

1962

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

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

PHILLIPS PETROLEUM  
COMPANY,

vs.

UTAH STATE TAX  
COMMISSION,

*Plaintiff,*

Clerk

Sup

Case No.

9615

SALT LAKE CITY UTAH

JUN 1 1962

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*Defendant.*

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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PHILLIPS PETROLEUM  
COMPANY,

*Plaintiff,*

vs.

UTAH STATE TAX  
COMMISSION,

*Defendant.*

Case No.  
9615

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## BRIEF OF DEFENDANT

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### NATURE OF THE CASE

This case involves a petition filed by plaintiff relative to plaintiff's mining occupation taxes for the calendar year 1960. In that petition the plaintiff prayed for rescission of a Tax Commission determination of taxes due and payable on or before June 1, 1961, in the amount of \$209,177.93. The basic issue is whether or not the legislature intended by virtue of the enactment of 59-5-67.2, U.C.A. 1953, as amended, that the oil and gas producers' occupation tax for the privilege of operating in 1960 be paid in 1960 and be based on 1959 operation.

## DISPOSITION BY THE UTAH STATE TAX COMMISSION

Defendant agrees with plaintiff's statement of the disposition of the case by the defendant, Utah State Tax Commission.

## STATEMENT OF FACTS

The defendant, Utah State Tax Commission, based its findings of fact upon a stipulation entered into by the parties to the action. Defendant agrees with the plaintiff's statement of those facts.

## ARGUMENT

### POINT 1.

THE MINE OCCUPATION TAX IS A TAX PAYABLE FOR THE PRIVILEGE OF OPERATING IN THE YEAR OF PRODUCTION UPON WHICH THE TAX IS BASED, THOUGH PAYMENT IS NOT DUE UNTIL THE FOLLOWING YEAR.

An occupation (privilege) tax is levied upon every person engaged in the state in the business of mining or producing ore containing gold, silver, copper, lead, iron, zinc, tungsten, uranium or other valuable metal and upon every person owning any interest in oil, gas or other hydrocarbon substances produced from Utah wells. The State Tax Commission is charged with the administration of the tax. In the case of oil, gas and other hydrocarbon substances, the tax is 2 per cent of the value at the well produced, saved and sold or transported from the producing field.

The occupation tax was first enacted by Chapter 101, Laws of 1937, and is codified as Sections 59-5-66 through 59-5-82 of the Utah Code Annotated, 1953. Chapter 120, Laws of 1955, amended Sections 59-5-66 through 59-5-69, 59-5-71, 59-5-72, 59-5-81 and 59-5-82, U.C.A. 1953, to include tungsten and uranium within the definitions of "metaliferous ore" and to include oil and gas wells within the provisions of the Mining Occupation Tax Law.

Senate Bill 89, Laws of 1959, increased the rate of tax on oil, gas or other hydrocarbon substances from 1 per cent to 2 per cent of the value at the well. The law provides that the tax is due and payable on or before and is delinquent on the first day of June of the year next succeeding the calendar year when the oil or metal is sold, or the oil, gas or other hydrocarbon substances are produced, saved and sold or transported from the field where produced. (See 59-5-71, U.C.A. 1953, as amended, and 59-5-67, U.C.A. 1953, as amended.)

In *Consolidated Uranium Mines, Inc. v. Tax Commission of the State of Utah*, 4 Ut. 2d 236, 291 P. 2d 895, a 1955 case, the plaintiff leased from various owners unpatented mining claims covering a large area, agreeing to enter and work such claims. Finding the claims to consist of several disconnecting channels or beddings, the plaintiff entered into written contracts engaging certain individuals as independent contractors to mine units of the leased claims. The contractor was to supply all mining equipment and supplies and labor necessary, except those of a more permanent nature which were sup-

plied by the plaintiff. The court held that under such an agreement the plaintiff was the entity which operated all separate units under one ownership and, therefore, was entitled to only one exemption of \$50,000.00 from the mining occupation tax. In addition, the plaintiff also contended that the Commission unlawfully used the production figures for the entire year of 1953 as the basis for the tax imposed. In dealing with that question, the court held that 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 provided that the mine occupation tax is based on the metal mined or sales made in the year prior to the year in which the tax becomes delinquent. Therefore, an imposition of such a tax based on sales other than those made in the calendar year sought to be taxed violated the provisions of the Act, and the Tax Commission erred when it purported to base its assessment for the year 1954 on sales made during the year 1953.

In the *G. & G. Mining Co. v. Tax Commission* case, 6 Ut. 2d 165, 308 P.2d 642 (1957), plaintiff taxpayer appealed its mine occupation tax assessment. Since it was not operating in 1955, it argued that no tax was due in that year. However, the court upheld the assessment, citing the *Consolidated Uranium* case, reasoning that since plaintiff was engaged in the business of mining or producing ore in Utah in 1954, it was liable for the payment of the mine occupation tax based on ores sold during that year, even though the payment for such tax was not due until the next succeeding year.

