

1992

Kennecott Corporation v. Salt Lake County and The Utah State Tax Commission of Utah : Brief of Respondent

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT

STATE OF UTAH

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| KENNECOTT CORPORATION, |) | |
| |) | |
| Plaintiff/Respondent, |) | |
| |) | Case No. 92-0149 |
| vs. |) | |
| |) | |
| SALT LAKE COUNTY and THE STATE |) | Priority 15 |
| TAX COMMISSION OF UTAH, |) | |
| |) | |
| Defendants/Appellants. |) | |

* * * * *

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER AND JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, JUDGE RIGTRUP
DATED FEBRUARY 28, 1992

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UTAH

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JURISDICTION

The Utah Supreme Court has jurisdiction of this appeal pursuant to Utah Code Ann. § 78-2-3(3) (Supp. 1992).

ISSUES PRESENTED FOR REVIEW

1. Should Judge Rigtrup's decision, that plaintiff/respondent Kennecott Corporation ("Kennecott") is entitled to relief respecting its January 1, 1983 assessment by the Utah State Tax Commission under this court's decision in Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984) holding Utah Code Ann. § 59-5-109 (Supp. 1981) unconstitutional, be sustained?

2. Would denial of relief to Kennecott constitute a violation of Kennecott's due process and equal protection rights under the Utah and United States Constitutions?

STANDARD OF REVIEW

The issues presented in this appeal are questions of law. The trial court's decisions on these issues are reviewed for correctness. Sharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS¹

1. Utah Constitution, Article XIII, Section 2:

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in

¹ A verbatim presentation of the constitutional provisions and statutes are included in the Addendum at page B-1.

proportion to its value, to be ascertained as provided by law.

2. Utah Constitution, Article XIII, Section 3:

The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property,

3. Fourteenth Amendment, United States Constitution,

Section I:

. . . No State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

4. Utah Constitution, Article I, Section 7:

No person shall be deprived of life, liberty or property, without due process of law.

5. Utah Constitution, Article I, Section 24:

All laws of a general nature shall have uniform operation.

6. Utah Code Ann. § 59-5-109 (Supp. 1981):

All locally assessed taxable real property shall be appraised at current fair market value and the value of such property rolled back to its January 1, 1978, level as such level is determined by the state tax commission.

7. Utah Code Ann. § 59-7-12 (Supp. 1986):

If the owner of any property assessed by the state tax commission . . . objects to the assessment, [it] may, before the tenth day of April, apply to the commission for a hearing. . . .

8. Utah Code Ann. § 59-11-11 (Supp. 1983):

In all cases of levy of taxes, . . . which is deemed unlawful by the party whose property is thus taxed, . . . such party may pay under protest such tax . . . to the officers designated and authorized by law to collect the same; and thereupon the party so paying . . . may bring an action in the tax division of the appropriate district court . . . to recover said tax . . . paid under protest.

9. Utah Code Ann. § 59-5-1 (Supp. 1981):

All taxable property, not specifically exempt under Article XIII, section 2, of the Constitution of Utah, must be assessed at 20% of its reasonable fair cash value

10. Utah Code Ann. § 59-24-2 (Supp. 1986):

(1) Within 30 days after notice of any decision by the state tax commission rendered after a formal hearing before it, any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may appeal or petition for review to the tax division of the district court located in the county of residence or principal place of business of the affected taxpayer

11. Utah Code Ann. § 63-30-25 (1989):

If the subdivision is unable to pay the claim or award during the current fiscal year it may pay the claim or award in not more than ten ensuing annual installments of equal size or in such other installments as are agreeable to the claimant.

12. Utah Code Ann. § 63-30-27 (1989):

(1) Notwithstanding any provision of law to the contrary, all political subdivisions may levy an annual property tax sufficient to pay the following:

- (a) any claim;
- (b) any settlement;
- (c) any judgment, . . . ;
- (d) the cost to defend any claim, settlement, or judgment; or
- (e) the establishment and maintenance of a reserve fund for the payment of claims, settlements or judgments as may be reasonably anticipated.

STATEMENT OF THE CASE

A. Nature of the Case.

This case is an appeal by Salt Lake County (the "County") from a summary judgment entered in favor of Kennecott by the Honorable Kenneth Rigtrup of the Third Judicial District Court on February 28, 1992 which reduced the assessed value of Kennecott's property assessed by the Utah State Tax Commission (the "Commission") as of January 1, 1983, from \$136,449,995 to \$123,405,445. See Record at 696.² Kennecott originally brought this proceeding before the Commission, pursuant to the provisions of Utah Code Ann. § 59-7-12 (Supp. 1986), and then appealed the

² Copies of the Findings of Fact, Conclusions of Law, and Summary Judgment dated February 28, 1992 are included in the Addendum at page A-1.

Commission's decision to the Tax Division of the Third Judicial District Court under the Tax Court Act. See Utah Code Ann. § 59-24-2 (Supp. 1986); Record at 1-5.

B. Course of Proceedings Below.

1. Kennecott initiated this case on June 1, 1983, when it, pursuant to provisions of Utah Code Ann. § 59-7-12, supra, filed a petition with the Commission protesting the January 1, 1983 assessed value of Kennecott's centrally assessed property. Kennecott received its Notice of Assessment from the Commission on or about May 24, 1983. Kennecott's petition asserted that Kennecott should have its centrally assessed property treated in the same fashion as locally assessed property under the "rollback" statute, Utah Code Ann. § 59-5-109, supra. The Commission, after an informal hearing in which the County appeared and participated, denied the assessed value reduction sought by Kennecott. See Record at 1-5, 20-23.

2. In a related proceeding Kennecott filed a tax protest action under the provisions of Utah Code Ann. § 59-11-11 (Supp. 1983) with the Third Judicial District Court, Civil No. C84-3049, wherein Kennecott requested from the District Court the same relief it was seeking from the Commission in Kennecott's appeal of its centrally assessed property. See Record at 21 and Utah Supreme Court Case No. 92-0286, Kennecott Corporation v. Salt Lake County.

3. After the Commission's informal hearing decision, Kennecott requested a formal hearing. Before the formal hearing was held, this court issued its decision in Rio Algom Mining Corp. v. San Juan County, supra, holding Utah Code Ann. § 59-5-109, supra, unconstitutional in violation of Article XIII, Sections 2 and 3 of the Utah Constitution. Following a formal hearing, the Commission again denied Kennecott the relief it requested, i.e., a reduction in the assessed value of Kennecott's centrally assessed real property. See Record at 20-23.

4. Pursuant to the provisions of the Tax Court Act, Utah Code Ann. § 59-24-1 et seq. (Supp. 1986), Kennecott then brought an action in the Tax Division of the Third Judicial District Court appealing the Commission's refusal to reduce the value of Kennecott's centrally assessed real property. See Record at 1-5.

5. The Tax Division of the Third Judicial District Court determined that Kennecott, as an owner of centrally assessed real property which had an appeal of the assessed value of its centrally assessed property pending before the Commission at the time Rio Algom was decided by this court, was entitled to relief from the unconstitutional assessment of its property if it could meet the criteria for relief set out by the court in Rio Algom. The Tax Division Court then remanded the case to the Commission for further proceedings. See Record at 219-21.

6. After another formal hearing, conducted by the Commission following remand, the District Court entered summary judgment sustaining the Commission's reduction in value of Kennecott's centrally assessed real property as a result of Kennecott's having met the Rio Algom criteria. See Record at 697-701. It is from this summary judgment that the County is herein appealing.

C. Statement of Facts Relevant to the Issues Presented.

1. On June 1, 1983, Kennecott filed a Protest of Notice of Assessment and Petition for Hearing with the Commission challenging the assessed value of Kennecott's centrally assessed property as of January 1, 1983. Kennecott received the Notice of Assessment that was challenged in this protest on, or after, May 24, 1983. See Record at 42-44.

2. In its protest, Kennecott asserted that its centrally assessed property was excessively valued in violation of relevant provisions of the Utah Constitution because locally assessed real property had its value rolled back to its 1978 level through the application of Utah Code Ann. § 59-5-109, supra, whereas the value of Kennecott's centrally assessed real property had not been rolled back. See Record at 20-23.

3. After an informal hearing held on June 29, 1983, the Commission, in a decision dated January 26, 1984, denied Kennecott any reduction in the assessed value of Kennecott's

property. On February 29, 1984, Kennecott petitioned the Commission for a formal hearing respecting the value of its centrally assessed property. Id.

4. On May 23, 1984, Kennecott filed a tax protest action under Utah Code Ann. § 59-11-11 (Supp. 1983) with the Third Judicial District Court respecting those property taxes it paid Salt Lake County under protest on November 30, 1983. The relief sought in this tax protest action, and the grounds for that relief, were virtually the same as in Kennecott's assessment proceeding pending before the Commission. That tax protest action, following a judgment entered in favor of Kennecott by Judge Brian of the Third Judicial District Court, has also been appealed by the County. See Utah Supreme Court Case No. 92-0286, Kennecott Corporation v. Salt Lake County.

5. Prior to the Commission's initial formal hearing in this case on June 4, 1984, this court issued its decision on March 13, 1984 in Rio Algom Mining Corp. v. San Juan County, 681 P.2d 184 (Utah 1984), which held Utah Code Ann. § 59-5-109, supra, unconstitutional as a violation of the plaintiff's rights under Article XIII, Sections 2 and 3 of the Utah Constitution respecting taxes paid in 1981. Kennecott's request for a formal hearing with the Commission was filed on February 29, 1984, prior to this Court's decision in Rio Algom, supra, not after the

issuance of that decision as asserted by the County in the County's brief. See Record 20-97.

6. On June 27, 1985, the Commission issued its decision following the Commission's initial formal hearing which was conducted on September 11, 1984. In that decision the Commission again refused to grant Kennecott any reduction in the assessed value of Kennecott's property as of January 1, 1983, specifically refusing to apply this court's holding that Utah Code Ann. § 59-5-109 was unconstitutional. Even though the Commission's formal hearing decision is dated June 27, 1985, it was not issued by the Commission, or mailed to Kennecott, until October 31, 1985. See Record 2-22.

7. On November 27, 1985, Kennecott filed a "Complaint, Notice of Appeal, and Petition for Review of a Decision of the Utah State Tax Commission" with the Tax Division of the Third Judicial District Court of Salt Lake County, Civil No. C85-8015, pursuant to the Utah Tax Court Act, Utah Code Ann. § 59-24-2, supra, whereby it appealed the Commission's formal hearing decision. Kennecott asserted, in this lawsuit, that the Commission's decision refusing to grant Kennecott the rollback under Utah Code Ann. § 59-5-109 as of January 1, 1983, when that rollback had been extended to locally assessed real property, violated Kennecott's rights under Article XIII, Sections 2, 3 and 4 of the Utah Constitution. See Record at 1-5.

