

1967

Atlas Corporation v. Donald T. Adams, Orville Gunther, A. Pratt Kesler, and Ransom Quinn, Members of the State Tax Commission of Utah, and George W. Barben, Executive Secretary of the State Tax Commission of Utah, and the State Tax Commission of Utah : Defendants' Brief In Opposition To Writ of Prohibition

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# IN THE SUPREME COURT OF THE STATE OF UTAH

ATLAS CORPORATION, a  
corporation,

vs.

DONALD T. ADAMS, CRIMINAL  
GUNTHER, A. PRATTER,  
and RANSOM QUINN,  
MEMBERS OF THE STATE  
COMMISSION OF INVESTIGATION,  
GEORGE W. HARRIS, AS  
ASSISTANT SECRETARY OF THE  
STATE TAX COMMISSION,  
UTAH, and THE STATE  
COMMISSION OF INVESTIGATION

BRIEF FOR THE PLAINTIFFS

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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ATLAS CORPORATION, a  
corporation,

*Plaintiff,*

vs.

DONALD T. ADAMS, ORVILLE  
GUNTHER, A. PRATT KESLER,  
and RANSOM QUINN, MEM-  
BERS OF THE STATE TAX  
COMMISSION OF UTAH, and  
GEORGE W. BARBEN, EXECU-  
TIVE SECRETARY OF THE  
STATE TAX COMMISSION OF  
UTAH, and THE STATE TAX  
COMMISSION OF UTAH,

*Defendants.*

No. 10522

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## DEFENDANTS' BRIEF IN OPPOSITION TO WRIT OF PROHIBITION

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### STATEMENT OF THE CASE

This case involves the question of whether or not net proceeds ad valorem mining taxes can be collected from a company for the last year of operation by that company prior to the depletion or abandonment of a mining claim. The plaintiff contends that the decision of this Court in *San Juan County v. Jen, Inc.*, 16 Utah

2d 394, 401 Pacific 2d 952, prevents the Tax Commission from asserting any liability for the tax against anything other than the depleted mine itself. The State Tax Commission on the other hand claims that the provisions of Sections 59-5-79 and 59-10-22 authorize it to docket warrants for delinquent ad valorem mining taxes, which warrants can be satisfied from other property of the plaintiff.

## STATEMENT OF FACTS

The State Tax Commission of Utah is a governmental agency of the State of Utah, with general supervisory powers over the tax laws of this State, including the power to direct proceedings, actions and prosecutions to enforce the laws relating to the penalties, liabilities and punishments of public officers, persons and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property. See Sec. 59-5-46 (14) U.C.A., 1953.

The plaintiff is a Delaware Corporation, qualified to do business in this State and is engaged in mining uranium and vanadium. Plaintiff owns or operates mining claims in San Juan County and has not paid appropriate ad valorem property taxes arising out of the operations of two of its mines.

Section 59-5-57, U.C.A., 1953, imposes a value for assessment purposes against metalliferous mines and mining claims equal to two times the average net annual proceeds of such mines or claims for the three calendar

years next preceding or the years of actual operation if less than three.

Pursuant to Section 59-5-60, U.C.A., 1953, such proceeds are reported on a statement to the Tax Commission on or before the 10th day of February of the calendar year following the realization of proceeds from the mine or claim.

From the information submitted, the Tax Commission determines the assessment valuation of the mine or claim, which is forwarded to the county wherein the mine or claim is located and is subjected to the mill levy of that county.

An ad valorem property tax assessment thereafter ensues for the year in which the statement is submitted, which tax is delinquent on or before the 30th day of November of that year as is more fully set forth in Section 59-10-26, U.C.A., 1953.

Under the statutory provisions and procedures heretofore set forth, the plaintiff owes the sum of \$516,335.00 in delinquent ad valorem property taxes for the year 1965, together with interest, which amount has been assessed against the plaintiff and is based upon its failure to pay the taxes arising out of the operations of its My Vida and South Almar mines.

