

1992

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

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

920149

IN THE SUPREME COURT

STATE OF UTAH

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:
KENNECOTT CORPORATION, :
:
Plaintiff/Appellee, :
:
-vs- : Case No. 92-0149
:
SALT LAKE COUNTY and STATE :
TAX COMMISSION OF UTAH, :
:
Defendants/Appellants.: Priority 15
:
---oo0oo--

BRIEF OF APPELLANT

APPEAL FROM THE ORDER AND JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT, DATED FEBRUARY 28, 1992

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FILED

AUG 19 1992

CLERK SUPREME COURT,
UTAH

FILED

SEP 16 1992

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UTAH

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IN THE SUPREME COURT

STATE OF UTAH

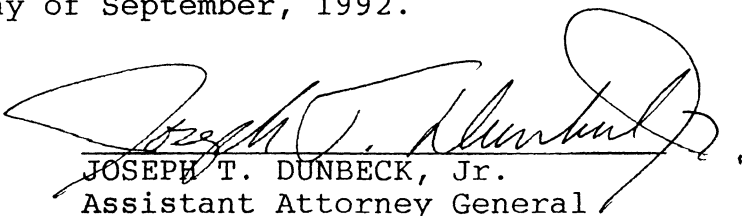
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KENNECOTT CORPORATION,	:	NOTICE OF JOINDER IN BRIEF
	:	OF APPELLANT SALT LAKE COUNTY
Plaintiff/Appellee,	:	
	:	
vs.	:	
	:	Case No. 92-0149
SALT LAKE COUNTY and STATE TAX	:	Priority 15
COMMISSION OF UTAH,	:	
	:	
Defendant/Appellants.	:	

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The Utah State Tax Commission, pursuant to Rule 24(i)
of the Utah Rules of Appellate Procedure, hereby joins in the
Brief of Appellant Salt Lake County.

DATED this 16th day of September, 1992.

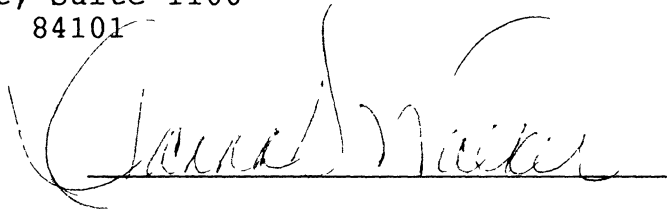

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I hereby certify that on the 16th day of September, 1992, I caused a true and correct copy of the foregoing NOTICE OF JOINDER IN BRIEF OF APPELLANT SALT LAKE COUNTY to be mailed, first class, postage prepaid, to the following:

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IN THE SUPREME COURT

STATE OF UTAH

KENNECOTT CORPORATION,
 Plaintiff/Appellee,
 -vs-
 SALT LAKE COUNTY and STATE
 TAX COMMISSION OF UTAH,
 Defendants/Appellants.

Case No. 92-0149
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JURISDICTION

The Utah Supreme Court has jurisdiction in this matter pursuant to Utah Code Annotated, § 78-2-2(3).

ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in determining that plaintiff/appellee, Kennecott Corporation ("Kennecott") is entitled to relief relative to its January 1, 1983, tax assessment, based upon this court's decision in Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984)?

STANDARD OF REVIEW

The sole issue in this appeal is a question of law. The standard of review is a "correction of error" standard. The trial court's conclusions of law are accorded no deference, but are reviewed for correctness. Bailey v. Call, 767 P.2d 138 (Utah Ct.App. 1989); T.R.F. v. Felan, 760 P.2d 906 (Utah Ct.App. 1988); General Glass Corp. v. Master Construction Co., 754 P.2d 438 (Utah Ct.App. 1988); Western Kane County Cattle Co., 744 P.2d 1376 (Utah 1987).

RELEVANT STATUTES

Utah Constitution, Article XIII, Section 2:

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.

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,

Utah Code Annotated, § 59-3-1 (Supp. 1983) - See Appendix 3.

Utah Code Annotated, § 59-5-57 - See Appendix 3.

Utah Code Annotated, § 59-5-109 (Supp. 1981) - See Appendix 3.

