of property and the collection of taxes in Utah. It must necessarily follow that the determination of the tax assessor of the valuation of petitioners property is the valuation of the State Tax Commission, and that the State Tax Commission should be bound thereby.

Petitioner is unable to discover any reasonable basis upon which the State Tax Commission can determine that the “fair value” of petitioner’s property for franchise tax purposes is 185% of its “value” for the same property for property tax purposes.

## POINT VII

THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION 184 BEFORE THE STATE TAX COMMISSION OF UTAH ARE CONTRARY TO THE LAW AND THE FACTS.

The law in this case has been heretofore argued. The facts have been stipulated by the parties to this action and are not in dispute. The position of the tax commission that the depreciated book values of petitioner’s property represent the “fair value” of said assets seems untenable in view of the cases cited above, and considers only one of many factors which must be considered to determine the value of petitioner’s property. In the case of *State ex rel. Public Service Commission et al. v. South-*

*ern Pac. Co. et al., (State Tax Commission et al., interveners)*, 95 Ut. 84, 79 P. 2d 25 the court stated:

“The tax assessor must, within legal limits, determine present market value and not what capital has been invested in the property.”

The court in the same case also stated that:

“The State Tax Commission by Constitution and Statute was required to assess tangible utility property at its ‘value in money’ for taxation purposes.”

The conclusion seems inescapable that the “fair value” or “full value” of property can be determined by multiplying the assessed valuation by  $2\frac{1}{2}$  to convert the 40% of value used as assessed value to 100% or full value, and that the petitioner did not err in so doing to compute the “fair value” of its assets for purposes of the corporation franchise tax.

## CONCLUSION

It seems clear that the statutes concerning assessment of property for property tax purposes are unconstitutional since they attempt to vary the clear definition of value of property for tax purposes as set forth in the constitution of Utah. It also seems clear that, even if said statutes are not unconstitutional, the wording used in the constitution and statutes, and in the corporation franchise tax act in describing the value at which property is to be assessed has practically the same meaning, and that the same standard of measurement of value should be used for both purposes.

The law makes it mandatory that all property be assessed at 40% of its value, and accordingly the full value can be ascertained by a simple mathematical computation.

The use of historical cost only, in determining value, completely ignores many other equally important factors, and is not fair or realistic.

Decision 184 of the State Tax Commission of Utah should be set aside and the matter remanded with directions to annul, vacate and set aside the same under one or all of the points herein presented and argued.

Respectfully submitted,

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