

1962

# Phillips Petroleum Company v. Utah State Tax Commission : Brief of Appellant

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

PHILLIPS PETROLEUM  
COMPANY,

*Plaintiff - Appellant,*

— vs. —

UTAH STATE TAX  
COMMISSION,

*Defendant - Respondent.*

Case  
No. 9615

## APPELLANT'S BRIEF

Review of a Decision of the  
Utah State Tax Commission

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## APPELLANT'S BRIEF

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Review of a Decision of the  
Utah State Tax Commission

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### NATURE OF THE CASE

This case involves a petition filed by Plaintiff with the Defendant, Utah State Tax Commission, which petition sought rescission of a notice purporting to impose upon Plaintiff a mining occupation tax for the calendar year 1960, based upon Plaintiff's 1960 oil and gas production, and requested that the payment made under protest by Plaintiff pursuant to said notice be returned and refunded.

## DISPOSITION BY THE DEFENDANT UTAH STATE TAX COMMISSION

After a hearing held on October 26, 1961, Defendant, by its Decision No. 194 dated December 22, 1961, rejected Plaintiff's petition for the return and refund of said money and held that Defendant's determination and retention of the tax was lawful and proper.

## RELIEF SOUGHT ON APPEAL

Plaintiff seeks a review and reversal of Defendant's said decision of December 22, 1961, and asks that Defendant be required to return and refund to Plaintiff the sum of \$209,177.93 paid under protest by Plaintiff to Defendant on June 1, 1961, conditioned, however, upon Plaintiff paying to Defendant a sum (\$124,434.66) representing the occupation tax properly chargeable against Plaintiff for the privilege of operating in Utah during the calendar year 1959.

## STATEMENT OF FACTS

Plaintiff is a corporation organized under the laws of the State of Delaware and is duly qualified to do business in the State of Utah (R. 18-19). Plaintiff's business activities during the years 1959 and 1960 included the production of oil, gas and other hydrocarbon substances from wells in the State of Utah (R. 19).

In March, 1960, Plaintiff filed with Defendant a "Statement of Occupation Tax of Oil and Gas Producers

For the Year 1960, Based on Sales of Oil, Gas and Hydrocarbons during 1959'' (R. 19). In April, 1960, said statement was supplemented by the filing of a further and additional statement, a true copy of which appears at page 10 of the Record.

These statements were filed in accordance with the following provisions of Section 59-5-68 Utah Code Annotated 1953, as amended (R. 19):

“Every producer engaged in the production of oil, gas, or other hydrocarbon substances from a well or wells in the state of Utah shall likewise file with the tax commission, on or before the 31st day of March of each year beginning with the year 1956, on forms furnished by the tax commission, a statement containing the following information relating to such oil, gas or other hydrocarbon substances produced [,] saved and sold or transported from the oil or gas field where produced during the preceding calendar year:

(1) The name, description and location of the well or wells and the field or fields in which the well or wells are located.

(2) The number of barrels of oil, the cubic feet of gas and quantity of other hydrocarbon substances produced by him during the preceding calendar year.

(3) The value at the well of such production.

(4) Such other reasonable and necessary information as the commission may require.

The statements or reports required to be filed with the tax commission shall be signed and sworn to by a person required to file the same, by a partner if a partnership, or by the president, secre-

tary or managing officer, if a corporation. Any wilful false swearing as to the purported material facts set out in such report shall constitute the crime of perjury and shall be punished as such under the Criminal Code of this state.”

Thereafter Defendant fixed the amount of the occupation tax which Plaintiff should pay and on May 5, 1960 gave notice thereof to Plaintiff (R. 19-20). A true copy of said notice appears at page 11 of the Record. Said tax in the amount of \$248,869.31 was duly paid by Plaintiff by its Check No. 615,822 dated May 26, 1960, a true copy of which appears at page 12 of the Record. The voucher attached to said check when delivered to the Commission bore the following notation:

“Tax payable under Utah Mining Occupation Tax Act for the Privilege of Operating in 1960”  
(R. 20)

In May, 1961, in compliance with the provisions of Section 59-5-68 above quoted, Plaintiff filed its corrected “Statement of Occupation Tax of Oil and Gas Producers for the Year 19..... Based on Sales of Oil, Gas and Hydrocarbons during 19.....,” setting out information as to its 1960 Utah production (R. 20). A true copy of said corrected report appears at page 13 of the Record. On May 31, 1961, Defendant directed a notice to Plaintiff to the effect that it had determined that Plaintiff owed an oil and gas producer’s occupation tax in the amount of \$209,177.93, which was due and payable “on or before June 1, 1961.” A true copy of said notice appears at page 8 of the Record.