STATEMENT OF THE CASE

A. Nature of the Case.

This appeal seeks review of the Findings of Fact, Conclusions of Law and Summary Judgment and the Order, both dated February 28, 1992, of the Honorable Kenneth Rigtrup, entered in the Third Judicial District Court (collectively referred to herein as the "Judgment"), which reduced the assessed value of Kennecott's property, as of January 1, 1983, from \$136,449,995 to an assessed value of \$123,405,445.

B. Course of Proceedings Below.

In 1983, Kennecott sought review of the January 1, 1983, assessment of its property by the State Assessed Property Division of the Utah State Tax Commission (the "Commission"), asserting that

application of the rollback provisions contained in § 59-5-109 to locally assessed properties and not to state-assessed properties such as Kennecott, was violative of Article XIII, Sections 2, 3 and/or 4 of the Utah Constitution. After an informal hearing, the Commission issued a decision sustaining the assessment.

Before the formal hearing was held, this court's decision in the Rio Algom Corp. case, supra, was issued. Kennecott requested a formal hearing to challenge the Commission's decision. The Commission found that Kennecott was not entitled to the relief granted in the Rio Algom case and, thereafter, Kennecott filed a Complaint, Notice of Appeal and Petition for Review in the Tax Division of the Third Judicial District Court, seeking a reduction in the assessed value of its property and a refund of taxes paid in 1983 under protest in the amount of \$898,475.

The District Court determined that Kennecott was entitled to the relief granted by the Utah Supreme Court in the Rio Algom case and remanded the case to the Commission for further proceedings. At the termination of those proceedings, the case was again referred to the Third Judicial District Court for review. The District Court found that Kennecott had met the two-prong test established in the Rio Algom case and granted summary judgment in favor of Kennecott.

C. Statement of Relevant Facts.

1. On May 24, 1983, the State Assessed Property Division of the Commission sent a Notice of Assessment to Kennecott, informing Kennecott that its personal and real property had been assessed as of January 1, 1983. The assessed value of Kennecott's property for 1983 was \$136,685,576. R. 336.

2. On June 1, 1983, Kennecott filed a Petition of Protest relative to its 1983 assessment with the Commission. This Petition protested the Notice of Assessment as it applied to the assessed real property "on the grounds that the Notice of Assessment . . . failed to apply a rollback to 1978 values on that real property assessed by the Utah State Tax Commission." R. 2.

3. On June 29, 1983, the Commission held an informal hearing on Kennecott's protest. R. 20.

4. On January 26, 1984, the Commission issued a decision denying Kennecott the reduction it sought, and sustaining the original assessment. R. 20.

5. On March 13, 1984, the Utah Supreme Court issued its decision in Rio Algom Mining Corp. v. San Juan County, 681 P.2d 184 (Utah 1984). The named plaintiffs in the Rio Algom case were Rio Algom Corporation, Utah Power & Light, Energy Fuels Nuclear, Inc., Consolidated Oil and Gas, Inc., Atlas Corporation, and Northwest Pipeline Corporation.

6. On June 4, 1984, Kennecott petitioned the Commission for a formal hearing on its 1983 assessment. Kennecott specifically claimed that it was entitled to have the value of the property "rolled back" from its 1983 value to 1978 levels, pursuant to Article XIII, Section 4 of the Utah Constitution or, alternatively, pursuant to Article XIII, Sections 2 and 3.

7. On September 11, 1984, the Commission held a formal hearing on Kennecott's 1983 protest and, on June 27, 1985, issued its Findings of Fact, Conclusions of Law and Final Decision. R. 20. In its Final Decision, the Commission found that "the roll back in property values for locally assessed property was done pursuant to Utah Code Ann. § 59-5-109 (1953, as amended). That statute was held to be unconstitutional by the Supreme Court of Utah in the case of Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984). The Supreme Court stated in its decision that its determination was to be given only prospective relief and would be retroactive only in certain circumstances. Those circumstances only applied to the litigants in the Rio Algom case. Since appellant [Kennecott] was not one of the six taxpayers that were parties to that decision, then Rio Algom does not apply retroactively. (Rio Algom, supra)." R. 20-23.