8. The Commission, and the County, in response to Kennecott's complaint, brought a Motion to Dismiss upon the grounds that Rio Algom foreclosed any relief because Kennecott was not one of the named plaintiffs in Rio Algom. See Record at 12. The District Court denied this Motion to Dismiss, but remanded the case to the Commission for a new formal hearing to determine if Kennecott could meet the criteria for relief specified in Rio Algom, and, if so, what reduction should be granted. See Record at 219-21. The District Court specifically held as follows:

Kennecott's protest of its 1983 ad valorem assessment was timely filed pursuant to Utah Code Ann., section 59-7-12 (1953), and was pending before the Utah State Tax Commission at the time the Utah Supreme Court decided Rio Algom, et al. v. San Juan County, et al., 681 P.2d 184 (Utah 1984). That case does not deny a taxpayer having a pending assessment challenge on March 13, 1984, the date Rio Algom was decided, the opportunity of fully pursuing its protest and obtaining any relief to which it may be entitled pursuant to Utah Code Annotated, section 59-7-12 (1953), as amended. The decision following formal hearing of the Utah State Tax Commission on Kennecott's valuation protest was based upon the Tax Commission's interpretation of the decision in Rio Algom, an interpretation that Kennecott was entitled to no relief under either Rio Algom, et al. v. San Juan County, et al., supra, or Article XIII, Section 2 and 3, Utah Constitution. The Commission made no findings and reached no conclusions about value, and as to whether the requirements of Article XIII, Sections 2 and 3, Utah Constitution had been met. This decision by the Tax Commission was erroneous.

Record at 220.

9. On June 24, 1987, following a formal hearing upon remand, the Commission entered an Amended Final Decision and Order which reduced the January 1, 1983 assessed value of Kennecott's property from the original assessed value of \$136,449,995 to \$114,642,841. See Record at 247-50. That Amended Final Decision and Order was appealed to the District Court by the County. The District Court again remanded the proceeding to the Commission for reexamination of Kennecott's January 1, 1983 assessed value in light of Rio Algom. See Record at 423-29.

10. On September 5, 1991, the Commission entered an order, based upon another formal hearing held on August 15, 1990 after the second remand, which expressly held that Kennecott had met the Rio Algom criteria for relief under that decision. The Commission then ordered a reduction in the assessed value of Kennecott's centrally assessed property from \$136,449,995 to \$123,405,445. See Record at 457-61.

11. On February 28, 1992, the District Court entered its "Findings of Fact, Conclusions of Law and Summary Judgment" which:

(a) concluded that "comparable locally assessed real property in Salt Lake County was undervalued by a factor of 1.4 in relation to Kennecott's centrally assessed property as of January 1, 1983";

(b) "that in order to equalize the value of Kennecott's centrally assessed property with the assessed value of comparable locally assessed property, Kennecott's real property should have its assessed value rolled back by a factor of 1.4" as of January 1, 1983; and

(c) affirmed, in its entirety, through a de novo independent review of the record before the Commission, the order and decision of the Commission reducing the assessed value of Kennecott's centrally assessed property from \$136,449,995 to \$123,405,445. See Record at 696-701.

SUMMARY OF ARGUMENT

The trial court correctly concluded that Rio Algom did not foreclose Kennecott's challenge to its January 1, 1983 assessment upon the basis that Kennecott's rights under Article XIII, Sections 2, 3 and 4 of the Utah Constitution were violated when locally assessed real property was rolled back to its January 1, 1978 level, whereas Kennecott's centrally assessed real property was not given the benefit of that rollback. Under Utah law Kennecott had done everything in its power to protect its assertion that Kennecott's constitutional rights were violated by the Commission in the original January 1, 1983 assessment.

Kennecott's rights under the Fourteenth Amendment of the United States Constitution and Article I, Sections 7 and 24 of the Utah Constitution will be violated if Kennecott is not

permitted to challenge its assessment as unlawful because of an unconstitutional statute.

ARGUMENT

POINT I

JUDGE RIGTRUP WAS CORRECT IN HOLDING KENNECOTT WAS ENTITLED TO RELIEF FROM THE APPLICATION OF AN UNCONSTITUTIONAL STATUTE AS TO KENNECOTT'S JANUARY 1, 1983 ASSESSMENT.

In Rio Algom Mining Corp. v. San Juan County, 681 P.2d 184 (Utah 1984), the Utah Supreme Court held that Utah Code Ann. § 59-5-109 (Supp. 1981) was unconstitutional and invalid because the statute violated the provisions of Article XIII, Sections 2 and 3 of the Utah Constitution. The statute which the court held unconstitutional was effective in 1981, 1982, 1983 and, prior to its repeal, in 1984. In declaring that the Rio Algom plaintiffs' rights under Article XIII, Sections 2 and 3 of the Utah Constitution were violated in 1981, as a result of the implementation by San Juan County of Utah Code Ann. § 59-5-109, supra, the court stated:

It necessarily follows that an indefinite, partial freeze on the valuation of some properties in the state is inherently inconsistent with the basic concept of an ad valorem tax system. Inevitably, the statute would produce valuations that are not based on market value and that are in violation of the principal of uniformity.

681 P.2d at 195. And further:

In sum, the fixing of baseline assessments of county-assessed real properties as of a given year in the past, see Utah Hotel Company v.

Yorgason, Utah, 659 P.2d 1056 (1983), is a violation of Article XIII, Sections 2 and 3 and is unconstitutional.

681 P.2d at 195.

Following this declaration of unconstitutionality, the court then discussed the effect its decision was to be given, stating as follows:

One of the criticisms of giving only prospective effect to a decision is that it turns the court's opinion into an advisory opinion or dicta. It also deprives the litigants, who have sustained the burden of attacking an unconstitutional statute, of the fruits of their victory. For this reason, prospective effect may even discourage challenges to statutes of questionable validity. In response to these considerations, some decisions that give only prospective effect to a holding of unconstitutionality as to all other parties give the holding retroactive effect as to the litigants or others who have litigation pending. [Citations deleted.] We gave this kind of limited retroactive effect to a decision that local government legislation was unconstitutional, a decision that was otherwise prospective only. [Citations deleted.]

For the same reasons that motivated the foregoing decisions, we direct that our holding of unconstitutionality be prospective and effective only from and after January 1, 1984. As to the six plaintiff-taxpayers who are parties to this appeal, however, this decision shall be retroactive for the year for which this suit for refund was brought.

681 P.2d at 196.

The County, in this appeal, is asserting that the meaning of the court's decision respecting the retroactive, versus

prospective, effect of Rio Algom is that Kennecott, a state assessed property owner which took every step available under Utah law to properly assert that its rights under the Utah constitution had been violated in the January 1, 1983 Commission assessment, has no relief available to it even though Kennecott's constitutional rights were admittedly violated in that assessment.³

This argument by the County is not supported by Rio Algom. As shown in the language from Rio Algom reproduced above, the court in that decision did not address the situation of parties who, at the time of the decision, had litigation pending challenging the constitutionality of Utah Code Ann. § 59-5-109, Kennecott's precise position in this case. What was specifically addressed in Rio Algom was (1) the rights of the six plaintiffs in that case; and (2) the general retroactive effect of the holding that Utah Code Ann. § 59-5-109 was unconstitutional. A careful review of the Rio Algom decision reveals that with respect to

³ As is shown in Kennecott's Statement of Relevant Facts, supra, Kennecott initiated its challenge to its 1983 assessment as required under Utah Code Ann. § 59-7-12 before the Rio Algom decision was issued. Not only did Kennecott challenge its assessment before the Commission under Utah Code Ann. § 59-7-12, it also commenced the tax protest action under Utah Code Ann. § 59-11-11, supra, within six months of paying these taxes under protest, when it became clear that no final decision respecting Kennecott's assessment would be forthcoming from the Commission before the six month statute of limitations respecting tax protest actions would have run. Thus, Kennecott did all it could to preserve its rights.

the issue of prospectivity versus retroactivity, the court was relying upon the law of pure prospectivity in setting an effective date of January 1, 1984, even though what was implemented by the court in Rio Algom was "modified" or "selective" prospectivity.⁴

In a very recent decision of the United States Supreme Court "selective" prospectivity, as urged by the County in this case, was specifically rejected. In James B. Beam Distilling Co. v. Georgia, 501 U.S. ____, 111 S. Ct. 2439, 115 L.Ed.2d 481 (1991), the Court held that "selective" prospectivity was inappropriate in a civil context because it violates the principles of stare decisis and the rule of law. In Beam the Court stated:

But selective prospectivity also breaches the principle that litigants in similar situations should be treated the same, a

⁴ "Selective" or "modified" prospectivity is a situation where the new rule of law is applied to the litigants before the court, and perhaps to others with litigation pending, retroactively, but prospectively as to all others. "Pure" prospectivity, is the situation where the new rule of law is only applied after the effective date of the newly announced rule of law. It is not applied retroactively to anyone, including the litigants in the case where the new rule is announced. Each of the following cases cited in the Rio Algom decision is a "pure" prospectivity, not a "selective" prospectivity, decision: Loyal Order of Moose v. County Board, 657 P.2d 257 (Utah 1982); Great Northern Railway v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932); Lemon v. Kurtzman, 411 U.S. 192 (1973); Northern Construction Pipeline Co. v. Marathon Pipeline Co., 458 U.S. 50 (1982); Southern Pacific Co. v. Cochise County, 377 P.2d 770 (Ariz. 1963); Deltona Corp. v. Bailey, 336 So.2d 1163 (Fla. 1976); Jacobs v. Lexington - Fayette Urban County Gov't, 450 SW.2d 10 (Ky. 1977); Salorio v. Glaser, 461 A.2d 1100 (N.J. 1983); Soo Line Railroad v. State, 286 NW.2d 459 (N.D. 1979); Gottlieb v. City of Milwaukee, 147 NW.2d 633 (Wis. 1977).