## POINT 2.

THE PURPOSE OF THE MINING OCCUPATION STATUTE IS TO PROVIDE A CONSISTENT ANNUAL CONTRIBUTION TO THE STATES REVENUES. THE PURPOSE OF THE 1 PER CENT RATE RAISE WAS TO FINANCE SPECIFIC 1959-61 STATE MEASURES, TO BE PAID FOR DURING THOSE YEARS. PLAINTIFF'S POSITION IS INCONSISTENT WITH THOSE PURPOSES.

In all cases the object of statutory construction is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from those circumstances which the person using them had in view.

In construing an ambiguous statute, courts do not limit their search for the legislative intent to sources embodied in a published act, such as the title of the act, the preamble, chapter, article and section headings and marginal notes — “intrinsic aids” — but they will consider sources outside the printed page — “extrinsic” aids to interpretation. Extrinsic aids to the interpretation of statutes deal with the history of the statute. They may be legislative, executive, judicial or non-governmental in their origin and may include the events leading up to the introduction of the bill out of which the statute under consideration developed. (See Sutherland, Statutory Construction, Vol. 2, Section 5001.)

Under the provisions of 59-5-82, U.C.A. 1953, as amended:

“All occupation taxes imposed and collected under this act shall be paid to the state tax commission and by it promptly paid over to the state treasurer, and by him credited to the following funds, and in the manner hereinafter described:

“Of all occupation taxes paid to the state treasurer from the effective date of this act through December 31, 1947, 80% thereof shall be credited to the general fund, and the remainder shall be credited to a fund to be hereafter known as the ‘Occupation Tax Reserve Fund.’ All occupation taxes paid to the state treasurer from January 1, 1948, through December 31, 1948, shall be credited to the occupation tax reserve fund. There shall be credited by him at the end of each month from said fund to the general fund an amount equal to 80% of the average revenue collected from said tax during the corresponding month for the preceding two years. The same procedure shall be followed by him for each calendar year following 1948, except that on each succeeding year the number of preceding years whose monthly average revenues shall be taken as a basis for computing the amount to be credited to the general fund, shall be increased by one; provided, that when the number of years shall reach five, it shall remain at that number thereafter; and provided, further, that when the occupation tax reserve fund shall equal one and one-half times the average revenues received from the occupation tax for the five calendar years immediately preceding the current fiscal year, the treasurer shall thereafter credit every month to the general fund one hundred per cent of the average monthly collections for the corresponding months for the number of preceding years prescribed by law.

“The reserves in the occupation tax reserve fund shall be employed and handled in the same manner as all other unappropriated reserves in the general fund, but shall be kept intact. Interest from this fund shall be periodically credited to the general fund.”

As to the revenues from the 1 per cent increase in the mine occupation tax rate, 59-5-67.1, U.C.A., 1953, provides that:

“The proceeds from one-half of the tax imposed by this act upon gas and oil only shall be deposited as provided by law and credited by the state treasurer to the general fund.”

Substantially all, then, of the monies derived from the mining occupation tax are channeled immediately into the General Fund.

Utah law states that the General Fund consists of monies received into the treasury and not specifically appropriated to any other fund. In practice, the Utah General Fund also serves as a clearing fund for the distribution of money appropriated from some of the special funds. Conversely, some allocations of General Fund appropriations are transferred to special funds from which expenditures are made.

Every two years the administration and legislature of Utah is confronted with the task of formulating a budget or a financial plan for the state for the forthcoming biennium. For the most part this biennial review of state finance is centered around the operation of the State General Fund. Of the 115.5 million dollars

specifically appropriated by the 1961 Utah Legislature, a total of 102.5 million, or 89 per cent, was appropriated from the General Fund. Moreover, 53 of the 65 spending agencies in Utah receive all or part of their financial support from General Fund appropriations.

Governor George D. Clyde, in his budget message presented to the Utah State Thirty-Third Legislature at Salt Lake City, Utah, January 1959, for the period July 1, 1959 to June 30, 1961, stated that in 1957 a budget had been adopted which, among other things, raised school support to a realistic level and launched a program of capital construction designed to proceed over a period of several bienniums. (See Biennial Budget, State of Utah, for the period July 1, 1959-June 30, 1961.) He then stated that during 1959-61 the expanded programs would have to be continued with a much larger — and, therefore a much more costly — school enrollment. To meet the added costs, he proposed some extensions of existent taxes — and some comparatively minor increases in taxes not of general application.