8. On November 26, 1985, Kennecott filed a Complaint, Notice of Appeal and Petition for Review of a Decision of the Utah State

Tax Commission in the Tax Division of the Third Judicial District Court. This action appealed the Commission's June 27, 1985, decision and prayed for an order reducing the valuation of Kennecott's property by the Commission for 1983 by the sum of \$14,444,315, and for a refund of tax paid by Kennecott under protest, in the amount of \$898,475. R. 1-8.

9. On January 7, 1986, the Commission moved the District Court for an order dismissing Kennecott's complaint on the grounds that Kennecott was not entitled to relief by application of the ruling in Rio Algom, supra. In the alternative, and in the event that the District Court concluded Kennecott was entitled to relief under Rio Algom, the Commission moved that the case be remanded for further adjudication. R. 12-19.

10. On August 18, 1986, the District Court issued a Decision and Order on the Commission's motion to dismiss. The District Court denied the motion, stating that the Commission had erroneously decided that Kennecott "was entitled to no relief under either Rio Algom Corp. v. San Juan County, supra, or Article XIII, Sections 2 and 3, Utah Constitution." R. 220. The District Court did grant the Commission's motion to remand and instructed the Commission to give appropriate consideration to Rio Algom factors.

11. On June 27, 1987, the Commission entered an Order styled "Amended Final Decision and Order", which (1) reduced the assessed

value of Kennecott's property for 1983, and (2) further rolled back the reduced value to the 1978 level by applying a factor of 1.4. R. 247-250.

12. Salt Lake County (the "County") appealed the Commission's Amended Final Decision and Order and the District Court remanded for a second time, with directions indicating that the reduction of value was improper and directing the Commission to make express findings concerning whether the two-pronged test contained in Rio Algom, supra, had been met. R. 423-429.

13. On August 15, 1990, the Commission held a formal hearing pursuant to the Court's second remand order and, thereafter, entered an "order", dated September 5, 1991, determining that the requirements of Rio Algom had been met. R. 528-533.

14. Based upon the Commission's order of September 5, 1991, the District Court granted summary judgment in favor of Kennecott. R. 696-704, Appendix 1.

SUMMARY OF ARGUMENT

The sole issue in this appeal concerns the application and interpretation of this court's decision in the Rio Algom case, supra. It is the County's position that the District Court erred when it denied the motion of the County and the Commission to dismiss Kennecott's complaint. The District Court erroneously

interpreted the Rio Algom decision as establishing a test for pending litigants, when the Utah Supreme Court clearly intended the relief granted in Rio Algom to apply only to the six parties plaintiff in that case.

ARGUMENT

POINT I

KENNECOTT IS NOT ENTITLED TO THE RELIEF GRANTED TO THE SIX PARTIES PLAINTIFF IN THE RIO ALGOM DECISION

In proceedings below, the District Court erroneously found that Kennecott was entitled to establish the factors outlined in this court's Rio Algom decision in Part V, Proceedings on Remand. 681 P.2d, at 197. Resolution of this appeal hinges on the interpretation of this court's intentions relative to the relief granted in the Rio Algom case, supra. The language of the decision which is in dispute is set forth below:

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.

V. PROCEEDINGS ON REMAND

Having concluded that § 59-5-109 is unconstitutional, it is appropriate to state the guidelines that should be applied in determining what relief may be granted on remand.

For the plaintiffs to recover an alleged overpayment of taxes paid under protest on the ground that § 59-5-109 caused a shift in the tax burden to their properties, plaintiffs must prove two elements. First, the plaintiffs must demonstrate that the county-assessed properties were appraised at less than their 1981 true values. Second, the plaintiffs must establish by independent evidence the true value of their own properties, and the appraisal used must give due effect to the same economic factors as the formulae used to value the county-assessed properties. [Citations omitted.]

681 P.2d, at 196-197.

The District Court, in its August 18, 1986, Memorandum Decision (R. 219-221), ruled that the Utah Supreme Court did not intend by its ruling in the Rio Algom case to "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." R. 220. It is the County's position, however, that that is precisely what the Supreme Court intended to do.