fundamental component of stare decisis and the rule of law generally. See R. Wasserstrom, *The Judicial Decision* 69-72 (1961). "We depart from this basic judicial tradition when we simply pick and choose from among similarly situated defendants those who alone will receive the benefit of a 'new' rule of constitutional law." Desist v. United States, 394 U.S. 244, 258-59, 22 L.Ed.2d 248, 89 S. Ct. 1030 (1969) (Harlan, J., dissenting); see also, Von Moschzisker, *Stare Decisis in Courts of Last Resort*, 37 Harv. L. Rev. 409, 425 (1924). For this reason, we abandoned the possibility of selective prospectivity in the criminal context in Griffith v. Kentucky, 479 U.S. 314, 328, 93 L.Ed.2d 649, 107 S. Ct. 708 (1987), even where the new rule constituted a "clear break" with previous law, in favor of completely retroactive application of all decisions to cases pending on direct review. Though Griffith was held not to dispose of the matter of civil retroactivity, see id., at 322, n.8, 93 L.Ed.2d 649, 107 S. Ct. 708, selective prospectivity appears never to have been endorsed in the civil context. [*American Trucking Associations, Inc. v. Smith*, 496 U.S. [167] at ____, 110 L.Ed.2d 148, 110 S. Ct. 2323 (plurality opinion)]. This case presents the issue.⁵

111 S. Ct. 2445, 115 L.Ed.2d 489-90.

In Beam, the plaintiff brought an action against Georgia seeking a refund of taxes paid under a statute which had been held unconstitutional in violation of the commerce clause in

⁵ The Court's opinion in Beam was a plurality decision, written by Justice Souter and joined in by Justice Stevens. Justice White wrote a concurring opinion which also rejected "selective" prospectivity, but reserved the issue of "pure" prospectivity. Justice Scalia, in a concurring opinion which was joined in by Justices Blackmun and Marshall, would have rejected both "selective" and "pure" prospectivity as not permitted by the constitution. Justices O'Connor, Rehnquist and Kennedy dissented.

Bacchus Imports Ltd. v. Dias, 468 U.S. 263, 104 S.Ct. 3049, 82 L.Ed.2d 200 (1984). Both the trial court, a state court, and the Supreme Court of Georgia declared the challenged tax unconstitutional and enjoined any future enforcement, but denied the liquor manufacturer's tax refund request holding that the ruling was to apply only prospectively. In Beam, the Court reversed the decision of the Georgia Supreme Court, holding that because the Bacchus case applied retroactively to the litigants in that case, the Bacchus rule would also have to be applied to the plaintiff in Beam, a similarly situated litigant. In so holding, the Court stated:

Bacchus thus applied its own rule, just as if it had reversed and remanded without further ado, and yet of course the Georgia courts refused to apply that rule with respect to the litigants in this case. Thus, the question is whether it is error to refuse to apply a rule of federal law retroactively after the case announcing the rule has already done so. We hold that it is, principles of equality and stare decisis here prevailing over any claim based on a Chevron Oil analysis.

111 S. Ct. at 2446, 115 L.Ed.2d at 491. And further;

Of course, retroactivity in civil cases must be limited by the need for finality, see Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 84 L.Ed. 329, 60 S. Ct. 317 (1940); once suit is barred by res judicata or by statutes of limitation or repose, a new rule cannot reopen the door already closed.

111 S. Ct. at 2446, 115 L.Ed.2d at 492.

The Court's analysis in Beam is particularly apropos in this case.⁶ In Rio Algom, just as in Bacchus, the litigants had the ruling applied retroactively. In Rio Algom that ruling was applied to the Rio Algom plaintiffs in 1981, even though the decision that Utah Code Ann. § 59-5-109 was unconstitutional was issued on March 13, 1984. Similarly, in this case, Kennecott sought to have that ruling applied to it for tax year 1983, two years after 1981, the year in which the Rio Algom plaintiffs were litigating their taxes. For the reasons enunciated in Beam, Rio Algom should not be read as foreclosing Kennecott's right to relief from the application of an unconstitutional statute in 1983, when Kennecott is not only "similarly situated" to the Rio Algom plaintiffs, but had litigation pending over the exact issue

⁶ The Supreme Court of Washington in Robinson v. City of Seattle, 119 Wash. 2d 34, _____, 830 P.2d 318, 342-43 (1992), adopted the Court's analysis and result in Beam when it rejected selective prospectivity. The Washington court stated:

We are persuaded that the Beam Distilling holding is sound. While our decision in National Can relied in part on the Chevron Oil analysis, we now modify our rule from National Can in a manner consistent with the limitations on the Chevron Oil rule effected in Beam Distilling. We expressly limit our holding in this case to the abolishment of selective prospectivity in the application of our state appellate decisions.

Id. 830 P.2d at 343. Utah should also reject selective prospectivity and sustain the trial court's decision in this case.

decided in Rio Algom at the time the decision in that case was issued.⁷

In Rio Algom the court expressed some concern that to apply its holding that Utah Code Ann. § 59-5-109 was unconstitutional could mean that "local governments will be subject to enormous financial and administrative burdens." Rio Algom, 681 P.2d at 195, and further: "Local governments operate on very precise and often strained budgets . . . " Id.

This concern is largely nonexistent in this case. Political subdivisions in Utah, including Salt Lake County, have specific authority to levy taxes to raise revenue in order to satisfy judgments rendered against them. Utah Code Ann. § 63-30-27 (1989) specifically provides:

(1) Notwithstanding any provision of law to the contrary, all political subdivisions may levy an annual property tax sufficient to pay the following:

- (a) any claim;
- (b) any settlement;

⁷ The court in Rio Algom, at page 196, cites one other Utah case where "selective" prospectivity had been announced and applied. In Carter v. Beaver County Service Area No. 1, 16 Utah 2d 280, 283, 399 P.2d 440, 442 (1965), the court granted a taxpayer a declaratory judgment holding the County Service Area Act unconstitutional, but stating; "In so declaring we desire it to be understood that this ruling applies to the instant controversy, and apart from this, the decision is to have prospective not retroactive effect." No damage relief, tax refund relief, or injunctive relief was sought by plaintiff in that case. Thus, the case may be more properly read as a "pure" prospectivity case since no other citizens' rights were adversely impacted by the decision of prospectivity.

(c) any judgment, including any judgment against an elected official or employee of any political subdivision, including peace officers, based upon a claim for punitive damages but the authority of a political subdivision for the payment of any judgment for punitive damages is limited in any individual case to \$10,000;

(d) the cost to defend any claim, settlement, or judgment; or

(e) the establishment and maintenance of a reserve fund for the payment of claims, settlements or judgments as may be reasonably anticipated.

(2) . . . No levy under this section may exceed .0001 per dollar of taxable value of taxable property. The revenues derived from this levy may not be used for any other purpose than those stipulated in this section.

Furthermore, to the extent a financial hardship may be imposed upon one of Utah's political subdivisions because of the need to refund taxes, Utah Code Ann. § 63-30-25 (1989) specifically permits the payment of an "award" in installments. Thus the "hardship" expressed by the County is nonexistent, or at least, minimal. Certainly any "hardship" should not permit the County and the Commission to violate Kennecott's constitutional rights under Article XIII, Sections 2 and 3 of the Utah Constitution and then retain the funds extorted as a result of that violation. This is simply unconscionable, and as will be pointed out hereinbelow, will result in a separate violation of

Kennecott's rights to due process of law and equal protection under the United States and Utah constitutions.⁸

POINT II

DENIAL OF RELIEF TO KENNECOTT RESPECTING ITS
JANUARY 1, 1983 ASSESSMENT WILL VIOLATE KEN-
NECOTT'S DUE PROCESS AND EQUAL PROTECTION
RIGHTS UNDER THE UNITED STATES AND UTAH
CONSTITUTIONS.

Denying relief to Kennecott in this case will result in Kennecott being unable to obtain any relief from an unconstitutional assessment. Consequently, such a denial will result in a separate violation of Kennecott's due process rights. This becomes clear when the recent decision of the United States Supreme Court in McKesson Corp. v. Division of Alcoholic

⁸ The County and the court may have some concern that a decision in Kennecott's favor may result in a series of lawsuits by others over the unconstitutionality of Utah Code Ann. § 59-5-109. That concern is also addressed by Judge Souter in his Beam opinion, where he stated that the retroactivity principle announced in Beam is necessarily limited by appropriate statutes of limitation as well as the doctrine of res judicata. In this situation, further litigation over Utah Code Ann. § 59-5-109, supra, is highly unlikely. If a state assessed taxpayer believed his real property assessment by the Commission was unlawful because of Utah Code Ann. § 59-5-109, he would have had to bring that assertion before the Commission within 30 days of having received his Notice of Assessment in 1981, 1982 or 1983. See Utah Code Ann. § 59-7-12 (1975). If that taxpayer decided to bring a tax protest action challenging the taxes he paid as a result of an unconstitutional assessment, that action would have to have been brought within six months of the date the taxes were paid under protest, or before May 30, 1984 at the latest. See Utah Code Ann. § 78-12-31 (1992) and Ponderosa One Limited Partnership v. Salt Lake Suburban Sanitary Dist., 738 P.2d 635 (Utah 1987).

Beverages & Tobacco, 496 U.S. 18, 110 S. Ct. 2238, 110 L.Ed.2d 17 (1990) is examined.

In McKesson, Florida enacted an excise tax scheme for alcoholic beverages which granted preferential rates to certain citrus, grape and sugarcane products, all of which were commonly grown in Florida and used in alcoholic beverages produced in that state. McKesson Corp. ("McKesson"), a liquor distributor whose products did not qualify for the reduced tax rate, filed an application for a tax refund with the Florida Comptroller's office upon the grounds that the tax scheme was unlawful in violation of the commerce clause and the Court's decision in Bacchus, supra.

The refund request was denied. McKesson then sued for the refund in a Florida state court. Eventually the Florida Supreme Court held the tax scheme unconstitutional and sustained an injunction against future enforcement of the preferred rate scheme, but refused to grant any refund or other relief for the taxes McKesson had already paid. In a unanimous decision, the United States Supreme Court reversed the Florida Supreme Court's refusal to order a tax refund, or grant other relief with respect to those taxes McKesson had already paid, holding that denying such relief violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In McKesson, the Court stated:

It is undisputed that the Florida Supreme Court, after holding that the Liquor Tax unconstitutionally discriminated against interstate commerce because of its preferences for liquor made from "crops which Florida is adapted to growing," 524 So.2d, at 1008, acted correctly in awarding petitioner declaratory and injunctive relief against continued enforcement of the discriminatory provisions. The question before us is whether prospective relief, by itself, exhausts the requirements of federal law. The answer is no: if a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.

