

1960

# Salt Lake City v. State Tax Commission of Utah : Brief of Appellant

Utah Supreme Court

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# In the Supreme Court of the State of Utah

FILED

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SALT LAKE CITY, A MUNICIPAL  
CORPORATION OF THE STATE  
OF UTAH,

*Plaintiff and Appellant,*

vs.

STATE TAX COMMISSION OF  
UTAH,

*Defendant and Respondent.*

Case No.  
9347

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## BRIEF OF APPELLANT

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*Plaintiff and Appellant,*

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STATE TAX COMMISSION OF  
UTAH,

*Defendant and Respondent.*

Case No.

9347

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## BRIEF OF APPELLANT

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### STATEMENT OF THE CASE

This action was commenced in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, for a declaratory judgment as to the constitutionality of Chapter 111 of the Laws of Utah, 1959, relating to the withholding of state income taxes from wages paid to employees by employers.

## STATEMENT OF FACTS

On May 12, 1959, Chapter 111 of the Laws of Utah, 1959, being entitled "An Act \* \* \* Providing for the Deduction and Withholding of Individual Income Tax from Wages Paid by Employers to *Resident* Employees, and Providing for the *Reimbursement* of Expenses in Inaugurating and Administering the Withholding Provisions of This Act" became a law amending Section 59-14-71, Utah Code Annotated 1953, as amended by Chapter 124 of the Laws of Utah, 1955. (Paragraph 3 of appellant's complaint as admitted by paragraph 3 of respondent's Answer, R. 1-4, 9). (Emphasis added above). The appellant is a municipal corporation of the State of Utah and, as such, is an "employer" paying "wages" to "employees" within the purview of said act, and is subject to the requirements contained therein. (Paragraphs 2 and 4 of appellant's complaint as admitted by paragraphs 2 and 4 of respondent's Answer, R. 1, 4, 9). Chapter 111 of the Laws of Utah, 1959, does not provide for "reimbursement" to "employers" of expenses in inaugurating and administering the withholding provisions of said act. (Paragraph 5 of appellant's complaint as admitted by paragraph 5 of respondent's Answer, R. 4, 9). The defendant is charged with the enforcement and administration of Chapter 111 of the Laws of Utah, 1959. (Paragraph 7 of respondent's answer, R. 4, 9).

## STATEMENT OF POINTS

### POINT I

CHAPTER 111 OF THE LAWS OF UTAH, 1959, VIOLATES ARTICLE VI, SECTION 23 OF THE CONSTITU-

TION OF THE STATE OF UTAH IN THAT THE SUBJECT MATTER OF SAID ACT IS NOT CLEARLY EXPRESSED IN THE TITLE THEREOF.

## POINT II

THE REQUIREMENTS IMPOSED UPON THE APPELLANT AS AN "EMPLOYER" UNDER CHAPTER 111 OF THE LAWS OF UTAH, 1959, TO COLLECT AND REMIT STATE INCOME TAXES TO THE RESPONDENT WITHOUT COMPENSATION FOR ITS SERVICES CONSTITUTES AN UNLAWFUL TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW AND INVOLUNTARY SERVITUDE.

## POINT III

CHAPTER 111 OF THE LAWS OF UTAH, 1959, VIOLATES ARTICLE VI, SECTION 22, OF THE CONSTITUTION OF THE STATE OF UTAH FOR ITS FAILURE TO SET FORTH THE STATUTE IT AMENDS AT LENGTH.

## POINT IV

THE LOWER COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS.

## POINT V

THE LOWER COURT ERRED IN FAILING TO GRANT JUDGMENT ON THE PLEADINGS TO APPELLANT.



## ARGUMENT

### POINT I

CHAPTER 111 OF THE LAWS OF UTAH, 1959, VIOLATES ARTICLE VI, SECTION 23 OF THE CONSTITUTION OF THE STATE OF UTAH IN THAT THE SUBJECT MATTER OF SAID ACT IS NOT CLEARLY EXPRESSED IN THE TITLE THEREOF.

Article VI, Section 23 of the Utah Constitution provides as follows:

“Except general appropriation bills, and bills for the codification and general revision of laws, no bill shall be passed containing more than one subject, *which shall be clearly expressed in its title.*” (Emphasis added).