It is important to remember that the Rio Algom case involved a constitutional challenge to two statutes -- § 59-5-4.5, which the court declined to declare unconstitutional; and § 59-5-109, which the court held to be unconstitutional, applying that holding prospectively from January 1, 1984, with the exception of the six parties plaintiff in the Rio Algom case, itself. In connection

with its discussion of § 59-5-4.5, the court established a two-prong test that future challengers of the application of that statute must meet in order to prove that application of the statute to the challengers resulted in unequal treatment. 681 P.2d, at 192.

Having dealt with § 59-5-4.5, the Rio Algom court went on to discuss the constitutionality of § 59-5-109 and held it to be unconstitutional. The court ruled that its decision would be prospective and effective only after January 1, 1984, except as to the six parties plaintiff in the Rio Algom case, itself. The court then went on to outline what those six parties were required to establish, on remand, to obtain the relief granted to them, and to no others, in the Rio Algom decision. 681 P.2d, at 197. Thus, the court established a test which applied only to the six parties plaintiff in the Rio Algom case. The District Court interpreted the decision to mean that Kennecott was entitled to meet the burden outlined in the Rio Algom decision. That interpretation was clearly erroneous because the relief granted to Rio Algom plaintiffs is available only to the Rio Algom plaintiffs.

In its decision to apply the Rio Algom holding prospectively, this court considered and discussed a number of cases where this unusual relief was granted. Among those cases were the decisions of the United States Supreme Court in Lemon v. Kurtzman, 411 U.S.

192, 93 S.Ct. 1463, 36 L.Ed.2d 51 (1973)¹; City of Phoenix v. Kolodziejewski, 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed.2d 523 (1970)²; Cipriano v. City of Houma, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed. 2d 647 (1969)³; Northern Pipeline Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982)⁴.

The Rio Algom court also considered the decisions in Southern Pacific Company v. Cochise County, 92 Ariz. 395, 377 P.2d 770 (1963). In that case, the Arizona Supreme Court found that a taxpayer could not be granted a refund of taxes paid under protest where granting the refund would threaten the financial solvency of the state taxing authorities. Id., at 778. In Strickland v. Newton County, 244 Ga. 54, 258 S.E.2d 132 (1979), another case relied upon by the Rio Algom court, the Georgia Supreme Court noted that when a court decides that one of its ruling shall operate only

1 Holding that a statement and those with whom it deals are not to be subjected to harsh, retrospective relief merely because they act on the basis of presumptively valid legislation, in the absence of contrary judicial direction. 411 U.S., at 193, 207-209.

2 Holding that it would be unjustifiably disruptive to give the decision determining election statute unconstitutional full retroactive effect and directing that the decision shall apply only to authorizations not final as of June 23, 1970. 399 U.S., at 214.

3 Holding that full retroactive effect to decision that limitation of franchise was unconstitutional would impose significant hardships on cities, bondholders and others connected with municipal utilities and directing that decision be applied only where, under state law, the time for challenging the election result had not expired and the elections were not final. 395 U.S., at 706.

4 Holding that the broad grant of jurisdiction to bankruptcy courts is unconstitutional, but retroactive application would visit substantial injustice and hardship on those who had relied on the bankruptcy courts' jurisdiction, the Supreme Court gave only prospective effect to its judgment. 458 U.S., at 88.

prospectively, that decision is subject to not set principles and the court may choose any relevant date in the interest of justice. 258 S.E.2d, at 133-134.

Of particular interest in this court's inclusion of Kansas City Millwright Co., Inc. v. Kalb, 221 Kan. 658, 562 P.2d 65 (1977), in its discussion concerning prospective application of determinations of statutory unconstitutionality. In that case, the court held that its decision would control the rights of all taxpayers who had paid taxes under protest and had pending actions challenging the validity of the tax on the date the decision of the Kansas Supreme Court was announced. Id., at 74. It is clear, then, that the Utah Supreme Court, in deciding what date its Rio Algom decision would become effect and to which parties it would apply, was wholly aware that it could make the ruling applicable to any party with an action pending and affirmatively chose not to do so.