496 U.S. at 31. And further:

To satisfy the requirements of the Due Process Clause, therefore, in this refund action the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a "clear and certain remedy," [Atchison, T.&S.F.R. Co. v.] O'Connor, 223 U.S. at 285, 56 L.Ed. 436, 32 S. Ct. 216, for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one.

Had the Florida courts declared the Liquor Tax invalid either because (other than its discriminatory nature) it was beyond the State's power to impose, as was the unapportioned tax in O'Connor, or because the taxpayers were absolutely immune from the tax, as were the Indian Tribes in Ward and Carpenter, no corrective action by the State could cure the invalidity of the tax during the contested tax period. The State would have had no choice but to "undo" the unlawful deprivation by refunding the tax previously

paid under duress, because allowing the State to "collect these unlawful taxes by coercive means and not incur any obligation to pay them back . . . would be in contravention of the Fourteenth Amendment.

496 U.S. at 39.

In the circumstances presented in this case, Kennecott can only protest, or litigate, a Tax Commission assessment it believes to be unlawful pursuant to the provisions of Utah Code Ann. § 59-7-12 (Supp. 1986), which states:

If the owner of any property assessed by the state tax commission or any county with a showing of reasonable cause objects to the assessment, either may, before the tenth day of April, apply to the commission for a hearing. Both the owner or the county upon a showing of reasonable cause shall be allowed to be a party at any hearing under this section.

The tax commission shall set a time for hearing the objection from April 10 until April 22. At the hearing the tax commission may increase, lower or sustain the assessment, if the commission finds an error in the assessment or if it is necessary to equalize the assessment with out similarly assessed property.

In Crystal Car Line v. State Tax Commission, 110 Utah 426, 174 P.2d 984 (1946), this court held that a taxpayer whose personal property was assessed by the Commission could not challenge that assessment as unlawful, because it was fraudulent, in a declaratory judgment action respecting the legal ability of the Commission to assess and tax the taxpayer's property. The court held that any such challenge was required to be brought before

the Commission under the predecessor to Utah Code Ann. § 59-7-12, supra.⁹ In so holding, the Utah Supreme Court stated:

Plaintiffs further contend that the assessments of their cars were fraudulent per se because in their valuation no account was taken of their diverse ages but all were given the same valuation per car. We are not impressed with this argument in view of the fact that plaintiffs at no time before they commenced this action protested the valuation placed on their cars, as provided for in Sec. 80-7-12, U.C.A. 1943. Had any of the plaintiffs been of the opinion that their cars were being overvaluated they had an opportunity under this section to apply to the commission within the time allowed, to have the valuations corrected and they would have been entitled to a hearing of the matter. This they did not do. . . . This court is committed to the view that in the absence of fraud or bad faith on the part of the assessor, his valuation is conclusive unless changed by the Board of Equalization on application of the taxpayer, and that this remedy which the legislature had provided for the taxpayer is exclusive unless willfulness, arbitrariness, fraud or bad faith can be clearly shown.

⁹ The text of Utah Code Ann. § 80-7-12 (1943), at the time of the Crystal Car Line decision, read as follows:

If the owner of any property assessed by the State Tax Commission is dissatisfied with the assessment made by it, such owner may, between the third Monday in May and the second Monday in June, apply to the Commission to have the same corrected in any particular, and it shall set a time for hearing such objections and may correct and increase or lower any assessment made by it, so as to equalize the same with the assessment of other property in the state.

174 P.2d at 991.

Thus, when Kennecott determined that the assessment of its real property by the Commission was excessive and unlawful because of a rollback granted to locally assessed real property, but not to Kennecott's property, Kennecott's only recourse was to contest that assessment under Utah Code Ann. § 59-7-12, supra. This is exactly the course Kennecott pursued.

Under McKesson, due process of law requires that a state give a taxpayer ". . . a fair opportunity to challenge the accuracy and legal validity of their tax obligation" and "a clear and certain remedy." 496 U.S. at 39. If this court does not sustain the trial court's determination that Kennecott was entitled to challenge its assessment in 1983, but agrees with the County that Rio Algom forecloses any remedy available to Kennecott for an assessment under a statute which was unconstitutional in 1981, and also in 1983, then the Court will have denied Kennecott a "clear and certain remedy" which McKesson requires

must be available so that Kennecott's due process rights are not violated.¹⁰

The County may argue that McKesson doesn't apply in this case because the assessment Kennecott is challenging was unlawful as a result of Utah state, not federal law. That assertion was addressed by the court in Smith v. Travis County Education District, 791 F. Supp. 1170 (D. Tex. 1992), vacated on other grounds, 968 F.2d 453 (5th Cir. 1992).

In Travis County, the court held that imposition of taxes which were violative of the Texas State Constitution constituted a violation of the due process of law guarantees afforded taxpayers by the Fifth and Fourteenth Amendments of the United States Constitution. In so holding, the United States District Court for the Western District of Texas stated:

As the State correctly argues, McKesson involved a tax that was held unconstitutional under the Commerce Clause of the United States Constitution. Consequently, the state proceeds to argue that McKesson should not be held to apply to state tax schemes that only violate state law. A distinction should be

¹⁰ The effect of the decision denying Kennecott any relief in this case is to deny Kennecott any relief whatsoever. Utah Code Ann. § 59-5-109, supra, was repealed by the Legislature following this court's decision in Rio Algom. Kennecott's right to relief in the tax protest action which is related to this assessment proceeding is entirely dependent upon the improper assessment of Kennecott's property by the Commission due to the rollback statute. Thus, denial of a possibility of relief in this case forecloses any relief available to Kennecott in the tax protest case. See Kennecott Corp. v. S.L. County; Utah State Supreme Court Case No. 92-0286.

recognized, but perhaps a distinction should also be recognized between tax schemes that merely violate a state or local statute and tax schemes that violate a state's constitution. The basic issue is whether the State provides a remedy. The issue in the present action is the State's continued enforcement of a tax scheme that has been found unconstitutional under the State constitution. Such a continued enforcement would violate the Fifth and Fourteenth Amendments of the United States Constitution.

791 F. Supp. at 1190-91.

That this continued imposition of taxes violation of a state constitutional provision also constitutes a violation of federal due process was directly addressed in Travis County as follows:

Once a state taxation scheme has been declared invalid under the state constitution, the taxpayers of that state must be given a substantive means to protest any payments of taxes incurred under such a scheme. A merely pro forma state remedy does not satisfy the demands of due process under the United States Constitution.

791 F.Supp. at 1203.

The analysis of whether imposition of a tax unlawful under state law constitutes a violation of the federal constitution is similar to an analysis of a due process of law violation under Utah's Constitution. See Vali Convalescent & Care Inst. v. Industrial Comm'n, 649 P.2d 33 (Utah 1982) (Decisions relating to the fifth and fourteenth amendments of the United States Constitution are highly persuasive when interpreting the due process

clause of the Utah Constitution); Untermeyer v. State Tax Comm'n, 102 Utah 214, 129 P.2d 881 (1942). Article I, Section 7 of the Utah Constitution, independent of federal constitutional guarantees, protects Kennecott from any action of the Commission, the County, or another Utah government unit, including Utah's Legislature, which results in a deprivation of Kennecott's property without due process of law. Kennecott submits that if this court does not sustain Judge Rigtrup's decision that Kennecott was entitled to challenge the Commission's assessment as of January 1, 1983, and also that Kennecott was entitled to a reduction in the assessed value of its property when Kennecott demonstrated that its assessment violated Article XIII, Sections 2 and 3 of the Utah Constitution, then Kennecott's due process rights under Article I, Section 7 of the Utah Constitution will be violated.

Not only does failure to grant Kennecott a remedy for the unconstitutional assessment of its property in 1983 constitute a violation of federal and state guarantees of due process of law, it also violates Kennecott's equal protection rights under the Fourteenth Amendment of the United States Constitution and Article I, Section 24 of the Utah Constitution.

As pointed out by the Court in Beam, ". . . similarly situated litigants should be treated the same, . . . " 111 S. Ct. at 2446, 115 L.Ed.2d at 491. See also, City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439, 105 S. Ct. 3249,

87 L.Ed.2d 313 (1985) ("The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."); Plyler v. Doe, 457 U.S. 202, 216, 102 S. Ct. 2382, 72 L.Ed.2d 786 (1982) ("The Equal Protection Clause directs that 'all persons similarly circumstanced shall be treated alike'"); Allegheny Pittsburgh Coal Co. v. County Commission, 488 U.S. 336, 343-345, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989) (the Equal Protection Clause applies to taxation which bears unequally on persons or property of the same class).

Furthermore, Beam held that "selective" prospectivity, i.e., selecting certain litigants to receive the benefit of a newly announced rule of law, while denying that benefit to all other litigants, violates the "rule of law." See, 111 S. Ct. at 2447, 115 L.Ed.2d at 493. In this case, Kennecott had pending before the Commission its assessment challenge, as required if Kennecott desired to challenge its assessed value, at the time Rio Algom was decided. The fact that the Rio Algom plaintiffs had the good fortune to be before the Utah Supreme Court, whereas Kennecott was litigating the exact same issue before the Tax Commission, was purely fortuitous.¹¹

¹¹ According to the Economist Style Guide, "fortuitous means accidental, not fortunate, or well-timed." The Economist Style Guide, p. 31, (1991), The Economist Books, Ltd.

Consequently, applying the Rio Algom rule to the Rio Algom plaintiffs, but not to Kennecott, only because Kennecott was not one of the lucky six plaintiffs in Rio Algom, is a wholly arbitrary distinction or classification, a completely accidental result.

When the only distinction that can be drawn between "similarly situated litigants," some of whom receive the benefit of a ruling, i.e., the Rio Algom plaintiffs, and others who do not receive any such benefit, i.e., Kennecott, is simply because of good fortune, or accident, the party left out in the cold has had its rights to equal protection under the law violated. The Equal Protection Clause of the Fourteenth Amendment protects Kennecott against just such an arbitrary and accidental result.

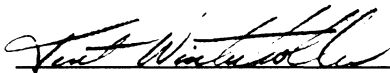
Article I, Section 24, of Utah's Constitution also protects Kennecott from the result the County seeks in this case. In Blue Cross and Blue Shield v. State, 779 P.2d 634, 637 (Utah 1989) and Amax Magnesium Corp. v. Tax Commission, 796 P.2d 1256, 1261 (Utah 1990), the principle was established that a violation of Article I, Section 24, of Utah's Constitution would also be a violation of the Equal Protection Clause of the Fourteenth Amendment. Kennecott submits that the converse is also true. Any violation of Kennecott's rights to equal protection of the law under the Fourteenth Amendment of the United States Constitution will also constitute a violation of Kennecott's rights under

Article I, Section 24 of Utah's Constitution because Utah's Constitution provides more protection than the Fourteenth Amendment against arbitrary and unreasonable action by government units in Utah.