The title of Chapter 111 of the Laws of Utah, 1959, sets forth the subject matter of the act and states, among other things, that the act provides “for the Reimbursement of Expenses in Inaugurating and Administering the Withholding Provisions of This Act.” Respondent admits that the act does not provide for “reimbursement” to “employers” of expenses in inaugurating and administering the withholding provisions of the act. In fact the body of the act does not provide “reimbursement” to anyone for sums expended in effecting the withholding provisions of the act.

Respondent argues that the term “reimbursement” as used in the title of the subject act necessarily refers to the expenses incurred by it in carrying out the program of the withholding tax provided by the statute. The fallacy in this argument lies in its failure to recognize the basic difference between the terms

"reimbursement" and "appropriation." The only reference to expenses involved in the administration of the withholding provisions of Chapter 111 of the Laws of Utah, 1959, is contained in Section(5) of the act which reads as follows:

"(5) For the necessary expenses of administering the withholding provisions of this act to June 30, 1961, including the use of necessary tabulating devices and cards, auditing and clerical services, forms, stationery, stamps and printing, *there is appropriated* from the Uniform Schol Fund to the tax commission, the sum of \$125,000.00 and to the finance commission the sum of \$60,000.00." (Emphasis added).

There can be no question that the Legislature intended the above section of the act *to appropriate funds* to the various state departments charged with the enforcement of the act *after* its effective date, i.e., May 12, 1959. Thus the body of the act clearly contemplated an "appropriation" for future expenses, not a "reimbursement" for past expenses incurred in inaugurating and administering the withholding provisions of the act. Indeed, the respondent was without authority to effectuate the provisions of such act until it had become law upon the aforementioned date, and upon that date the Legislature provided the respondent with the necessary funds for anticipated future expenses in carrying out the purposes of the act. It is too clear for argument that Section 5 of the act here involved constituted an "appropriation" only for the necessary expense of administering the act from its effective date to June 30, 1961. The absence of any provision for "reimbursement" to employers for their expenses involved in inaugurating and administering the withholding provisions of the act renders it fatally defective.

It has been held in many cases that the primary meaning of the verb "reimburse" is to pay back; to make return or restoration of an equivalent for something paid, expended, or lost; to indemnify; to make whole. *Woerz v. Schumaker*, 161 N.Y. 530, 56 N.E. 72; *Perkins v. Brown*, 179 Wash. 597, 38 P.2d 253, 101 A.L.R. 275; See *Words and Phrases, Permanent Edition* for additional cases so holding. Likewise the noun "reimbursement" has been held to mean pay back, to make restoration, to repay that expended. *Los Angeles County v. Frisbie*, 19 Cal.2d 634, 122 P.2d 526. And it has been held that "reimbursement" presupposes previous payment. *Solimine v. Hollander*, 129 N.J. Eq. 264, 19 A.2d 344, 348. See *Words and Phrases, Permanent Edition*, for other cases similarly defining "reimbursement."

On the other hand the cases clearly define an "appropriation" as the setting apart from the public revenue of a certain sum of money for a specified object, in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other. *Hunt v. Callaghan*, 32 Ariz. 235, 257 P. 648; *State ex rel. Murray v. Carter*, 167 Okla. 473, 30 P.2d 700; *Grable v. Blackwood*, 180 Ark. 311, 22 S.W.2d 41; See *Words and Phrases, Permanent Edition*, for additional cases. It has also been held that there is a distinction between an "appropriation" and the making of "expenditures"—the latter being the act of expending, a laying out of money, or a disbursement, while the former means to set apart for, or assign to a particular person or use in exclusion of all others. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362.

Applying the rule that the ordinary meaning and under-

standing of a word will be employed in construing statutes, it is clear that the legislature contemplated some form of refund or repayment for prior expenditures incurred in connection with the collection of income taxes withheld from wages by reason of its use of the term "reimbursement" in the title of the act. The only persons that could have been reasonably contemplated thereunder would be "employers" as defined in the body of the act inasmuch as they constituted the only class of persons under the act who were charged with affirmative duties necessitating the outlay of cash expenditures to effectuate the purposes of the act without provision for prior payment of such expenses. The expenses of the respondent and the State Finance Commission were adequately provided for *in advance* by a specific *appropriation* contained in the act. It necessarily follows, therefore, that the subject matter of Chapter 111 of the Laws of Utah, 1959, was not *clearly expressed in its title* as required by Article VI, Section 23 of the Utah Constitution for two reasons:

1. The body of the act does not provide for "reimbursement" to employers for their expenses in inaugurating and administering the withholding provisions contained therein.