Loyal Order of Moose No. 259 v. County Bd., 657 P.2d 257 (Utah 1982), is also illustrative. That case was decided on October 28, 1982. However, this court determined that the rules adopted should be applied prospectively, with a delayed effective date of January 1, 1983. Discussing its decision concerning the effective date of its ruling, this court noted:

Ordinarily an overruling decision has retro-active operation. [Citation omitted.] Retro-

active operation occurs, to some degree, whenever a case is applied in any manner to control the legal consequences flowing from fact situations which arose at a point earlier than the announcement of the new rule. The application may be to parties and facts of the case where the new rule is announced, to pending cases, to future-initiated cases arising from earlier events, or in some rare instances to terminated cases which are subject to collateral attack. [Citation omitted.]

Constitutional law neither requires nor prohibits retroactive operation of an overruling decision. A decision's operative effect is treated as a function of judicial policy rather than judicial power. [Citations omitted.] In other words, the extent of the decision's application is left to the discretion of the court. [Citations omitted.]

Where overruled law has been justifiably relied upon or where retroactive operation creates a burden, the court, in its discretion, may prohibit retroactive operation of the overruling decision. [Citation omitted.] In such instances, prospective operation of a court decision has long been applied. [Citation omitted.] In some cases, purely prospective application of the declared law of the case results in the new law not applying to the parties in the overruling case. [Citations omitted.]

657 P.2d, at 264-265.

It is abundantly clear that this court was aware that there might be pending challenges to the constitutionality of § 59-5-109 at the time it rendered its decision in Rio Algom and made a conscious decision to apply the ruling only to the six parties plaintiff in that case. After balancing the comparative burdens,

this court determined that severe hardship which would be imposed on local governmental units if their decision were given retroactive effect. 681 P.2d, at 196. Thus, this court limited its decision and held that it would control the rights of only the parties to the decision that overruled the constitutionality of § 59-5-109.

The District Court misinterpreted this court's ruling in Rio Algom, when it found that Kennecott was entitled to pursue its appeal, the basis of which that Kennecott, as a state assessed entity, was unconstitutionally overassessed because it did not receive the benefit of the rollback granted to locally assessed properties under § 59-5-109 in 1983. The value of the property was not in dispute; that value was agreed upon by all parties. The single issue upon which Kennecott's challenge was based was whether § 59-5-109 deprived Kennecott of equal treatment under Article XIII, Sections 2 and 3 of the Utah Constitution.

This court determined that § 59-5-109 was, in fact, violative of Article XIII, Sections 2 and 3 and ruled that, effective January 1, 1984. 681 P.2d, at 196. Having made that ruling, this court went on to direct that, in proceedings on remand, the six parties plaintiff could recover an overpayment of taxes if they established (1) that county assessed properties were appraised at less than their true values for the tax year at issue and (2) the true value

of their own properties, using an appraisal that gave due effect to the same economic factors as the formulae used to value the county-assessed properties. 681 P.2d, at 197.

The lien date relative to the Kennecott appeal here is January 1, 1983, a year prior to the effective date of this court's ruling in Rio Algom. Therefore, during the time period at issue, § 59-5-109 is presumed to be constitutional. The basis for Kennecott's appeal was that application of § 59-5-109 to locally assessed properties and not state assessed properties was unconstitutional. That issue was resolved against Kennecott by virtue of the effective date of this court's decision in Rio Algom.

CONCLUSION

The District Court erroneously found that Kennecott was entitled to establish the two factors to obtain this court outlined in granting limited relief to the six parties plaintiff in Rio Algom and remanded the case to the Commission for that purpose. That interpretation, however, ignores this court's specific ruling that the relief afforded to the six parties plaintiff in the Rio Algom case shall control only the rights of those six parties. Had this court intended for the ruling to apply to parties with pending challenges to § 59-5-109, it would have been a simple matter for the court to include those parties in its ruling. It did not. For these reasons, the judgment granted by the Third Judicial District

Court must be reversed and Kennecott's request for refund must be denied.

DATED this 19th day of August, 1992.

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The undersigned hereby certifies that four true and correct copies of the foregoing Brief of Appellant Salt Lake County were mailed, postage prepaid, this 19th day of August, 1992, to the following:

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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

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.