On December 1, 1965, and pursuant to the provisions of Section 59-5-79, 59-5-80, and 59-10-22, U.C.A., 1953, and after notice and declaration of taxes in jeopardy, the State Tax Commission caused a warrant in the sum of \$516,335.00 to be docketed in the judgment docket

of the County Clerk of Salt Lake County, which warrant constitutes a lien on the real property of the plaintiff in said county and has the force and effect of an execution against all of the personal property of plaintiff in said county.

No execution has been issued on this warrant and the same remains wholly unsatisfied, and no part thereof has been paid.

The validity of the warrant herein and the constitutionality of the net proceeds ad valorem tax came before the Honorable A. H. Ellett, Judge of the District Court of Salt Lake County, Utah, on December 20, 1965. Atlas Corporation sought to enjoin the State Tax Commission from enforcing the warrant docketed in Salt Lake County in that proceeding, and this request was denied. In addition, Judge Ellett ruled:

1. That the said warrants docketed by the defendant and against the plaintiff are valid.

2. That ad valorem property taxes assessed against the plaintiff's mines for the year 1965 are constitutional in that there is a reasonable relationship between assessed value of the properties in question and the actual value of these properties on January 1, 1965.

3. Section 59-5-57 U.C.A., 1953, is constitutional and no unreasonable classification is used therein so as to discriminate against the uranium and vanadium industry.

Thereafter, the plaintiff on or about the 4th day of January, 1966, filed an original Complaint and Petition

for Writ of Prohibition in this Court. The parties entered into a stipulation whereby it was agreed that proceedings for execution upon the warrants would be stayed pending a final determination of the issues raised by plaintiff's Complaint. Based upon this stipulation an alternative Writ of Prohibition and Order to Show Cause were issued by this Court, and a hearing thereon set for the 7th of February, 1966, wherein the Tax Commission was ordered to show cause why it should not be restrained from any further proceedings in the matter.

## ARGUMENT

### POINT I

#### THE TAX WARRANTS HEREIN ARE PROPERLY DOCKETED UNDER SECTION 59-5-79, U.C.A., 1953

The tax assessed against plaintiff's mines is based upon actual proceeds from these mines during the year 1964 as is required by Section 59-5-57, U.C.A., 1953. The tax resulting from plaintiff's 1964 production is due upon assessment in 1965 and became delinquent November 30, 1965. It is conceded by defendant that the taxes in question are now delinquent.

In this regard Section 59-5-79, U.C.A., 1953, provides:

“If the tax imposed by this *chapter* or any portion thereof is not paid when the same becomes due, the tax commission may issue a warrant, in duplicate under its official seal, directed to the sheriff of *any* county of the state commanding him to levy upon and sell the real and

personal property of the taxpayer found within this county for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the tax commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty days from the date of the warrant." (Emphasis added.)

Section 59-5-80 further provides:

"Immediately upon receipt of said warrant in duplicate the sheriff shall file the duplicate with the clerk of the district court in this county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such duplicate is filed, and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer, and shall also become a lien upon the real property of the taxpayer, against whom it is issued in the same manner as a judgment duly rendered by any district court and docketed in the office of the clerk thereof. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner as is prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner."

It is contended by Atlas that the above-cited sections only authorize the docketing of a warrant to ef-

fectuate the collection of the mining occupation taxes and are not intended to operate in the area of net proceeds ad valorem taxation.

Defendant refers the Court to Chapter 101 of Laws of Utah, 1937, for a more complete understanding of the above sections. Senate Bill 192 which resulted in the enactment of these sections was there entitled "An Act Amending Sections 80-5-55, 80-5-56, and 80-5-57, Revised Statutes of Utah, 1933, Relating to the Assessment of Mines; Enacting New Sections Imposing an Occupation Tax on All Engaged in the Business of Mining or Producing Metalliferous Ores; Providing for the Collection and Disposition of such Occupation Tax; Fixing the Time in Which an Action for the Collection Thereof May be Commenced; Fixing the Duties of the State Tax Commission; Making It a Crime and Fixing Penalties for Making False Statements for the Purpose of Evading the Payment of the Tax."

It should be noted that the original bill dealt with both net proceeds and mining occupation taxes and that Section 15 of that bill referred to "any tax imposed by this chapter" or, in other words, either tax.