2. The title of the act contains no reference to an "appropriation" to defray the future expenses of the State Tax Commission in inaugurating and administering the withholding provision of the act, and the inclusion of such an "appropriation" within the body of the act is inconsistent with the title thereof.

In the case of *Pass v. Kanell et al.*, 98 U. 511, 100 P.2d 972, this court held that the title to an act does not purport

to state the details, but it must be broad enough to include the subject of the legislation. In that case the majority opinion held the statute contained subject matter not clearly expressed in the title and stated as follows at page 975 of 100 P.2d:

“We fail to discover anything in the title ‘Registration of Motor Vehicles’ that would justify the inclusion of liability of owners of rent automobiles for negligence of the drivers of such rented automobiles.”

In view of the holding in the *Kanell* case, appellant is confident that this court will conclude that there is nothing in the term “reimbursement” as used in the title of Chapter 111 of the Laws of Utah, 1959, that would justify the inclusion of an “appropriation” to the respondent for its future expenses in carrying out assigned duties and obligations under the withholding provisions of said act.

In addition to the above objection to the title of Chapter 111 of the Laws of Utah, 1959, the attention of this court is directed to the limitation expressed in the title of said act to “Resident Employees.” An examination of the act itself, particularly Sections (1) (a) and (2) (b) thereof, reveals that the body of the act covers *all employees*, not just resident employees. The sections referred to above read as follows:

“(1) (a) Commencing July 1, 1959, every employer making payment of wages shall deduct and withhold from wages an amount equal to seven per cent of the total amount required to be deducted and withheld by an employer from wages of an employee under the provisions of the Internal Revenue Code of the United States. The amount of tax withheld shall be computed

without regard to any other amount required to be withheld thereunder.”

“(2) (b) The term ‘employee’ means and includes every individual performing services for an employer, either within or without, or both within and without the State of Utah, the performances of which services constitutes, establishes and determines the relationship between the parties as that of employer and employee, and includes officers of corporations, individuals, including elected officials, performing services for the United States Government or any agency or instrumentality thereof, or the state of Utah or any county, city, municipality or political subdivision thereof.”

This is a classic example of the failure of the title of an act to clearly express the subject matter of the act itself. The accepted, and indeed the required, practice in drafting legislation is to use language in titles which is broad enough to cover the subject of the legislation, not to resort to language which is more limited in scope than the body of the act. See *Pass v. Kanell*, supra. Appellant would further point out that, even if such act itself was only applicable to withholding of income taxes from *resident employees*, it would fail for the reason that such a classification would unconstitutionally discriminate against resident employees. There can be no doubt that the use of the term “Resident Employees” in the title of this act was the result of mistake or carelessness on the part of those responsible for drafting the bill. Such mistake or carelessness, however, cannot be the basis for breathing life into an invalid act.

For the reasons above stated, Chapter 111 of the Laws of Utah, 1959, fails to meet the requirements of Article VI, Section 23 of the Utah Constitution.

## POINT II

THE REQUIREMENTS IMPOSED UPON THE APPELLANT AS AN "EMPLOYER" UNDER CHAPTER 111 OF THE LAWS OF UTAH, 1959, TO COLLECT AND REMIT STATE INCOME TAXES TO THE RESPONDENT WITHOUT COMPENSATION FOR ITS SERVICES CONSTITUTES AN UNLAWFUL TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW AND INVOLUNTARY SERVITUDE.

To enforce collection of a tax imposed under an invalid law is to take the property of the taxpayer without due process of law. *J. & A. Freiberg Co. v. Dawson*, D.C. Ky., 274 F. 420, affirmed in *Dawson v. Kentucky Distilleries & Warehouse Co.*, 41 S. Ct. 272, 255 U.S. 288, 65 L.Ed. 638. It would therefore follow that the enforced collection of state income taxes by employers under the requirements of Chapter 111 of the Laws of Utah, 1959, would likewise constitute the taking of such employers' property without due process of law contrary to the provisions of the state or federal constitutions if such statute is invalid for any of the reasons asserted under Points I and III herein.

Furthermore, the Supreme Court of the United States, in the leading case of *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 60 L.Ed. 493, decided in 1915, although holding that the due process clause of the 5th Amendment to the Federal Constitution is not a limitation upon the taxing power conferred upon Congress by the Constitution and that the duty cast upon corporations to collect an income tax and absorb the cost to which they are thereby subjected is not

repugnant to due process of law as a taking of property without compensation, also placed a limitation upon that ruling by stating, at page 504 of 60 L.Ed.:

“And no change in the situation here would arise even if it be conceded, as we think it must be, *that this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the 5th Amendment; \* \* \*.*” (Emphasis added).