CONCLUSION

As is shown herein, Judge Rigtrup's decision in this case that Kennecott could maintain its action for an unlawful assessment by the Utah State Tax Commission in violation of Article XIII, Sections 2 and 3 of Utah's Constitution was correct. To hold otherwise will violate the principles of stare decisis and the rule of law. Reversal of the trial court will also result in a violation of Kennecott's rights to due process of law and equal protection as guaranteed in the Fourteenth Amendment of the United States Constitution and Article I, Sections 7 and 24 of the Utah Constitution. Judge Rigtrup's decision should be sustained.

Respectfully submitted this 19th day of October, 1992.



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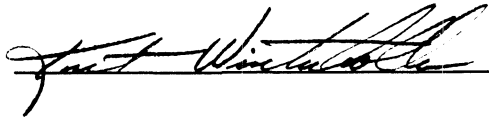
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MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, four true and correct copies of the foregoing BRIEF OF RESPONDENT to the following on this 19th day of October, 1992:

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KWW/101392A

ADDENDUM A

41
SALT LAKE COUNTY
Third Judicial District

FEB 28 1992

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By CB SALT LAKE COUNTY
Deputy Clerk

IN THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

* * * * *

| | | |
|-----------------------------|---|---------------------------------|
| KENNECOTT CORPORATION, |) | |
| |) | |
| Plaintiff/Petitioner/ |) | FINDINGS OF FACT |
| Appellant, |) | CONCLUSIONS OF LAW |
| |) | AND SUMMARY JUDGMENT |
| vs. |) | |
| |) | |
| THE STATE TAX COMMISSION OF |) | |
| UTAH and SALT LAKE COUNTY, |) | Civil No. C85-8015 |
| |) | |
| Defendants/Respondents. |) | Judge Kenneth Rigtrup |
| |) | |

* * * * *

Plaintiff Kennecott Corporation's, ("Kennecott") motion for summary judgment was heard by the court on October 28, 1991. Kennecott was represented at the hearing by its attorney Kent W. Winterholler of Parsons Behle & Latimer. Salt Lake County was represented by its attorney Bill Thomas Peters. Appearing at the hearing in behalf of the Utah State Tax Commission ("Tax Commission") was its attorney, Rick Carlton. At the conclusion of the hearing the court directed that the Tax Commission's record of the hearings held in this case before the Tax Commission, upon

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which Kennecott's motion was based, be transmitted to the court. The order directing the transmission of this Tax Commission record was entered by the court on October 29, 1991. Thereafter, the court received the record of the Tax Commission's hearings in this appeal and review proceeding, and has reviewed the same. Kennecott and Salt Lake County both submitted memoranda of law respecting their positions in this proceeding.

The court now having heard the arguments of counsel, having reviewed the respective memoranda of the parties, and having reviewed the record of the proceedings held before the Tax Commission, and being fully advised in the premises, does hereby enter the following:

FINDINGS OF FACT

1. The total assessed value of Kennecott's property located in Salt Lake County, as assessed by the Property Tax Division of the Tax Commission as of January 1, 1983, was \$136,449,995. Included in that assessment was \$5,924,084 assigned to land and \$39,731,840 assigned to buildings and improvements. This total Kennecott real property assessed value of \$45,655,924 represents twenty (20) percent of the fair market value of Kennecott's land, buildings and improvements as determined by the Tax Commission pursuant to Utah Code Ann. § 59-5-57 (Supp. 1983).

2. The total Tax Commission assessed value of \$45,655,924 assigned to real property did not include any assessment for Kennecott's mine and mining claims as of January 1, 1983.

3. The Utah State Tax Commission used the comparable sales method of valuation, or market approach to value, for its valuation of Kennecott's land included in the real property assessment of \$45,655,924. The Tax Commission in assessing the buildings and improvements included in Kennecott's real property assessment of \$45,685,294 used a cost approach to value, or a replacement cost new less depreciation methodology, based upon the Marshall & Swift Cost Manual.

4. Salt Lake County used the same valuation methodologies in assessing locally assessed commercial and industrial land and improvements as of January 1, 1983, as was used by the Tax Commission in assessing Kennecott's real property as of January 1, 1983. Both the comparable sales method of valuation, or the market approach, as well as the cost approach valuation method used by both the Tax Commission and Salt Lake County for 1983 are used to arrive at fair market values and both methods account for inflation or deflation as these factors may affect the fair market value of real property.

5. In 1983 Salt Lake County reduced the assessed value of land and improvements assessed by the Salt Lake County

Assessor by a factor of 1.4 to roll back these land and improvement values to 1978 levels pursuant to the provisions of Utah Code Ann. § 59-5-109 (Supp. 1983).

6. Kennecott's real property assessment as accomplished by the Tax Commission was not reduced by the 1.4 factor, or rolled back to 1978 levels by the Tax Commission, in assigning an assessed value to Kennecott's real property of \$45,655,924. If the Tax Commission had applied the same roll back factor to Kennecott's real property as was assigned by the Salt Lake County Assessor's office to locally assessed real property, so as to reduce the assessed value of Kennecott's real property, the total assessment of Kennecott's centrally assessed property as of January 1, 1983 would have been \$123,405,445.

Based upon the foregoing Findings of Fact, the court hereby makes the following:

CONCLUSIONS OF LAW

1. Because the Salt Lake County Assessor rolled back the value of locally assessed real property by a factor of 1.4, which real property was assessed by the same methodology as was Kennecott's centrally assessed real property as of January 1, 1983, comparable locally assessed real property in Salt Lake County was undervalued by a factor of 1.4 in relation to Kennecott's centrally assessed property as of January 1, 1983.

2. In order to equalize the valuation of Kennecott's centrally assessed property with the assessed value of comparable locally assessed property, Kennecott's real property should have its assessed value rolled back by a factor of 1.4. This results in an assessed value for Kennecott's centrally assessed property located in Salt Lake County as of January 1, 1983 of \$123,405,445.

3. The records of the Utah State Tax Commission and of the Salt Lake County Treasurer, Auditor and Assessor shall be corrected so as to reflect that the total assessed value of Kennecott's centrally assessed property located in Salt Lake County as of January 1, 1983 shall be \$123,405,445.

4. The September 5, 1991 and October 25, 1991 orders of the Tax Commission are amply supported by the evidence contained in the Tax Commission's record of these proceedings. The court's de novo, independent review of the record satisfies the court that Kennecott has demonstrated to the court and the Tax Commission, by a preponderance of the evidence, that the Tax Commission's orders of September 5, 1991 and October 25, 1991 should be, and hereby are, affirmed in their entirety.


SUMMARY JUDGMENT

Judgment is hereby awarded in favor of Kennecott reducing the assessed value of Kennecott's centrally assessed property located in Salt Lake County as of January 1, 1983 from the

assessed value originally assigned by the Utah State Tax Commission of \$136,449,995, to the Tax Commission assessed value as reflected and stated in the Utah State Tax Commission's Order of September 5, 1991 of \$123,405,445.

DATED this 28th day of February, 1992.

BY THE COURT:

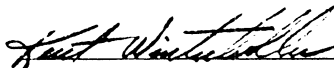

JUDGE KENNETH RISTRUP
District Court Judge

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND SUMMARY JUDGMENT to the following on this 14th day of February, 1992:

Bill Thomas Peters, Special Deputy
Salt Lake County Attorney
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111

Rick Carlton
Asst. Utah State Attorney General
Tax & Business Regulation Division
36 South State Street, 11th Floor
Salt Lake City, UT 84111



KWW/020592A

ADDENDUM B

AMENDMENT XIV

Section

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]

Section

4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives — Power to reduce appointment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

History: Proposed by Congress on June 16, 1866; declared to have been ratified by three-fourths of all the states on July 28, 1868.

AMENDMENT XV

Section

1. [Right of citizens to vote — Race or color not to disqualify.]

Section

2. [Power to enforce amendment.]

Section 1. [Right of citizens to vote — Race or color not to disqualify.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. 2. [Power to enforce amendment.]

The Congress shall have power to enforce this article by appropriate legislation.

History: Proposed by Congress on February 27, 1869; declared to have been ratified by more than three-fourths of all the states on March 30, 1870.

AMENDMENT XVI

[Income tax.]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

COLLATERAL REFERENCES

Utah Law Review. — The Mootness Question in Habeas Corpus Proceedings Where Petitioner Is Released Prior to Final Adjudication, 1969 Utah L. Rev. 265.

Habeas Corpus and the In-Service Conscientious Objector, 1969 Utah L. Rev. 328.

Post-Conviction Procedure Act: Limitation on Habeas Corpus?, 1969 Utah L. Rev. 595.

Am. Jur. 2d. — 39 Am. Jur. 2d Habeas Corpus §§ 5 to 7.

C.J.S. — 16A C.J.S. Constitutional Law § 472 et seq.; 39 C.J.S. Habeas Corpus § 5.

A.L.R. — Anticipatory relief in federal courts against state criminal prosecutions growing out of civil rights activities, 8 A.L.R.3d 301.

Key Numbers. — Constitutional Law ⇨ 83(1), 121 to 123.

Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 3.

Compiler's Notes. — Laws 1983, Senate

Joint Resolution No. 2, proposing to amend this section, was repealed by Senate Joint Resolution No. 3, Laws 1984 (2nd S.S.), § 2.

NOTES TO DECISIONS

ANALYSIS

Prospective application.

Regulation of right to bear arms.

Prospective application.

The amendment to this provision by Laws 1984 (2nd S.S.), Senate Joint Resolution No. 3 is to be given prospective application only. State v. Wacek, 703 P.2d 296 (Utah 1985).

Regulation of right to bear arms.

This section gives sufficient authority for the legislature to forbid the possession of dangerous weapons by those who are not citizens, or who have been convicted of crimes, or who are addicted to drugs, or who are mentally incompetent. State v. Beorchia, 530 P.2d 813 (Utah 1974).

COLLATERAL REFERENCES

Utah Law Review. — The Individual Right to Bear Arms: An Illusory Public Pacifier?, 1986 Utah L. Rev. 751.

Am. Jur. 2d. — 79 Am. Jur. 2d Weapons and Firearms § 4.

C.J.S. — 16A C.J.S. Constitutional Law § 511; 94 C.J.S. Weapons § 2.

A.L.R. — Gun control laws, validity and construction of, 28 A.L.R.3d 845.