The same phraseology is perpetuated in the 1953 Code and as both the mining occupation tax and the net proceeds ad valorem tax with which we are here concerned fall under Chapter 5 of Title 59, it would appear that the plain meaning of the statute authorizes the docketing of the warrant.

## POINT II

### THE TAX WARRANTS HEREIN ARE PROPERLY DOCKETED UNDER SECTION 59-10-22, U.C.A., 1953

As more fully appears from the Declaration of Taxes in Jeopardy (Exhibit "J") on file herein, the defendant has also docketed the warrant in this matter pursuant to authority of Section 59-10-22, U.C.A., 1953. This section provides :

"Whenever the tax commission shall find that a person liable for the payment of any tax which is collectible by the tax commission designs quickly to depart from the state of Utah, or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for the period then last past or for the period then current and that loss to the state will ensue unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated and the report, if any, for such period immediately due, and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for the immediate payment of the tax for the period so declared terminated and of any other tax or any part thereof unpaid, whether or not the time otherwise allowed by law for filing returns, assessing tax and paying the tax has expired; and such taxes shall thereupon become immediately due and payable, *and if the tax is not paid, as provided herein, the collection shall be made in the same manner as is provided for the collection of delinquent taxes in sections 59-13-53 and 59-13-54, Utah Code Annotated 1953, and in addition thereto the tax commission may,*

*in its discretion, issue a warrant of like terms, force and effect, directed to any duly authorized representative of the tax commission, and in the execution thereof such representative shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the findings of the tax commission, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design."* (Emphasis added.)

The Tax Commission submits that this statute furnishes additional support for the docketing of the warrant and proposed execution thereunder.

### POINT III

#### THE NET PROCEEDS AD VALOREM TAX ESTABLISHED BY SECTION 59-5-57, U.C.A., 1953, IS CONSTITUTIONAL

Atlas Corporation contends that Section 59-5-57, U.C.A., 1953, is unconstitutional. Part of the basis for this contention is found in dictum of the United States Supreme Court in the case of *South Utah Mines & Smelters v. Beaver County*, 262 U.S. 325, 43 S. Ct. 577, 67 L.Ed. 1004 (1922).

In that case the net proceeds arose from a "lot of refuse material, which, long prior to the imposition of the tax, had been severed from the mining claims, removed to a distance, submitted to the process of reduc-

tion, and stored on lands separate and apart from the claims." 262 U.S. 325, 331.

The statutes then in effect provided that the net proceeds should be trebled to arrive at the assessment valuation.

The comments of the court in regard to the constitutionality of the Utah statute were made with Article XIII, Sec. 3 of the Utah Constitution in view.

Even if the facts of the present case fell within the scope of the dictum of the United States Supreme Court, which they do not, both the Utah statute and Constitution have been amended to remove any question of unconstitutionality from Section 59-5-57 U.C.A., 1953.

This Section was amended by the 1963 Utah Legislature to provide that no assessment valuation thereunder shall be accorded to proceeds of uranium or vanadium mines in any year "in which there were no gross proceeds realized in the year next preceding the year of assessment.

Of greater significance is the fact that Article XIII, Section 4 of the Utah Constitution was amended in 1930 to read:

"All metalliferous mines or mining claims, both placer and rock in place, shall be assessed as the Legislature shall provide, . . ."

It is also worthy of note that the Utah Supreme Court has interpreted the *South Utah Mines & Smelters* case as upholding the constitutionality of the net proceeds valuation formula provided by Section 59-5-57,

U.C.A., 1953. See *United States S. R. & M. Co. v. Haynes*, 111 Utah 172, at 181, 176 P.2d 622 and cases cited therein.

This interpretation is probably based in part upon the following language of the United States Supreme Court in the *South Utah Mines & Smelters* case:

“The rule prescribed for the valuation of metalliferous mines, as we have already indicated, is one of necessity, and should not be extended to cases clearly not within the reason of the rule. The tailings, severed and removed from the mining claims, changed in character, placed on other and separate lands and *having an ascertained and adjudicated value of their own*, in our opinion, constituted a unit of property entirely apart from the mine from which they had been taken. . . . *The plaintiff, therefore, was subject to taxation upon their value, but not as a mine, since that implies something capable of being mined which this loose and homogeneous deposit obviously was not.*

“How far the state statute defining the net annual proceeds to be considered in measuring the value of a mine, properly includes those derived from dumps and tailings placed and remaining upon the mining claims or connected with a going mine, we do not determine; *but we do hold that the proceeds from the tailings in question, under the facts here disclosed, are not included within its terms.*” (Emphasis added.)