On June 1, 1961, Plaintiff paid to the Defendant under protest the amount set out in the Defendant's above-mentioned corrected notice of May 31, 1961 (R. 20)

Under date of June 9, 1961, Plaintiff filed with Defendant a "Petition for Hearing and for Rescission of Notice Purporting to Impose an Occupation Tax for Calendar Year 1960 Based Upon 1960 Production." The prayer of said petition was that Defendant revoke and rescind its said corrected notice of May 31, 1961, and declare that the occupation tax chargeable against Plaintiff for the privilege of operating in Utah in 1960 was fully paid and discharged by the payment of said \$248,869.31 made as aforesaid by Plaintiff's Check No. 615,822, and that Defendant order that the sum of \$209,177.93 paid by Plaintiff under protest on June 1, 1961, be returned and refunded to Plaintiff (R. 4-7),

A hearing on said petition was held before Defendant on October 26, 1961, following which Defendant, on December 22, 1961, made Findings of Fact and Conclusions of Law and rendered its Decision No. 194 denying said petition (R. 22-24).

## ARGUMENT

### POINT I.

EXCEPT WHERE THE LEGISLATURE HAS MADE AN EXPRESS AND LIMITED EXCEPTION FOR A SPECIFIED YEAR, THE MINING OCCUPATION TAX FOR THE PRIVILEGE OF DOING BUSINESS DURING A PARTICULAR CALENDAR YEAR IS

BASED UPON PRODUCTION DURING THAT PARTICULAR CALENDAR YEAR ALTHOUGH SUCH TAX IS NOT PAYABLE UNTIL THE SUCCEEDING YEAR.

*Background of Mining Occupation Tax Statute:*

Prior to its amendment in 1955 Section 59-5-67 Utah Code Annotated 1953, as amended applied only to metaliferous ores. In 1955 (L. 1955, Chapter 120, pages 252-258), the mining occupation tax statute was amended to require every person owning an interest in the oil, gas or other hydrocarbon substances produced from wells in the State of Utah to pay an occupation tax equal to “\* \* \* one per cent of the value at the well of the oil, gas and other hydrocarbon substances produced, saved and sold or transported from the oil or gas field where produced.”

In 1959 (L. 1959, Chapter 106, page 230), Section 59-5-67 was amended to increase the tax as to oil and gas to two per cent. That Act included as Section 3 thereof the following provision which is now Section 59-5-67.2:

“*Section 3. Effective Date* — This act shall take effect January 1, 1960, and the tax payable for the privilege of operating in 1960 shall be based on the 1959 operations.”

*Cases Interpreting Mining Occupation Tax Statute.*

In a case decided on December 21, 1955 (*Consolidated Uranium Mines, Inc. v. Tax Commission of Utah*, 4 U. 2d 236, 291 P. 2d 895), this Court had occasion to interpret the meaning and effect of said Section 59-5-67, Utah Code An-

notated 1953. That case involved an action to review a decision of the Tax Commission assessing an occupation tax for 1954 based on sales of uranium produced in 1953. The plaintiff therein contended that the Tax Commission unlawfully used production figures for the entire year 1953 as the basis for the tax imposed because until October 1, 1953, under the Atomic Energy Act, all uranium was the property of the Atomic Energy Commission. The Tax Commission argued that it was not taxing the materials delivered to the AEC before October 1, 1953, but since the occupation tax is a license tax, it was only using the gross sums received for ores sold during the entire year 1953 as a basis for the occupation tax for 1954. In rejecting the Tax Commission's argument and holding for the plaintiff, the court stated in part:

“The fault with that argument is that it ignores the provisions of Sec. 59-5-67, U. C. A. 1953. Although, it is true that a license fee or tax may be, and usually is, required to be paid before the business which is licensed may be carried on, the legislature in our Mining Occupation Tax specifically provided that:

“ ‘Said tax shall be delinquent on the first day of June next succeeding the calendar year when the ore or metal is *sold*.’ (Emphasis ours.) This clearly indicates that the legislature intended that the tax base should be on the ‘gross amount received for or the gross value of metalliferous ore sold’ and of course that cannot be ascertained until after the occurrence of one of those events. Since the tax is not delinquent until the first day of June next succeeding the calendar year when the ore or metal is sold, this indicates that the tax is on the metal mined in the year prior to the year

in which the tax becomes delinquent and, therefore, an imposition of such a tax based on sales other than those made in the calendar year sought to be taxed violates the provisions of the Act.”

By a decision dated March 28, 1957, *G & G Mining Company v. Tax Commission*, 6 U. 2d 165, 308 P. 2d 642, this Court followed its decision in the *Consolidated Uranium Mines* case. In the *G & G* case, the plaintiff contended that because it had discontinued its operations in 1954 and was not mining or producing ore in Utah in 1955, it was not liable for a tax based on its 1954 production. In rejecting this contention, this Court, after referring to the *Consolidated Uranium Mines* case, stated:

“There being no doubt that plaintiff was engaged in the business of mining or producing ore in Utah in the year 1954, it is liable for the payment of the mine occupation tax for ores sold during that year, even though payment for such tax is not due until the next succeeding calendar year.”

## POINT 2.

THE 1959 AMENDMENT OF THE UTAH MINING OCCUPATION TAX CREATED A SPECIFIC EXCEPTION AS TO THE YEAR 1960 BY PROVIDING THAT THE TAX PAYABLE FOR THE PRIVILEGE OF OPERATING IN 1960 SHOULD BE BASED ON THE 1959 OPERATIONS.

The Utah Mining Occupation Tax was amended by an act which was approved March 14, 1959 (L. Utah Ch. 106, p. 230) and which was captioned:

“An Act Amending Section 59-5-67, Utah Code Annotated 1953, as Amended by Chapter 120, Laws of Utah 1955, Relating to an Occupation Tax on Oil and Gas Wells.”

Said Act includes the following provision :

“Section 3. Effective Date.

This Act shall take effect January 1, 1960, and the tax payable for the privilege of operating in 1960 shall be based on the 1959 operations.”

This language is explicit, clear and unambiguous.

Prior to the 1959 enactment, this Court, as above pointed out, had twice clearly declared that the tax for the privilege of operating during a particular calendar year is based upon production during that calendar year. If the Legislature had intended to say that the tax for the privilege of operating in any calendar year should be based on operations during the preceding calendar year it could have simply and directly so stated. It did not. If the Legislature had intended that the tax for the privilege of operating in 1960 should be based upon 1960 operations there was no need for it to say anything about 1960 since that was the law absent any special provision. The Legislature saw fit to make a specific provision as to the year 1960. It said:

“The tax payable for the privilege of operating in 1960 shall be based on 1959 operations.”

The very inclusion of this provision indicates that there was a particular and specifically provided for exception as to a single particular year — namely, 1960.

Defendant's decision completely disregards the language of the statute. Plaintiff, in accordance with the provisions of the statute, paid an occupation tax for the privilege of operating in 1960 based upon its 1959 operations. The decision of Defendant is that Plaintiff, nevertheless, was obligated to pay a tax for the privilege of operating in 1960 based on its 1960 operations. Defendant's decision gives no reason for and makes no attempt to explain Defendant's disregard of the statute.

### POINT 3.

#### THE PAYMENT MADE BY PLAINTIFF ON MAY 26, 1960, CONSTITUTED FULL PAY- MENT OF THE OCCUPATION TAX CHARGE- ABLE AGAINST PLAINTIFF FOR THE PRIVILEGE OF DOING BUSINESS IN THE STATE OF UTAH FOR THE CALENDAR YEAR 1960.