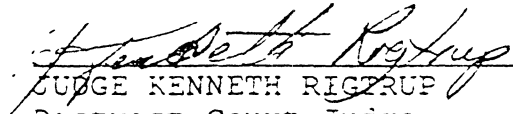
SUMMARY JUDGMENT

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:

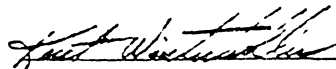

JUDGE KENNETH RIGTRUP
District Court Judge

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

APPENDIX 2

ORIGINAL

DAVID E. YOCOM - 3581
Salt Lake County Attorney
KARL HENDRICKSON - 1464
Deputy Salt Lake County Attorney
BILL THOMAS PETERS - 2574
Special Deputy Salt Lake County Attorney
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111
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MAR 19 1992

SALT LAKE COUNTY
By Wm. Peters
Deputy Clerk

FILED

MAR 23 1992

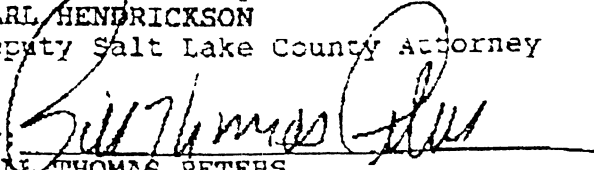
IN THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT COURT
CLERK SUPREME COURT
UTAH
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

KENNECOTT CORPORATION,	:	NOTICE OF APPEAL
Plaintiff,	:	
-vs-	:	920149
THE STATE TAX COMMISSION OF	:	Civil No. C85-8015
UTAH and <u>Salt Lake County</u> ,	:	Judge Kenneth Rigtrup
Defendants.	:	

Notice is hereby given that Defendant and Appellant Salt Lake County, through counsel Bill Thomas Peters, Special Deputy Salt Lake County Attorney, appeals to the Supreme Court the final judgment of the Honorable Kenneth Rigtrup entered in this matter on the 28th day of February, 1992. The appeal is taken from the entire judgment.

DATED t. s 19th day of March, 1992.

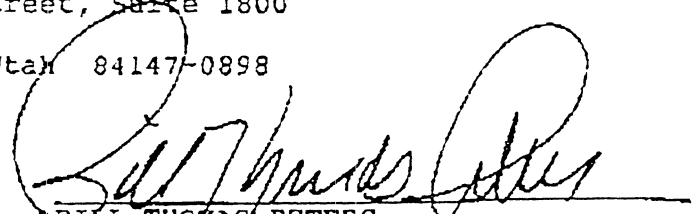
DAVID E. YOCOM
Salt Lake County Attorney
KARL HENDRICKSON
Deputy Salt Lake County Attorney

By: 
BILL THOMAS PETERS
Special Deputy Salt Lake County
Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing NOTICE OF APPEAL was mailed, postage prepaid, to the following this 17th day of March, 1992:

James B. Lee, Esq. 3/3
Kent W. Winterholler, Esq. 3/3
PARSONS, BEHLE & LATIMER
201 South Main Street, Suite 1800
P.O. Box 11898
Salt Lake City, Utah 84147-0898


BILL THOMAS PETERS

APPENDIX 3

provided livestock sold for slaughter or being held for slaughter shall be assessed at 14% of the fair cash value of the fraction of the full number of animals which the length of time said animals were held bears to the full year, but in no case for less than one-sixth of the full number of animals.

(3) On January 1, 1972, said property shall be assessed at 8% of its reasonable fair cash value; provided livestock sold for slaughter or being held for slaughter shall be assessed at 8% of the fair cash value of the fraction of the full number of animals which the length of time said animals were held bears to the full year, but in no case for less than one-sixth of the full number of animals.

(4) On January 1, 1973, and thereafter, said property shall be wholly exempted from ad valorem taxes. 1969

Effective through December 31, 1985

59-2-24. (Effective January 1, 1986). Inventory held for sale in ordinary course of business - Rate of assessment to reduce.