The constitutionality of the net proceeds ad valorem tax seems to be upheld without any doubt in the following cases which were combined for purposes of trial in the 10th Circuit Court of Appeals: *Salt Lake County v. Kennecott Copper Corp.*, *Summit County v. Silver King Coalition Mines Co.*, *Summit County v. Parks Utah*

*Cons. Mines Co., Wasatch County v. Parks Utah Cons. Mines Co., Wasatch County v. New Park Mining Co.*, 163 Fed. 2d 484. The court there stated:

“The Supreme Court of Utah quite recently considered the question and held without qualification that in the taxation of mines and mining claims in that state, premium or subsidy payments of this kind should be added to twice the amount of the proceeds received from the sale of the ores for the preceding calendar year as the base for such taxation. *United States Smelting, Refining & Mining Co. v. Haynes*, 111 Utah 172, 176 P.2d 622. And at the same time, the court reached a like conclusion in a case involving a closely similar question. *Combined Metals Reduction Co. v. State Tax Comm.*, 111 Utah 188, 176 P. 2d 614.”

“It will be observed that these provisions require that all tangible property, including metalliferous mines, shall be subjected to a uniform and equal rate of assessment according to its value in money. The method or yardstick by which the valuation in money is to be determined shall be prescribed by the legislature. . . . *It is conceded that the statutory method of valuing metalliferous mines for taxation purposes at \$5.00 per acre plus a multiple or sub-multiple of the net proceeds is a proper and constitutional formula for assessment purposes.*”

Thus, it can be stated that the 10th Circuit Court of Appeals has passed upon the constitutionality of the taxes involved in a number of instances, and the Utah Supreme Court has likewise passed upon the constitutionality of this section in the following cases heretofore mentioned by the 10th Circuit Court of Appeals: *United States Smelting, Refining & Mining Co. v. Haynes*, 111

Utah 172, 176 P. 2d 622, and *Combined Metals Reduction Co. v. Tooele Co.*, 111 Utah 188, 176 P. 2d 614. In these two cases the Utah Supreme Court upheld the net proceeds method of valuation. Likewise, the Utah Supreme Court in earlier decisions of *Tintic Standard Mining Co. v. Utah County*, 80 Utah 491, 15 P 2d 633, and *Mercur Gold Mining & Smelting v. Spry*, 16 Utah 222, has upheld and declared constitutional the net proceeds ad valorem tax.

The *Tintic Standard Mining* case, supra, is also important because it defines certain rules of statutory interpretation which are brought into issue because of defendant's attack on the constitutionality of Section 59-5-57.

The court therein said at P. 498:

“An enactment of the Legislature cannot be lightly set aside. Courts will not declare a statute unconstitutional unless it clearly and manifestly violates some constitutional provision. Every presumption will be indulged in favor of the constitutionality of an act and every reasonable doubt resolved in favor of validity. If by any fair interpretation of the statute the Legislature can be upheld, it is the duty of courts to sustain it.”

The plaintiff also contends that the case of *Moon Lake Electric Association v. Utah State Tax Commission*, 9 Utah 2d 384, 345 P.2d 612, establishes a system of constitutional priorities enthroneing the equality of assessment provisions of Article XIII, Sections 2 and 3 as controlling over the validity of other sections authorizing or supporting Section 59-5-57. As the *Moon Lake* case did not involve Article XIII, Section 4 of the Utah

Constitution, the Tax Commission cannot concede this to be true.

Even if the question of equality of assessment is involved herein, it only relates to property similarly situated. It is elemental that:

“The rule of uniformity in taxation applies to property of like kind and character and similarly situated, and a tax, in order to be uniform, must operate alike on all persons, things, or property, similarly situated. So the requirement is complied with when the tax is levied equally and uniformly on all subjects of the same class and kind.” 84 C.J.S. Taxation, Section 22, P. 79.