It was estimated by the Finance Commission in its report to the Governor that there would be a surplus of \$6,500,000 on July 1, 1959. The Tax Commission estimated that \$75,700,000 would flow into the General Fund during the 1959-61 biennium, \$4,600,000 of which would be derived from the mine occupation tax. The total of the surplus in anticipated revenues gave an \$82,200,000 figure in General Fund free revenue to meet the requirements of government operation during that biennium. The Governor then proposed a total budget

of a little more than \$97,000,000 for department and institutional operating costs, of which 63 and 3/4ths million dollars would come from the General Fund, which would leave a surplus of approximately \$18,500,000 with which to meet other state requirements. He proposed a transfer of \$10,000,000 of this amount to the State Building Board to continue the program of capital construction, which would leave a General Fund residue of \$8,500,000 which he proposed should be transferred to the Uniform School Fund. When combined with the other monies available to the Uniform School Fund, a deficit of \$8,400,000 had to be made up from the property tax. He then proposed revenue measures to meet the emergency need for construction of primary and secondary school buildings, one of which was that the gross proceeds tax on oil and gas production be increased from 1 to 2 per cent, with an estimated revenue increase from this source alone of \$1,000,000. He also proposed that for this purpose a transfer of \$1,200,000 from the Mine Reserve Fund be effected. I quote from the Governor:

“The needs which are being met have been allowed to accumulate over a period of more than two decades, and many of those needs have been critical. . . . I am convinced that we must continue our program of capital construction until the backlog of urgent unfulfilled needs have been met and then proceed on a reduced schedule that will be sufficient to keep us abreast of current requirements.”

The tenor of his message indicated that the state needed more programs during the ensuing two years in many areas than there was money to institute and main-

tain. We submit that within the 1959-61 biennium's frame-work of urgent need and limited monies, there was no room for a year's loss of the 1% increase in revenue from the mining occupation tax source, which in fact the Governor recommended be raised to specifically meet 1959-61 school construction needs; that the 1 per cent raise of necessity applies to the years of the biennium, which included 1959.

The 1959 Legislature, in fact, appropriated from the General Fund to the Uniform School Fund \$9,000,000, provided that if revenues to the General Fund were not sufficient to permit such transfers, the state fiscal officers, with the approval of the Board of Examiners, should withhold such transfers during the 1959-61 biennium. The sum of \$1,200,000 was appropriated from the mine occupation tax Reserve Fund to the General Fund of the State (H.B. No. 199, page 358, Chapter 156); \$12,235,750 was appropriated to the State Building Board. (See Appropriations Act of 1959, Laws of Utah 1959.) The foregoing are illustrative of the over-all tendency of the 1959 Legislature to equal and in some cases to exceed the expenditures recommended by the Governor.

In addition, the Legislature did increase the mine occupation tax by 1 per cent. It was the policy of the Legislature in raising the rate of the oil and gas producers' occupation tax to supply revenue from this source for the 1959-61 biennial, so that the state might be able to fulfill its current obligations as to primary and secondary school construction. To eliminate a year would

be inconsistent with this evident policy. In addition, it is not consistent with any rational approach to state financing to omit a year's revenue.

### POINT 3.

IN PASSING 59-5-67.2, U.C.A. 1953, THE LEGISLATURE DID NOT INTEND TO ALTER THE BASIC NATURE OF THE MINE OCCUPATION TAX NOR TO CARVE OUT A YEAR'S EXCEPTION TO ITS BASIC THEORY. THE INTENT OF THE LEGISLATURE IN PASSING 59-5-67.2, U.C.A. 1953, WAS TO ESTABLISH THE EFFECTIVE DATE OF THE 1 PER CENT TAX RAISE AND SCOPE OF ITS COVERAGE; THAT IS, THAT THE 2 PER CENT RATE SHOULD APPLY TO THE TAX PAYABLE IN 1960, WHICH TAX WAS FOR THE PRIVILEGE OF OPERATING IN 1959.

In construing tax statutes, substance and not the form is to be considered. Statutes relating to taxation are to be so construed as to carry into effect the obvious intent of the legislature, rather than to defeat that end by a too strict adherence to the letter.

The modern cases also indicate that courts today, rather than beginning their inquiries with the formal words of the act, consider from the start the legislative purpose and intention. (See Sutherland, Statutory Construction, Vol. 2, Sec. 4701.)

The manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words. (See Cooley, Taxation, Vol. 2, Sec. 4706.)

In other words, the courts rationalize the restricted meaning of the letter to give effect to the equity and

spirit of the statute. (See Sutherland, Statutory Construction, Vol. 3, Sec. 6006.)

The majority of the cases even recognize the power of the court to transpose words and phrases when it is necessary to carry out the legislative intent. The cases reveal that courts have permitted the transposition of words or phrases: Where it is necessary to give the statute meaning and avoid absurdity; where it is necessary to make the act consistent and harmonious throughout; where the mistake is obvious; where it is apparent on the face of the statute that the word or phrase has been misplaced through inadvertence. (See Sutherland, Statutory Construction, Vol. 2, Sec. 4927.)