Those wares and merchandise held for sale in the ordinary course of business and which constitute the inventory of any retailer, wholesaler, manufacturer, farmer, or livestock owner, and which are present in the state of Utah on January 1, shall be exempt from ad valorem property taxes. 1985

59-2-25. Inventory held for sale in ordinary course of business - Inventory defined.

As used in sections 59-2-23 through 59-2-30, "inventory," except livestock and poultry inventory, means all items of tangible personal property described as materials, containers, goods in process, finished goods and other personal property owned by or in possession of the retailer, wholesaler, or manufacturer, that are or will become, part of the stock in trade of the retailer, wholesaler or manufacturer, held for sale in the ordinary course of his business. Livestock and poultry inventory is defined as all livestock and poultry sold in the ordinary course of business during the taxable year. 1969

59-2-26. Inventory held for sale in ordinary course of business - Property to which act shall not apply.

The exemption granted by this act shall not apply to goods, wares, and merchandise not heretofore subject to ad valorem personal property taxation and shall not apply to property or mineral deposits covered by the provisions of section 59-5-56 through 59-5-85. 1969

59-2-27. Inventory held for sale in ordinary course of business - Rules, regulations and forms.

The state tax commission shall prescribe rules, regulations and forms under which the foregoing may be applied. 1969

59-2-28. Inventory held for sale in ordinary course of business - Burden of proof to establish exemption.

The burden of proof shall be upon the taxpayer to establish any exemption. 1969

59-2-29. Inventory held for sale in ordinary course of business - Effective date for application of act.

The provisions of this act shall apply to said goods, wares, merchandise, livestock and poultry on hand and present in this state on and after January 1, 1970. 1969

59-2-30. Property used for religious worship or charitable purposes - Requirements for exemption.

exemptions for property used exclusively for either religious worship or charitable purposes provided for in section 2 of Article XIII of the Constitution of the state of Utah. This section is not intended to expand or limit the scope of such exemptions. Any property whose use is dedicated to religious worship or charitable purposes including property which is incidental to and reasonably necessary for the accomplishment of such religious worship or charitable purposes, intended to benefit an indefinite number of persons is exempt from taxation if all of the following requirements are met:

(1) The user is not organized to produce a profit from the use of the property.

(2) No part of any net earnings, from the use of the property, inures to the benefit of any private shareholder or individual, but any net earnings shall be used directly or indirectly, for the charitable or religious purposes of the organization.

(3) The property is not used or operated by the organization or other person so as to benefit any officer, trustee, director, shareholder, lessor, member, employee, contributor, or any other person through the distribution of profits, payment of excessive charges or compensations.

(4) Upon the liquidation, dissolution, or abandonment of the user no part of any proceeds derived from such use will inure to the benefit of any private person. 1973

59-2-31. Applicability of constitutional provision for exemption of property used for charitable purposes.

(1) Property used exclusively for religious, hospital, educational, employee representation, or welfare purposes which use complies with the requirements of section 59-2-30, shall be deemed to be used for charitable purposes within the exemption provided for in section 2 of Article XIII of the Constitution of the state of Utah, and section 59-2-30.

(2) This section shall not defeat exemptions for property not specifically enumerated which may be found to be within the exemption provided in section 2 of Article XIII of the Constitution of the state of Utah. 1973

59-2-32. Livestock exemption.

For purposes of this section "livestock" means all domestic animals, poultry, fur-bearing animals and fish kept for breeding or other useful purposes.

Livestock in Utah is exempt from taxation according to its value in money. 1983

Chapter 3. Definitions

59-3-1. Definitions.

As used in this title:

(1) "Property" means property which is subject to assessment and taxation according to its value, and does not include moneys, credits, bonds, stocks, representative property, franchises, good will, copyrights, patents, or other things commonly known as intangibles.

(2) "Real estate" includes

(a) The possession of, claim to, ownership of or right to the possession of, land.