Furthermore, from this same volume and section, page 77:

“Equality in taxation is accomplished when the burden of the tax falls equally and impartially on all the persons and property subject to it, so that no higher rate or greater levy in proportion to value is imposed on one person or species of property than on others similarly situated or of like character. *Equality of taxation does not require identical taxation*, and it is not necessary that the benefits arising from taxation should be enjoyed by all the people in equal degree, or that each person should participate in each particular benefit. Equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relationship.” (Emphasis added.)

Since all uranium mine operators and, in fact, all metalliferous mine operators and owners, and any and all persons having a claim or title therein have their property assessed in the same manner, and this assess-

ment is based upon a valid constitutional procedure prescribed by the legislature which is not capricious or arbitrary and treats all parties similarly situated alike, the constitutionality of Section 59-5-57, and the net proceeds formula attempting to arrive at value, should be sustained.

#### POINT IV

#### THE INSTANT CONTROVERSY IS DISTINGUISHABLE FROM PRIOR RULINGS OF THIS COURT

The plaintiff, Atlas Corporation, places great reliance on the decision of this Court in *San Juan County and State Tax Commission v. Jen, Inc.*, 16 Utah 2d 394, 491 P. 2d 952. There San Juan County and the State Tax Commission of Utah sued to obtain a personal judgment against a foreign corporation which had no other property in Utah except a depleted mine which had been sold at a preliminary tax sale to San Juan County. As the issues in that case were framed for trial in the District Court of San Juan County, the Court was asked to pass upon two questions. The first was whether there was personal liability for real property taxes including real property taxes based upon annual net proceeds. The second was whether the tax was satisfied by the preliminary tax sale of property to San Juan County. In commenting upon these two propositions, Judge Keller, in his memorandum decision, dated October 18, 1963, stated:

“The plaintiffs cite as authority for the bringing of this action the concurring opinion of Justice Wolfe in the case of *Hayes v. Gibbs*, 110 Utah 54, 169 P. 2d 781. In that opinion, Justice Wolfe

supports his conclusion that a levy of taxes in this state 'smacks of an assessment against the person rather than a charge against the realty alone' by a citation of statutory provisions, which by the Utah Code Annotated, 1953, are as follows: 59-10-1, 59-5-4, 59-5-12, 59-5-13, and 59-5-18. Of these statutory provisions, the one most specifically supporting the conclusion of Justice Wolfe is 59-10-1, which I quote:

'Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.' [See 59-10-1, UCA 1953]

\* \* \*

"Even accepting the conclusions of Justice Wolfe to the effect that the levy of a tax is an assessment against the person, it appears to me that the only reasonable construction that can be given to the language of 59-10-1 is this; that the judgment as defined in the case last above cited is satisfied by payment of the tax *or* by a foreclosure of the lien upon the real property to which it was attached . . ." [Emphasis supplied]

The *Jen* decision recites in its first paragraph that plaintiffs appeal from a judgment "holding that an assessment of property taxes, remaining unsatisfied after sale of the charged property is not a debt against the landholder."

It is this holding that was affirmed, and anything else in the *Jen* case is dicta. In other words the defendant submits that the *Jen* case stands for the proposition

that the preliminary tax sale extinguishes any personal liability for taxes which may have existed in the taxpayer. This holding is in harmony with an ALR annotation in 66 ALR 2d 621, to the effect that even if statutes do create an inpersonam obligation to pay real property taxes such obligation is extinguished by a sale of the property in question.

The *Jen* case also contains the statement that this Court has concluded "the tax upon real property is a charge upon the property and not in the nature of an inpersonam obligation of the owner . . ."

To the extent that this is the law of the State of Utah then there may be no inpersonam responsibility for mining taxes. However, defendant should like to remind the Court that the warrant statutes under which the Commission is now proceeding and which are currently at issue in this case were not before the Utah Supreme Court in the *Jen* decision.

Even more important is the fact that if the obligation to pay mining taxes is one in rem, the property which can be held responsible for the satisfaction of a delinquent property tax may include any of the property of a tax debtor.