Validity of statute proscribing possession or carrying of knife, 47 A.L.R.4th 651.

Key Numbers. — Constitutional Law ⇨ 82; Weapons ⇨ 1, 3, 6 et seq.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

History: Const. 1896.

Cross-References. — Eminent domain generally, § 78-34-1 et seq.

project did not unconstitutionally grant benefits to private individuals; any benefits were strictly incidental to the public purpose of ter-

mination of urban blight. *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Franchises §§ 9 to 23.

C.J.S. — 37 C.J.S. Franchises § 26.
Key Numbers. — Franchises ⇐ 11.

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

History: Const. 1896.

Cross-References. — Prohibition on pri-

vate or special laws, Utah Const., Art. VI, Sec. 26.

NOTES TO DECISIONS

ANALYSIS

In general.

Age of majority.

Agent for service of process.

Automobile license law.

Construction with Art. VI, § 26.

Contract carrier permit.

Cosmetologists' license law.

Criminal actions.

—Investigations.

—Prosecution.

—Sentence.

Criminal sentence.

Disparate tax assessments.

Excess revenue refunds.

Guest statutes.

Inheritance Tax Law.

Insurance premium tax exemption.

Intoxicating liquor.

Licenses.

Massage parlor ordinance.

Municipal employment prerequisites.

Notice requirements.

Property.

—Responsibility for water service.

Public employees' retirement system.

Public officers' bonds.

Public officers' salaries.

Road poll tax.

School activities.

Search warrants.

Sunday closing laws.

Tax sales.

Unfair Practices Act.

In general.

All laws shall operate uniformly wherever uniform laws can be enacted. *State v. Holtgreve*, 58 Utah 563, 200 P. 894, 26 A.L.R. 696 (1921).

Objects and purposes of law present touchstone for determining proper and improper

classifications. *State v. Mason*, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330 (1938); *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941).

One who assails legislative classification as arbitrary has burden of proving it to be such. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941).

Classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for differentiation between classes or subject matters included, as compared to those excluded, provided differentiation bears reasonable relation to purposes of act. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941).

Before legislative enactment can be interfered with, court must be able to say that there is no fair reason for the law that would not require equally its extension to those which it leaves untouched. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941).

Only where some persons or transactions excluded from operation of law are, as to the subject matter of the law, in no differentiable class from those included in its operation, is the law discriminatory in the sense of being arbitrary and unconstitutional, and if reasonable basis to differentiate can be found, law must be held constitutional. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941).

Inability of legislature to make perfect classification does not render statute unconstitutional. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941).

In determining whether classification made by legislature is unconstitutional, discrimination is very essence of classification and is not objectionable unless founded upon unreasonable distinctions. *Gronlund v. Salt Lake City*, 113 Utah 284, 194 P.2d 464 (1948).

An act is never unconstitutional because of

NOTES TO DECISIONS

Bond issue.

City ordinance authorizing bond issue for improvement of waterworks and specifying that for purpose of servicing bonds fiscal year should continue same as calendar year was not

invalid as attempting to fix fiscal year other than that provided by this section. *Fjeldsted v. Ogden City*, 83 Utah 278, 28 P.2d 144 (1933); *Wadsworth v. Santaquin City*, 83 Utah 321, 28 P.2d 161 (1933).

COLLATERAL REFERENCES

C.J.S. — 84 C.J.S. Taxation § 357.

Key Numbers. — Taxation ⇨ 318.

Sec. 2. [Tangible property to be taxed — Value ascertained — Exemptions — Remittance or abatement of taxes of poor — Intangible property — Legislature to provide annual tax for state.]

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

(a) The property of the state, school districts, and public libraries;

(b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;

(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

(d) Places of burial not held or used for private or corporate benefit; and

(e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m., held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or livestock raiser may be deemed for purposes of ad valorem property taxation to be exempted.

(5) Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall be exempted from taxation to the extent that they shall be owned and used for such purposes.

(6) Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for

furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the Legislature may prescribe.

(7) The taxes of the poor may be remitted or abated at such times and in such manner as may be provided by law.

(8) The Legislature may provide by law for the exemption from taxation: of not to exceed 45% of the fair market value of residential property as defined by law; and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family.

(9) Property owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the Legislature may provide.

(10) Intangible property may be exempted from taxation as property or it may be taxed as property in such manner and to such extent as the Legislature may provide, but if taxed as property the income therefrom shall not also be taxed. Provided that if intangible property is taxed as property the rate thereof shall not exceed five mills on each dollar of valuation.

(11) 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. For the purpose of paying the state debt, if any there be, the Legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt.

History: Const. 1896; L. 1930 (Spec. Sess.), S.J.R. 2; 1945, H.J.R. 3; 1957, H.J.R. 7; 1961, S.J.R. 6; 1963, S.J.R. 5; 1967, S.J.R. 1; 1982, S.J.R. 3; 1986, H.J.R. 18.

Compiler's Notes. — Laws 1959, Senate Joint Resolution No. 5 proposed a constitutional amendment to be voted on by the electors at the general election in 1960. The proposed amendment failed to pass because it did not receive the necessary majority.

The 1979 proposed amendments to this section by House Joint Resolutions Nos. 23 and 25 were repealed and withdrawn by Senate Joint Resolution No. 6, Laws 1980.

Laws 1986, Senate Joint Resolution No. 4, proposed to amend Subsection (2)(c) of this section. The proposed amendment was submitted to the electors at the general election in 1986 and failed to pass because it did not receive the necessary majority.

Cross-References. — Armories exempt from taxation, § 39-2-1.

Civil Air Patrol equipment exempt, § 2-1-41.

County service area property exempt, § 17A-2-429.

Disabled veteran's exemption, §§ 59-2-1104, 59-2-1105.

Exemptions generally, § 59-2-1101 et seq., Chapter 23 of Title 78.

Indigent persons, abatement or deferral of taxes, §§ 59-2-1107 to 59-2-1109.

Industrial facilities development property exempt, § 11-17-10.

Mine and mining claim improvements, machinery or structures not exempt, § 59-5-64.

Privilege tax on possession and use of tax-exempt properties, § 51-4-101.

Property of higher education institutions exempt, § 53B-20-106.

Property tax relief, § 59-2-1201 et seq.

Rate of assessment of property, § 59-2-103.

School property exempt from taxation, § 53A-3-408.

Tangible personal property held for sale on January 1 exempt, § 59-2-1114.

property, and assessment based thereon was in violation of this section. *Harmer v. State Tax Comm'n*, 22 Utah 2d 324, 452 P.2d 876 (1969).

Cited in *Salt Lake County v. Tax Comm'n ex rel. Utah Transit Auth.*, 780 P.2d 1231

(Utah 1989); *Salt Lake County ex rel. County Bd. of Equalization v. State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131 (Utah 1989).

COLLATERAL REFERENCES

Utah Law Review. — Note, Financing Modernized and Unmodernized Local Government in the Age of Aquarius, 1971 Utah L. Rev. 30.

Housing in Salt Lake County — A Place to Live for the Poor?, 1972 Utah L. Rev. 193.

Brigham Young Law Review. — A Municipality's Interest in an Electrical Power Generating Facility: Some Tax Considerations, 1979 B.Y.U. L. Rev. 125.

Am. Jur. 2d. — 71 Am. Jur. 2d State and Local Taxation §§ 194 et seq., 307 et seq.

C.J.S. — 84 C.J.S. Taxation §§ 52, 57 et seq., 215 et seq.

A.L.R. — Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

Property tax: effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R.4th 1105.

Propriety of federal court's ordering state or local tax increase to effectuate civil rights decree, 76 A.L.R. Fed. 504.

Key Numbers. — Taxation ⇐ 49, 57 et seq., 191 et seq.

Sec. 3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

(2) Land used for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes.

History: Const. 1896; Nov. 6, 1900; Nov. 6, 1906; L. 1930 (S.S.), S.J.R. 2; 1946 (1st S.S.), H.J.R. 2; 1967, S.J.R. 2; 1982, S.J.R. 3.

Compiler's Notes. — The 1979 proposed amendment of this section by House Joint Res-

olution No. 23 was repealed and withdrawn by Senate Joint Resolution No. 6, Laws 1980.

Cross-References. — Uniform School Fund, taxes allocated to, § 53A-16-101.

NOTES TO DECISIONS

ANALYSIS

In general.

"According to value in money" construed.

Charitable association.

Co-operative corporation property.

County clerk's probate fees.

County improvement district contingent tax.

Disparity in state and county assessment.

Double taxation.

Drainage assessments.

Occupation and license taxes.

Remission of taxes of indigent or insane persons.

Road poll taxes.

Roll-back of assessed value.

Special assessments.

State property.

Telephone license tax.

Uniformity and equality.

Utility rates.

Cited.

Sec. 4. [Mines and claims to be assessed — Basis and multiple — What to be assessed as tangible property.]

All metalliferous mines or mining claims, both placer and rock in place, shall be assessed as the Legislature shall provide; but the basis and multiple now used in determining the value of metalliferous mines for taxation purposes and the additional assessed value of \$5.00 per acre thereof shall not be changed before January 1, 1935, nor thereafter until otherwise provided by law. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims, and the value of any surface use made of mining claims, or mining property for other than mining purposes, shall be assessed as other tangible property.

History: Const. 1896; Nov. 8, 1908; L. 1930 (S.S.), S.J.R. 5; 1982, S.J.R. 3.

Cross-References. — Statutory provisions, § 59-2-201.

NOTES TO DECISIONS

ANALYSIS

Construction and operation of section.

Drain tunnels.

Notice.

Unpatented mining claims.

Water rights.

Construction and operation of section.

Classification under this section as it formerly read was not intended to limit phrase "or other valuable mineral deposits," but embraced all mineral deposits including gypsum, and net annual profits from products manufactured therefrom were taxable. *Nephi Plaster & Mfg. Co. v. Juab County*, 33 Utah 114, 93 P. 53, 14 L.R.A. (n.s.) 1043 (1907).

Under this section as it once read, a blanket assessment of all coal lands in county could not be made at a flat or uniform rate. *Ririe v. Randolph*, 51 Utah 274, 169 P. 941 (1917).

Under this section as it formerly read, it was held that for purpose of taxing net proceeds of mines, the cost of mining incurred in any one year must be considered independently from the cost incurred in any other year, and only such costs as were incurred during year in which net proceeds were obtained could be considered. *Mammoth Mining Co. v. Juab County*, 51 Utah 316, 170 P. 78 (1918).