Despite its phraseology, we submit that 59-5-67.2 was not intended in any way to change the nature of the existing occupation tax law, nor to eliminate the collection of a year's revenue; that the increased tax was meant to apply to 1959 production, payable in 1960, for the privilege of operating in 1959, on a 2 per cent basis. 59-5-67.2 was drafted in order to clearly establish the effective date of the tax raise and scope of its coverage. The legislature did not contemplate a tax to be collected in 1959, based on 1958 production, at the 2 per cent rate, nor did they intend that the oil and gas producers' occupation tax for the privilege of operating in 1960 be paid in 1960 and be based on 1959 operations.

59-5-67.2 U.C.A. 1953, probably should be read in the following manner:

This tax shall take effect January 1, 1960,

and the tax payable in 1960, for the privilege of operating, shall be based on the 1959 operations.

#### POINT 4.

TO ADOPT PLAINTIFF'S CONSTRUCTION OF THE STATUTE WOULD POSSIBLY RENDER IT UNCONSTITUTIONAL, AND WHERE NECESSARY A CONSTITUTIONAL MEANING SHOULD BE INFERRED TO PRESERVE VALIDITY.

To interpret the Act in the manner plaintiff suggests would be to possibly invalidate it.

The Constitution of Utah, Article XIII, Section 2, as amended, provides that:

“The legislature shall provide by law for an annual tax sufficient with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year.”

And it is provided in Constitution of Utah, Article XIII, Section 9, that:

“No appropriation shall be made, or any expenditure authorized by the Legislature, whereby the expenditure of the State, during any fiscal year, shall exceed the total tax then provided for by law, and applicable for such appropriation or expenditure, unless the Legislature making such appropriation, shall provide for levying a sufficient tax, not exceeding the rates allowed in section seven of this article, to pay such appropriation or expenditure *within* such fiscal year. . . .” (Emphasis added.)

The legislature made appropriations at least equal to, and in some cases in excess of the Governor's rec-

ommendations for the 1959-61 biennium. (See Appropriation Act of 1959, Laws of Utah 1959.) As a result, to hold as plaintiff suggests would be to find that the legislature intended to violate the above provisions of the Constitution, and every presumption favors the validity of an act of the legislature and all doubts must be resolved in favor of the act. Likewise, it will be presumed that the legislature acted with integrity and with an honest purpose to keep within constitutional limits. In addition, where there are two possible interpretations of a statute, and one would render that statute unconstitutional, the alternative interpretation must be adopted by the court. (See Cooley, Taxation, Vol. 2, Sec. 509.)

#### POINT 5.

THE TAX COMMISSION'S INTERPRETATION OF 59-67.2, U.C.A. 1953, IS PRESUMPTIVELY CORRECT.

When the oil and gas producers' occupation tax was amended in 1955, Chapter 120, Section 2, with the exception of a difference in years, read the same as 59-5-67, U.C.A. 1953, the section in controversy in the instant case:

59-5-83, as amended: "This act shall take effect January 1956, and the tax payable for the privilege of operating in 1956 shall be based on the 1955 operations."

The Tax Commission administratively construed that act, and has done so since 1955. Its decision relative to Phillips Petroleum Company was in accord with that administrative position.

The practice and interpretative regulations by officers, administrative agencies, departmental heads and others officially charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of the statute, in that the use of contemporary and practical interpretation makes for certainty in the law and justifies reliance upon the conduct of public officials. (See Sutherland, Statutory Construction, Vol. 2, Sections 5105 and 5103.)

A fortiori, where a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is accorded greater weight than it ordinarily receives. It is regarded as presumptively the correct interpretation of the law. (See Sutherland, Statutory Construction, Vol. 2, Sec. 5109.)

Since 59-5-83, U.C.A. 1953, was copied without any meaningful change, we can assume that the legislature approved of the administrative position of the Tax Commission.

In addition, plaintiff's view of the statute was not adopted by the other producers who filed and paid in the usual fashion, and, interpretations made by the public and those affected by the law may have important bearing as to the meaning of a statute. (See Sutherland, Statutory Construction, Vol. 2, Sec. 5106.)

## CONCLUSION

In passing 59-5-67.2, U.C.A. 1953, the legislature merely intended to establish the effective date of the

1 per cent tax raise and the scope of its coverage; that is, to establish that the 2 per cent rate should apply to the tax payable in 1960, which tax was for the privilege of operating in 1959 and was based on 1959 production. The tax for the privilege of operating in 1960 is due and payable in 1961 and is based on 1960 production, and is also payable at a 2 per cent rate. The determination of the Utah State Tax Commission should be affirmed.

Respectfully submitted,

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