In view of the increased complexities of income tax withholding requirements and the extension of such withholding provisions to cover virtually all wages paid by employers, rather than a few isolated cases, it would appear that the time has arrived for a re-evaluation of the confiscatory nature of such tax programs. It is a matter of common knowledge that the costs incidental to the employment of wage earners in the form of frequent accountings to the federal and state governments upon matters of such complexity as require the employment of specially trained personnel for that purpose is stifling the emergence of new small businesses which have served historically as the cornerstone of our free enterprise system. At the present time employers are being charged with the direct responsibility of accounting to various governmental agencies for a substantial portion of the wages paid to their employees and the administrative costs incidental thereto have steadily increased over the years without provision for compensation to such employers for their out of pocket expense in securing to government its vital nourishment. It is the



appellant's contention that the time is long overdue for our courts to reconsider the inequality of withholding taxes which places upon the employer the unequal burden of sustaining government and consequently results in the destruction of the most valuable irreplaceable natural resources of this country—human initiative and creativeness.

There is no concept more rooted in our constitutional form of government than that which prohibits the exaction of involuntary servitude. See *McGrew v. Industrial Comm.*, 96 U. 203, 85 P.2d 608. The imposition of costly requirements that employers collect and remit to government the fruits of taxation from the wages of their employees without compensation for such services clearly places the employer in a position of involuntary servitude. To hold otherwise, as some cases have done, places the convenience of tax collection for the government above the freedom of the individual. In addition employers are subjected to "double taxation" under such circumstances inasmuch as their ordinary tax burden is increased by their collection and remittance costs solely by reason of their classification as an employer. Thus such costs, which are not borne equally by the taxpaying public, become an additional tax burden upon employers incidental to the imposition of a completely separate tax upon incomes including that of employers.

For the reasons above stated the appellant, as an "employer" under the income tax withholding law enacted by Chapter 111 of the Laws of Utah, 1959, herewith submits that the enforcement of said Act by the respondent against the appellant is grossly unfair upon its face, deprives the appellant of its property without due process of law and subjects it to

a state of involuntary servitude. In this connection it is to be noted that the legislature has provided reimbursement to the respondent for its expenses in collecting and remitting local sales taxes to municipalities, including the appellant, under Section 11-9-7, U.C.A. 1953, as enacted by Chapter 114 of the Laws of Utah, 1959.

### POINT III

CHAPTER 111 OF THE LAWS OF UTAH, 1959, VIOLATES ARTICLE VI, SECTION 22, OF THE CONSTITUTION OF THE STATE OF UTAH FOR ITS FAILURE TO SET FORTH THE STATUTE IT AMENDS AT LENGTH.

Chapter 111 of the Laws of Utah, 1959, providing for withholding of income taxes on all incomes in Utah, was passed by the Legislature on March 12, 1959. Chapter 112 of the Laws of Utah, 1959, relating to the withholding of income taxes on non-resident employees, and providing for an exemption for employers who do business in Utah less than 60 days in a calendar year, was passed by the Legislature on February 25, 1959. Both acts, which were amendments to Section 59-14-71, Utah Code Annotated, 1953, as amended, became effective upon May 12, 1959.

The pertinent section of Article VI, Section 22, of the Utah Constitution provides as follows:

\* \* \* and no law shall be revised or amended by reference to its title only; but the act as revised, or section as amended, shall be re-enacted and published at length."

Section 59-14-71, Utah Code Annotated, 1953, as amended, presently consists of a composite section born of the changes included in both Chapters 111 and 112 of the Laws of Utah, 1959, in accordance with an Attorney General's opinion, No. 59029, dated March 26, 1959. However, the changes incorporated in the then existing law by the passage of Chapter 112 of the Laws of Utah, 1959, were not incorporated in Chapter 111 of said Laws which was enacted subsequent to said Chapter 112. The failure of the Legislature in enacting Chapter 111 to set forth the amendments previously incorporated in said Section 59-14-71 by the passage of Chapter 112 is clearly in violation of the above quoted constitutional provision.