Drain tunnels.

Under this section, drain tunnels, used to drain a mine, may not be separately taxed where it appears that they have no separate and independent value, but are inseparably connected with the operation of the mine. *Ontario Silver Mining Co. v. Hixon*, 49 Utah 359, 164 P. 498 (1917).

Notice.

Assessment of mines was not defective where notice described property with reasonable certainty as to locality and identity. *Consolidated Uranium Mines, Inc. v. Moffitt*, 257 F.2d 396 (10th Cir. 1958).

Unpatented mining claims.

A tax imposed under state law upon the possessory right to explore and develop mines located upon unpatented claims located upon land belonging to the unappropriated public domain of the United States is not open to challenge upon the ground that it constitutes a tax against property belonging to the United States. *Consolidated Uranium Mines, Inc. v. Moffitt*, 257 F.2d 396 (10th Cir. 1958).

Water rights.

Water rights are taxable whether considered appurtenant to mine or independent property. *Utah Metal & Tunnel Co. v. Groesbeck*, 62 Utah 251, 219 P. 248 (1923).

CHAPTER 5

ASSESSMENT OF PROPERTY

Article

1. General provisions.
2. Assessment by county assessor.
4. Duties of county assessor.
6. Assessment by state tax commission.
7. Mining occupation tax.
8. Farmland assessment act of 1969.
9. Administration of property tax assessment.
10. Real property plat map.

ARTICLE 1

GENERAL PROVISIONS

Section

59-5-1. Rate of assessment of property — School district unmet need computations.

59-5-1. Rate of assessment of property — School district unmet need computations. All taxable property, not specifically exempt under Article XIII, section 2, of the Constitution of Utah, must be assessed at ~~25%~~ 20% of its reasonable fair cash value. Land and the improvements thereon must be separately assessed. School district unmet need computations for critical school building aid shall be determined as though the bonding capacity had not been increased because of changes in the assessment rate.

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| History: R.S. 1898 & C.L. 1907, § 2506; C.L. 1917, § 5866; R.S. 1933 & C. 1943, 80-5-1; L. 1947, ch. 102, § 1; 1961, ch. 142, § 1; 1979, ch. 213, § 1; 1981, ch. 231, § 2. | Compiler's Notes. The 1979 amendment reduced the assessment rate from 30% to 25%; and added the last sentence. |
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ARTICLE 2

ASSESSMENT BY COUNTY ASSESSOR

Section

- 59-5-4. General duties of county assessors — Election by taxpayer for assessment of goods at average value — Assessing interstate carriers.
- 59-5-4.5. Assessor to recognize certain expenses in valuing property — Percentage limitation.
- 59-5-6. Report of valuation of taxable value of property to municipal authorities.

59-5-4. General duties of county assessors — Election by taxpayer for assessment of goods at average value — Assessing interstate carriers. The county assessor must, before ~~the fifteenth day of April~~ the first day of June of each year, ascertain the names of all taxable inhabitants and all property in the county subject to taxation except such as is required to be assessed by the state tax commission and must assess ~~such~~ the property to the person by whom it was owned or claimed, or in whose possession or control it was, at 12 o'clock m. of the first day of January next preceding, and at its value on that date; provided that the owner of any stock of goods, inventory, or other accumulation of personal property which may tend to vary in quantity or value from day to day, may elect to have ~~such~~ the personal property assessed on the basis of the average value thereof

The state tax commission is authorized to incur by agreement up to 50% of the expense of such services from its own appropriation.

History: L. 1969, ch. 179, § 3; 1970, ch. 9, § 2; 1981, ch. 233, § 1.

59-5-109. Real property valuations to be rolled back to 1978 levels. All locally assessed taxable real property shall be appraised at current fair market value and the value of such property rolled back to its January 1, 1978, level as such level is determined by the state tax commission.

History: C. 1953, 59-5-109, enacted by L. 1981, ch. 233, § 2.

Compiler's Notes.

Laws 1981, ch. 233, § 2 repealed old section 59-5-109 (L. 1969, ch. 179, § 4; 1979, ch. 211, § 1), relating to revaluation of property, and enacted new section 59-5-109.

Title of Act.

An act relating to revenue and taxation; providing for taxable real property valuations to be rolled back to 1978 levels;

providing that annual studies between the assessed value and market value of each type of taxable property within taxing districts be conducted by the state tax commission.

This act amends section 59-5-108, Utah Code Annotated 1953, as last amended by chapter 9, Laws of Utah 1970; and repeals and reenacts section 59-5-109, Utah Code Annotated 1953, as last amended by chapter 211, Laws of Utah 1979, and section 59-5-109.6, Utah Code Annotated 1953, as enacted by chapter 224, Laws of Utah 1977. — Laws 1981, ch. 233.

59-5-109.5. Repealed.

Repeal.

Section 59-5-109.5 (L. 1977, ch. 216, § 1), relating to revaluational programs additional

to the initial program, was repealed by Laws 1979, ch. 211, § 2.

59-5-109.6. Assessment-sales ratio studies authorized — Adjustment or factoring of assessment rates by counties. (1) Each year, to assist it in the adjustment and equalization of valuation and assessment of taxable real property, the state tax commission shall conduct and publish the results of studies of the relationship between the assessed and market values of property to determine assessment-sales ratios for each type of taxable real property within taxing districts. Assessors may provide sales information.

(2) The state tax commission shall, before December 1 of each even-numbered year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in section 59-5-1. Such adjustment or factoring may include an entire county, geographical areas within a county and separate classes of properties. The state tax commission shall also order corrective action where significant value deviations occur as indicated by the coefficient of dispersion.

History: C. 1953, 59-5-109.6, enacted by L. 1981, ch. 233, § 3.

Compiler's Notes.

Laws 1981, ch. 233, § 3 repealed old section 59-5-109.6 (L. 1977, ch. 224, § 1), relating to assessment-sales ratio studies, and enacted new section 59-5-109.6.

59-5-111. Limitation of levies against assessed property values — Exceptions — Election procedures — "Taxing district" defined. (1) Prior to the imposition of property tax mill levies against new assessed property values incorporated onto the tax rolls of any county of 10% or more as the result of any revaluation program conducted pursuant to section 59-5-109 or any adjustments

ARTICLE 2

STATE TAX COMMISSION

| Section | Section |
|---|--|
| 59-7-12. Time for application to correct assessment — Hearings. | property — Increase or decrease of assessed valuation. |
| 59-7-13. Investigations by tax commission — Assessment of escaped | 59-7-14. Equalization based on reports of county auditors. |

59-7-12. Time for application to correct assessment — Hearings.

If the owner of any property assessed by the state tax commission or any county with a showing of reasonable cause objects to the assessment, either may, before the tenth day of April, apply to the commission for a hearing. Both the owner or the county upon a showing of reasonable cause shall be allowed to be a party at any hearing under this section.

The tax commission shall set a time for hearing the objection from April 10 until April 22. At the hearing the tax commission may increase, lower or sustain the assessment, if the commission finds an error in the assessment or if it is necessary to equalize the assessment with other similarly assessed property.

History: R.S. 1898 & C.L. 1907, § 2563; L. 1909, ch. 63, § 1; C.L. 1917, § 5926; L. 1931, ch. 53, § 1; R.S. 1933 & C. 1943, 80-7-12; L. 1982, ch. 71, § 41; 1983, ch. 278, § 1.

Compiler's Notes. — The 1982 amendment substituted "before the tenth day of April" for "between the third Monday in May and the second Monday in June"; and inserted "between the tenth day of April and the twenty-second day of April, inclusive."

The 1983 amendment rewrote this section which read: "If the owner of any property assessed by the state tax commission is dissatisfied with the assessment made by it, such owner may, before the tenth day of April,

apply to the commission to have the same corrected in any particular, and it shall set a time for hearing such objections, between the tenth day of April and the twenty-second day of April, inclusive, and may correct and increase or lower any assessment made by it, so as to equalize the same with the assessment of other property in the state."

Burden of taxpayer.

In protesting an assessment, taxpayer not only must show substantial error or impropriety in the assessment, but also must provide a sound evidentiary basis upon which the commission could adopt a lower valuation. *Utah Power & Light Co. v. Utah State Tax Comm.* (1979) 590 P 2d 332.

59-7-13. Investigations by tax commission — Assessment of escaped property — Increase or decrease of assessed valuation.

Each year the State Tax Commission shall conduct an investigation throughout each county of the state to determine whether all property subject to taxation is on the assessment rolls, and whether such property is

History: C. 1953, 59-10-70, enacted by L. 1974, ch. 27, § 16.

Compiler's Notes. — Laws 1974, ch. 27, § 16 repealed old section 59-10-70 (R.S. 1898 & C.L. 1907, § 2665; C.L. 1917, § 6066; R.S.

1933 & C. 1943, 80-10-73; L. 1969, ch. 206, § 30), relating to the county auditor's report to the state auditor, and enacted new section 59-10-70.

CHAPTER 11

MISCELLANEOUS PROVISIONS

| Section | | Section | |
|-----------|--|-----------|--------------------------------------|
| 59-11-1. | Examination of books of county officers by state officers. | | ment for recovery — Payment. |
| 59-11-11. | Payment under protest — Action to recover. | 59-11-13. | Repealed. |
| 59-11-12. | Payment under protest — Judgment for recovery. | 59-11-16. | Rate of interest. |
| | | 59-11-17. | Date falling on other than work day. |

59-11-1. Examination of books of county officers by state officers.

The state auditor, as well as any member of the state tax commission, or any person designated by them, may examine the books of any officer charged with the collection and receipt of state taxes.

History: R.S. 1898 & C.L. 1907, § 2670; C.L. 1917, § 6080; R.S. 1933 & C. 1943, 80-11-1; L. 1983, ch. 320, § 37.

Compiler's Notes. — The 1983 amend-

ment deleted "of the state board of examiners or" before "of the state tax commission"; and made a minor change in punctuation.

59-11-10. Illegal tax or license — Injunction, etc.

Constitutionality of tax.

The constitutionality or legality of the tax statutes may be raised as issues in an action

in a district court pursuant to this section or 59-11-11. State Tax Comm. v. Wright (1979) 596 P 2d 634.

59-11-11. Payment under protest — Action to recover.

In all cases of levy of taxes, licenses, or other demands for public revenue which is deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may pay under protest such tax or license, or any part thereof deemed unlawful, to the officers designated and authorized by law to collect the same; and thereupon the party so paying or his legal representative may bring an action in the tax division of the appropriate district court against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit on whose behalf the same was collected, to recover said tax or license or any portion thereof paid under protest.