By check dated May 26, 1960, Plaintiff paid to the Tax Commission the sum of \$248,869.31, which was computed on the basis of the 1959 production at the increased rate of two per cent, provided for by the 1959 amendment. The voucher of said check bore the notation:

“Tax payable under Utah Mining Occupation Tax Act for the Privilege of Operating in 1960.”

which follows the language of the statute.

The Defendant accepted and cashed this check with that notation and has never advised Plaintiff that said sum was accepted for any purpose other than in payment of the Plaintiff's occupation tax for the year 1960.

#### POINT 4.

### PLAINTIFF'S MINE OCCUPATION TAX COMPUTED AT THE RATE OF 1% FOR THE PRIVILEGE OF DOING BUSINESS IN UTAH IN THE YEAR 1959 IS DUE AND UNPAID.

Because of the exception provided in Section 3 of the 1959 act, the tax payable for the privilege of operating in 1960 is based on 1959 operations. It follows that there is no tax based upon 1960 production inasmuch as the tax for operating in 1961 was based upon 1961 production. What, then, of the tax for the privilege of operating in the year 1959? The Utah Occupation Tax for the privilege of operating during the calendar year 1959 is based upon operations during that calendar year. Plaintiff's liability for its 1959 occupation tax accrued and was established during that year, 1959, even though payment for such tax did not become due until the next succeeding calendar year. Plaintiff's liability for the 1959 tax arose under and was based upon the Mine Occupation Tax which was in effect during 1959. The tax rate under the Mine Occupation Tax statute then in effect was one per cent. The 1959 amendment, which increased the rate to two per cent, expressly provided that:

“This Act shall take effect January 1, 1960.”

Nothing in the 1959 enactment purports to affect the tax for the privilege of operating in 1959. The result, then, is that the tax for operating in 1959 is based upon 1959 production and the rate is one per cent; and the tax for operating in 1960 is also based upon 1959 production and the rate is two per cent.

A tax of one per cent of the value of the 1959 production is payable as a tax for the privilege of operating in 1959. Section 3 of the 1959 enactment did not say when the tax for the privilege of operating in 1960 would be payable; it merely said that it would be based on the 1959 production. However, Section 59-5-67, which was not changed in the 1959 enactment, does say that the tax provided for shall be delinquent on the first day of June next succeeding the calendar year when the oil and gas are produced and sold or transported. Plaintiff has not yet paid its occupation tax for the privilege of doing business in 1959. This tax, which became a fixed obligation as of December 31, 1959, totals \$124,434.66 (i. e. one per cent of the value of Plaintiff's 1959 production). Defendant has never given to Plaintiff any notice of determination in respect to this tax but Plaintiff fully recognizes that this Court has declared that the tax liability arises under and by virtue of the statute.

## CONCLUSION

The decision and conclusion of Defendant which is before this Court for review makes no attempt to explain why, when the Legislature said "the tax for the privilege of operating in 1960 shall be based on the 1959 operations," the Legislature did not mean that the tax payable for the privilege of operating in 1960 should be based on the 1959 operations. It is, no doubt, to be anticipated that in Defendant's brief Defendant will undertake to defend its conclusion which could only be reached on the premise that the Legislature did not mean what it said.



Plaintiff can hardly be expected to discuss Defendant's contention until Defendant, in its brief, discloses the alchemy or legerdemain by which it seeks to eradicate or rewrite the language of the 1959 amendment.

The Plaintiff respectfully submits that the Defendant erred in rejecting its petition for refund of said tax paid under protest on June 1, 1961; that the Plaintiff's occupation tax for the privilege of doing business in Utah for the year 1960 was fully paid by said check of May 26, 1960; and that the attempt by the Defendant to impose a second tax for the privilege of doing business in the state for 1960 was contrary to law.

Plaintiff, therefore, further submits that the Defendant should be ordered and directed to return and refund to Plaintiff the sum of \$209,177.93 conditioned upon the Plaintiff paying to the Defendant its 1959 occupation tax in the sum of \$124,434.66.

Respectfully submitted,

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