A comprehensive discussion of personal liability for property taxes is found in 84 CJS §643. Following this section in §644 is a discussion of property which is subject to the collection process apart from the personal liability of a owner for taxes levied upon his property. It is there stated:

"While it has been stated as a general proposition that, unless other provision is made a tax

on property is collectible only from the property assessed, it has been recognized that it is within the power of the State to make one class or kind of property responsible for taxes levied and assessed against another kind or class of property, and, under constitutional or statutory provisions, a tax may be collected not only from the property against which the levy was made, but also from property other than that against which the tax was levied, and any property of a person against whom a tax has been levied may be subject to process for the collection of the tax.”

This section continues:

“Where personal property of a delinquent taxpayer is made liable for the payment of taxes, there is as a general rule no exemption of any class or kind of personalty from liability for the payment of taxes except as such exists by reason of constitutional or statutory provisions; and almost every variety of personal property is subject to compulsory process for the payment of taxes . . .”

So it appears that even if an in rem property tax obligation is the only obligation existing in this state, if statutory requirements are met, this obligation may be satisfied out of other property than the property assessed.

We submit that the warrant provisions in question herein authorize the seizure and sale of any of the taxpayers property in order to satisfy a net proceeds ad valorem tax obligation. In this regard Section 59-10-22 provides in part “. . . if the tax is not paid as provided herein, the collection shall be made in the same manner as

is provided for the collection of delinquent taxes in Sections 59-13-53 and 59-13-54, U. C. A., 1953, . . ." Section 59-13-53 provides in part "if the tax imposed by this chapter or any portion thereof is not paid when the same becomes due, the Tax Commission may issue a warrant, in duplicate under its official seal, directed to the Sheriff of *any* county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found in his county, for the payment of the amount thereof . . ." (Emphasis supplied) Section 59-5-79 also provides that if the tax imposed by the act is not paid when the same becomes due: "The Tax Commission may issue a warrant, in duplicate under its official seal, directed to the Sheriff of *any* county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within this county for the payment of the amount thereof . . ." (Emphasis added)

It is submitted that Utah statutes clearly contemplate and authorize the satisfaction of personal property tax liability for mining taxes out of any real and personal property of the taxpayer found within any county of the State. This authorization is not tantamount to an authorization of personal liability but rather is a statutory designation of which property of the taxpayer can be used to satisfy the in rem ad valorem property tax obligation incurred by the owner or operator of a mining claim.

## POINT V

THE LEGISLATURE INTENDED THAT THE OBLIGATION TO PAY MINING TAXES BE ENFORCED BY MEANS OF WARRANTS AGAINST OTHER PROPERTY OF THE MINING TAXPAYER.

Prior to 1935 Sections 80-5-55, 56 and 57, Revised Statutes of Utah 1933, provided for a net proceeds valuation assessment for mines very similar to that presently existing. In its 1933-34 biennial report to the Utah Legislature the State Tax Commission of Utah commented on the net proceeds method of valuation and requested the Legislature to make certain improvements thereon. On Page 19 of this report the Commission quoted Section 4 of Article 13 of the Utah Constitution as then providing:

‘All metalliferous mines or mining claims both placer and rock in place shall be assessed as the Legislature shall provide; providing the basis and multiple now used in determining the value of metalliferous mines for taxation purposes and the additional assessed valuation of \$5.00 per acre thereon shall not be changed before January 1, 1935, nor thereafter until otherwise provided by law.’

This report continued:

“On and after January 1, 1935, the method to be adopted for the taxation of metalliferous mines will be open for legislation. No doubt the question will be presented to the coming Legislature and we consider it our duty to make some special comments upon the present

methods and to express our recommendations as to the course such legislation, if enacted, should follow.

\* \* \*

“If the net proceeds method of taxation is retained, certain improvements should be made. In the first place, the tax is levied and collected as a property tax — that is, if not paid during the year following that in which the proceeds were recovered, it becomes delinquent and the property is sold subject to redemption within four years. During this four-year period of redemption there is nothing to prevent the operator from continuing extraction and by the time the tax lien can be foreclosed all values may be removed. During the past few years there have been several instances where this may have happened. In 1929 the profits from the mines were considerable and the taxes assessed thereon large. In some few cases these taxes were allowed to become delinquent, while operations have continued. It is quite possible that by the time the counties in which these mines are situated are in a position to sell the property free of redemption the mines will be exhausted.