History: R.S. 1898 & C.L. 1907, § 2684; C.L. 1917, § 6094; R.S. 1933 & C. 1943, 80-11-11; L. 1977, ch. 80, § 3.

Compiler's Notes. — The 1977 amend-

ment substituted "the tax division of the appropriate district court" for "any court of competent jurisdiction."

ANALYSIS

Constitutionality of tax.

Payment under section not necessary.
Sewer connection fee.
Standing.

Constitutionality of tax.

The constitutionality or legality of the tax statutes may be raised as issues in an action in a district court pursuant to this section or 59-11-10. State Tax Comm. v. Wright (1979) 596 P 2d 634.

Payment under section not necessary.

Where owners were improperly taxed, it was not necessary to pay under protest and be put to expense of lawsuit until administrative remedies were exhausted. Baker v. Tax Comm. (1974) 520 P 2d 203.

Sewer connection fee.

Termination, without hearing, of water service to city residents who failed to pay ini-

tial sewer connection fee pursuant to ordinance requiring connection to new sewer system was not a deprivation of property without due process since procedures available to residents insured notice and opportunity to be heard. Rupp v. Grantsville City (1980) 610 P 2d 338.

Standing.

Plaintiff had sufficient standing to file claim where he alleged that property tax statute was unconstitutional in that it taxed a limited amount of property, and allowed expenditure of tax dollars on religious institutions that paid no taxes, thus resulting in his having to pay more in property taxes. Jenkins v. Swan (1983) 675 P 2d 1145.

59-11-12. Payment under protest — Judgment for recovery — Payment.

In case it is determined in any action that a tax or license, or any portion paid under protest was unlawfully collected, a judgment for recovery and lawful interest, together with costs of action shall be entered in favor of the plaintiff. Upon being presented a duly authenticated copy of the judgment, the proper officer or officers of the state, county or municipality whose officers collected or received the tax or license shall audit and allow such judgment, and cause a warrant to be drawn for the amount recovered by the judgment in favor of the legal holder. When the judgment is obtained against a county, and any portion of the taxes included in the judgment are state, district school or other taxing-units taxes which have been or may be paid over to the state or to any school district or other taxing unit by the county, the proper officer or officers of the state, school district or other taxing unit shall, upon demand by the county, cause a warrant to be drawn upon the treasurer of the state, school district or other taxing unit in favor of the county, for the amount of the taxes received, together with legal interest and an equitable portion of the costs of the action.

CHAPTER 24

TAX COURT ACT

| Section | | Section | |
|----------|--|----------|--|
| 59-24-1. | Tax division created in each district court — Jurisdiction — Probate division not affected. | | |
| 59-24-2. | Appeal from tax commission to tax division of district court — Waiver — Review by Supreme Court. | 59-24-6. | Tax division of third judicial district — Judge permanently assigned — Qualifications of judges. |
| 59-24-3. | Appeal from tax commission to tax division of district court — Procedure. | 59-24-7. | Decision of tax division of district court as final determination. |
| 59-24-4. | Burden of proof — Decision of court. | 59-24-8. | Appeal to Supreme Court from decision or order of tax division of district court. |
| 59-24-5. | Tax division of third judicial district — Publication of decisions. | 59-24-9. | District courts outside Salt Lake County — Service by third judicial district judge. |

59-24-1. Tax division created in each district court — Jurisdiction — Probate division not affected.

(1) There is created a tax division in each of the district courts of the State of Utah which shall have exclusive jurisdiction of all appeals from and petitions for review of decisions by the state tax commission rendered after formal hearings before the commission.

(2) The creation of a tax division in each of the district courts of this state shall not affect the jurisdiction of the probate division of those district courts to hear and determine matters relating to inheritance tax as conferred by chapter 12 of title 59.

History: C. 1953, 59-24-1, enacted by L. 1977, ch. 80, § 20.

59-24-2. Appeal from tax commission to tax division of district court — Waiver — Review by Supreme Court.

(1) Within 30 days after notice of any decision by the state tax commission rendered after a formal hearing before it, any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may appeal or petition for review to the tax division of the district court located in the county of residence or principal place of business of the affected taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to the tax division of the third judicial district court in and for Salt Lake County.

(2) In all cases, whether or not proper under subsection (1), any aggrieved party appearing before the state tax commission or county whose tax revenues are affected by the decision may appeal or petition for review a decision rendered after a formal hearing of the commission to the tax division of the third judicial district court in and for Salt Lake County within the specified 30 days following notice of such decision.

(3) In the alternative, a taxpayer may waive review and trial de novo in the tax division of the district court and, within the specified 30 days following the required notice, may seek review by the Utah Supreme Court upon writ of certiorari. If a taxpayer or any affected county chooses to waive right of review by the tax division of the district court and applies for a writ in the Supreme Court, the taxpayer or affected county must (a) state in the application for the writ that the taxpayer or affected county is waiving the right of review and trial de novo in the tax division of the district court and (b) comply with the provisions of sections 59-5-78, 59-13-48, 59-14A-77, 59-15-16 and/or 59-16-13 as though seeking review in the tax division of the district court. A county whose tax revenues are affected by the decision being reviewed shall be allowed to be a party in interest in the proceeding before the Supreme Court.

History: C. 1953, 59-24-2, enacted by L. 1977, ch. 80, § 21; L. 1983, ch. 278, § 2.

Compiler's Notes. — The 1983 amendment inserted "or county whose tax revenues are affected by the decision" in subsecs. (1) and (2); inserted "or any affected county" and "affected county" in the second sentence of subsec. (3); and added the last sentence in subsec. (3).

Sections 59-13-48, 59-14A-77, 59-15-16 and 59-16-13, referred to in subsec. (3), were repealed by Laws 1983, ch. 283, § 10.

Failure to waive right to review in district court.

Failure to expressly waive the right to review in the tax division of the district court and failure to state such waiver in the application for review by the Supreme Court upon writ of certiorari is to be treated as a pleading deficiency of the kind to which the pleader's adversary must make timely objection or the right to object to the error in pleading is waived. *Salt Lake County v. Tax Comm. ex rel. Greater Salt Lake Recreational Facilities* (1979) 596 P 2d 641.

59-24-3. Appeal from tax commission to tax division of district court — Procedure.

(1) All appeals from and petitions for review of decisions of the state tax commission brought before the tax division of any district court shall be original, independent proceedings and shall be tried without jury and de novo.

(2) If a statute provides for an appeal or review by the tax division of a district court of an order or determination of the state tax commission or of any other administrative agency, the proceeding shall be an original proceeding in the nature of a suit in equity to set aside such order or determination. The time within which the statute provides that the proceedings shall be brought is a period of limitations and not jurisdictional.

History: L. 1965, ch. 139, § 22.

Cross-References. — Archives and Records Service and Information Practices Act, exemplary damages under, § 63-2-88.

Health Care Malpractice Act, relation to this chapter, § 78-14-10.

Salaries of public officers subject to garnishment, § 78-27-15.

Tax levy for payment of punitive damages awarded against elected official or employee, § 63-30-27.

63-30-23. Payment of claim or judgment against state — Presentment for payment.

Any claim approved by the state as defined by Subsection 63-30-2(1) or any final judgment obtained against the state shall be presented to the state risk manager, or to the office, agency, institution or other instrumentality involved for payment, if payment by said instrumentality is otherwise permitted by law. If such payment is not authorized by law then said judgment or claim shall be presented to the board of examiners and the board shall proceed as provided in Section 63-6-10.

History: L. 1965, ch. 139, § 23; 1983, ch. 129, § 9; 1987, ch. 75, § 8.

Amendment Notes. — The 1987 amend-

ment substituted "Subsection 63-30-2(1)" for "Subsection 63-30-2(5)."

63-30-24. Payment of claim or judgment against political subdivision — Procedure by governing body.

Any claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body thereof to be paid forthwith from the general funds of said political subdivision unless said funds are appropriated to some other use or restricted by law or contract for other purposes.

History: L. 1965, ch. 139, § 24.

63-30-25. Payment of claim or judgment against political subdivision — Installment payments.

If the subdivision is unable to pay the claim or award during the current fiscal year it may pay the claim or award in not more than ten ensuing annual installments of equal size or in such other installments as are agreeable to the claimant.

History: L. 1965, ch. 139, § 25.

63-30-26. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.

Any political subdivision may create and maintain a reserve fund or may jointly with one or more other political subdivisions make contributions to a joint reserve fund, for the purpose of making payment of claims against the co-operating subdivisions when they become payable pursuant to this chapter,

or for the purpose of purchasing liability insurance to protect the co-operating subdivisions from any or all risks created by this chapter.

History: L. 1965, ch. 139, § 26; 1983, ch. 129, § 10.

63-30-27. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.

(1) Notwithstanding any provision of law to the contrary, all political subdivisions may levy an annual property tax sufficient to pay the following:

- (a) any claim;
- (b) any settlement;
- (c) any judgment, including any judgment against an elected official or employee of any political subdivision, including peace officers, based upon a claim for punitive damages but the authority of a political subdivision for the payment of any judgment for punitive damages is limited in any individual case to \$10,000;
- (d) the costs to defend against any claim, settlement, or judgment; or
- (e) the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments as may be reasonably anticipated.

(2) It is legislative intent that the payments authorized for punitive damage judgments or to pay the premium for such insurance as authorized is money spent for a public purpose within the meaning of this section and Article XIII, Sec. 5, Utah Constitution, even though as a result of the levy the maximum levy as otherwise restricted by law is exceeded. No levy under this section may exceed .0001 per dollar of taxable value of taxable property. The revenues derived from this levy may not be used for any other purpose than those stipulated in this section.

History: L. 1965, ch. 139, § 27; 1973, ch. 165, § 1; 1978, ch. 27, § 8; 1985, ch. 165, § 81; 1988, ch. 3, § 234.

Amendment Notes. — The 1985 amendment substituted “.0001” for “one-half mill” near the end of the section.

The 1988 amendment, effective February 9, 1988, rewrote the section, as amended by Laws

1985, ch. 165, § 81, to the extent that a detailed comparison is impracticable.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

Cross-References. — No judgment for punitive damages to be rendered against governmental entity, § 63-30-22.

63-30-28. Liability insurance — Purchase of insurance or self-insurance by governmental entity authorized — Establishment of trust accounts for self-insurance.

Any governmental entity within the state may purchase commercial insurance, self-insure, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against any risk created or recognized by this chapter or any action for which a governmental entity or its employee may be held liable.

In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establish-