In holding that the provisions of Article VI, Section 22 of the Utah Constitution are restrictive and mandatory requiring an amended or revised section or act to be complete within itself, so that when published as revised or amended it will contain *all the law* upon the subject embraced in the act or section, this court stated as follows in *State v. Beddo*, 22 U. 432, 63 P. 96, at page 97 of the Pacific Reporter:

"This is a wise provision of the constitution, and was intended to avoid that confusion which would inevitably follow if an act or section could be revised or amended by mere reference to the title or section or word or line as to which the change was intended to be made; for, after repeated amendments so made, the statute law would be rendered so ambiguous and imperfect, and in the course of time would require the examination of so many enactments to ascertain what statutes were in force, as to render any satisfactory determination or conclusion exceedingly difficult, if not impossible. Such revisions and amendments by

mere reference to title, however, not only render the statute law difficult of construction, but they are calculated to confuse and mislead the public, and are therefore inimical to business transactions and the interests of the people. So they have a tendency to encourage improvident legislation, by misleading the average legislator, who, because of numerous additions, insertions, or substitutions, made with mere reference to the old statute or section, is unable to ascertain what the exact state of the law is; and yet it is of the highest importance that every member of the legislature shall have a correct understanding of what the existing law is, before he attempts to revise or amend it. This fact was doubtless recognized by the framers of the constitution, who evidently intended the provisions above quoted as a remedy for the evils referred to. *Therefore, when an act or a section is revised or amended the same must be complete within itself, so that when published as revised or amended it will contain all the law upon the subject embraced in the act or section;* and any matter contained in the old statute or section which is not contained in the new ceases to have the force of law, except as to past transactions." (Emphasis added).

An examination of Chapter 111 of the Laws of Utah, 1959, and particularly a comparison of the same with present Section 59-14-71, Utah Code Annotated 1953, will reveal most conclusively that said Chapter 111, which was the last amendment to the above code section adopted by the Legislature, is not complete within itself such that it contains all the law upon the subject embraced in that section. In fact subsections (1) (b) and (6) thereof are not even included in said Chapter 111. It necessarily follows that Chapter 111 of the Laws of Utah, 1959, violates Article VI, Section 22 of the Utah Constitution.

#### POINT IV

THE LOWER COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS.

Appellant incorporates herein the arguments set forth under Points I, II, and III. If any or all of said points are approved by this court it necessarily follows that the lower court erred in granting respondent's motion for judgment on the pleadings.

#### POINT V

THE LOWER COURT ERRED IN FAILING TO GRANT JUDGMENT ON THE PLEADINGS TO APPELLANT.

Appellant incorporates herein the argument set forth under Points I, II and III, and for the reasons therein set forth urges this court to hold that the lower court erred in failing to grant judgment on the pleadings to appellant as a matter of law.

#### CONCLUSION

In view of the above facts and the law applicable thereto the following conclusions are inescapable:

1. The failure of the legislature to provide for any "reimbursement" to employers for their expenses incurred in the collection and remittance of income taxes withheld from employees' wages under Chapter 111 of the Laws of Utah, 1959,

is in direct conflict with the provisions of the title of said act and therefore violates the constitutional prohibition against the inclusion in legislation of subject matter which is not clearly expressed in the title.

2. The limitation of the title of Chapter 111 of the Laws of Utah, 1959, to provide only for the withholding of income taxes from wages of "Resident Employees" thereunder is in direct conflict with the body of the act which calls for withholding of income taxes from all wages of all employees and therefore violates the constitutional prohibition against the inclusion in legislation of subject matter which is not clearly expressed in the title.

3. The failure of the legislature in amending Section 59-14-71 of the Utah Code Annotated, 1953, by its passage of Chapter 111 of the Laws of 1959, to include in said chapter the amendments to said section 59-14-71 included in Chapter 112 of the Laws of 1959 which was passed by the Legislature prior to said Chapter 111 constitutes a violation of the constitutional prohibition against statutory amendments which fail to set forth the amended sections at length.

4. The requirement that appellant withhold and remit state income taxes to the respondent under Chapter 111 of the Laws of Utah, 1959, without compensation or reimbursement for its expenses necessarily incurred thereunder constitutes a taking of appellant's property without due process of law and subjects appellant to involuntary servitude.

The appellant therefore asks this Honorable Court to declare that Chapter 111 of the Laws of Utah, 1959, is void, unconstitutional, ineffective, and without force of law; that

the appellant is not required to further comply with the terms and provisions of said Act; that the respondent, its agents and employees be permanently restrained and enjoined by the order of this court from exercising any of the powers, rights or duties respecting the enforcement of said Act against the appellant; and that appellant be granted its costs upon this appeal.

Respectfully submitted,

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