“To eliminate this possibility, which is peculiar to wasting assets such as mines, we recommend the amendment of the law so as to authorize the collection of the tax, with penalty and interest by suit or otherwise immediately after delinquency.” *Ibid.* Page 23.

The 1935 Utah Legislature, both House and Senate, approved Senate Bill 29 which embodied many of the changes recommended by the Commission. However this Bill was never signed by the Governor and consequently

did not become law. Thereafter, the Tax Commission in its 1935-36 biennial report to the Legislature made the following comments: "We repeat again the two following recommendations made in our last biennial report:

\* \* \*

“(2) On Page 23 of that report we stated:

‘It is quite possible that by the time the counties in which these mines are situated, are in a position to sell the property free of redemption the mines will be exhausted.’

“To carry out this recommendation Senate Bill 29 was introduced into the Legislature and was passed by both the Senate and the House but for some unaccountable reason the Bill was never engrossed and was not signed by the Presiding Officers of the Senate and the House and transmitted to the Governor. For that reason the Bill failed to become a law. We again urge the Legislature to pass such a Bill so as to remove the possibility of loss of taxes where a mine becomes exhausted before the taxpayer loses the right to redemption.

“If a law similar to the above-mentioned Senate Bill No. 29 is enacted, then the following recommendation may not be of great importance. However, if such a law is not passed, it is suggested that the statutes be clarified so as to make definite the extent of a lien which is acquired by a tax on a mining claim. It appears that the statutes are somewhat deficient in providing for the extent of the lien that is acquired by the levy of a tax based upon net proceeds. Section 80-5-57 [Section 59-5-65 U. C. A., 1953] states that the tax is a lien upon ‘such mine or mining claim.’

“Serious problems might arise unless the assessment made by the Tax Commission definitely indicates the property against which the net proceeds tax is to become a lien. The statute should provide that this assessment should be a lien on all the mining claims of the company, owner or lessee, or at least a lien on all the claims which are contiguous. A more serious problem arises when the property of the mine is located in two counties. If the assessment based upon net proceeds is sent to one county that being the one from which the ore is extracted, then that assessment never becomes a lien against the mining claims located in the adjoining county, even though the claims in two counties are contiguous. Assuming that the extraction of the ore in the one county makes valueless the claims in that county, then having a lien against only the worked out claims would be of no benefit. While the tax should be payable to the county from whose claims the ore was extracted, still the assessment should also constitute a lien against the claims located in the other county.” (pp. 24-25)

With the background of the two aforementioned biennial reports and after receiving the recommendations of the State Tax Commission, the 1937 Utah Legislature made significant changes in existing law. Chapter 101 of the Laws of Utah, 1937, represents the result. This Bill was passed as an amendment to the existing net proceeds mining tax and provided among other things for certain means to enforce payment of taxes prior to the end of the redemption period.

This Bill established what are now sections 59-5-57, and 59-5-80, U.C.A., 1953, authorizing collection of all

taxes "imposed by this chapter" by warrant whenever these taxes were not paid after having become due. The taxes which were dealt with by Chapter 101 were metal-liferous mining taxes, including what are now the net proceeds ad valorem tax as well as the occupation tax on mines. No mention was made in that Chapter 101 of real property taxes imposed upon non-mining property owners.

Chapter 105 of the Laws of Utah, 1937, [59-10-22, U.C.A., 1953] was also enacted providing for a jeopardy action by the Commission accelerating the due date of property taxes and established the warrant as a method of collecting in this type of case also.

It should be noted that both warrant sections significantly authorize the sale of a taxpayers real and personal property for the payment of mining taxes.

It is submitted that the intention of the Utah Legislature was to allow the State Tax Commission to enforce the collection of mining taxes by means of warrants if these taxes had not been paid when the same became due and that the sections in questions clearly authorize the imposition of the tax in the present case.

## CONCLUSION

For the foregoing reasons, the Writ of Prohibition entered herein should be dismissed and the Court should determine that the warrants in question are valid and properly docketed and enforceable.

Respectfully submitted,

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