(b) All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining thereto.

county, the total assessment of all such property, and the amount of the apportionment of such total assessments to each county. The record assessment books and the information upon which the assessments and apportionments are calculated shall be available for review by a county assessor, upon request. Each agent, employee, or other person acting under the control of a county assessor is subject to the standards and requirements of confidentiality in effect for the state tax commission and may not release any confidential proprietary information about a taxpayer if such person knows, or has reason to believe, that release of the information would significantly competitively disadvantage the taxpayer. Any person who violates the confidentiality requirements of this section may be imprisoned for a period not to exceed six months, fined in an amount not to exceed \$500, or both. In addition, such person shall be dismissed from county office or employment, as the case may be, and is disqualified from holding county office or employment for a period of five years.

1983

59-5-55. Record assessment of utility companies - Review by county assessor - Confidentiality - Penalties for disclosure.

The state tax commission must prepare each year a book to be called "Record Assessment of Utility Companies," in which must be entered the names of every person, organization or corporation engaged in any utility business, the value of all the tangible and intangible properties of said persons or companies doing business within the state of Utah upon which they are entitled to earn a fair return; together with such other information as the state tax commission may determine.

The value of the tangible properties of the public utilities within the state of Utah which are to be recorded in the book to be called "Record Assessment of Public Utilities," shall be determined as follows: The commission shall each year copy in said book from the last volume of the book known as "Record of Valuation of Utility Companies," prepared by the public service commission, the valuations of the tangible properties of every public utility doing business in this state which said properties are located within the boundaries of Utah. Said valuation so recorded in the record of valuations of utility companies and copied by the commission in the book known as "Record of Assessments of Utility Companies," shall be accepted as the true and actual value of the tangible properties of said utilities in Utah, and the commission shall assess the properties of each public utility from the valuation so recorded in the same proportion to the recorded valuation as the assessed valuation of other tangible properties similarly assessed bear to their actual value. The record assessment books and the information upon which the assessments and apportionments are calculated shall be available for review by a county assessor, upon request. Each agent, employee, or other person acting under the control of a county assessor is subject to the standards and requirements of confidentiality in effect for the state tax commission and may not release any confidential proprietary information about a taxpayer if such person knows, or has reason to believe, that release of the information would significantly competitively disadvantage the taxpayer. Any person who violates the confidentiality requirements of this section may be imprisoned for a period not to exceed six months, fined in an amount not to exceed \$500, or

both. In addition, such person shall be dismissed from county office or employment, as the case may be, and is disqualified from holding county office or employment for a period of five years. The commission shall consider the record of valuations of utility companies prepared by the public service commission in determining utility rates in valuing the property for tax purposes.

1983

59-5-56. Occupation tax and assessment book of mines - Review by county assessor - Confidentiality - Penalties for disclosure.

The state tax commission must prepare each year a book called the "Occupation Tax and Assessment Book of Mines," in which must be entered all occupation taxes fixed and the assessment of all mines in the state subject to assessment by it and in which book must be specified in separate columns and under appropriate heads:

- (1) Owner of mine.
- (2) Name and description and location of the mine.
- (3) County in which it is situated.
- (4) Net proceeds in dollars, if a metalliferous mine.
- (5) Number of tons of ore mined whether by the owner, lessee, contractor or otherwise.
- (6) Amount received for ore and metal if sold; if not sold the value thereof.
- (7) Value of mine.
- (8) Value of the machinery.
- (9) Value of supplies and other personal property.
- (10) Value of improvements.
- (11) Value of machinery, property and surface improvements having a value separate and independent of all such mines or mining claims assessed by the state tax commission, and the names of the owners of the same.

Together with such other information as the tax commission may determine. The record assessment books and the information upon which the assessments and apportionments are calculated shall be available for review by a county assessor, upon request. Each agent, employee, or other person acting under the control of a county assessor is subject to the standards and requirements of confidentiality in effect for the state tax commission and may not release any confidential proprietary information about a taxpayer if such person knows, or has reason to believe, that release of the information would significantly competitively disadvantage the taxpayer. Any person who violates the confidentiality requirements of this section may be imprisoned for a period not to exceed six months, fined in an amount not to exceed \$500, or both. In addition, such person shall be dismissed from county office or employment, as the case may be, and is disqualified from holding county office or employment for a period of five years.

1983

59-5-57. Assessment of mines.

All metalliferous mines and mining claims, both placer and rock in place, shall be assessed at \$10 per acre and in addition thereto at a value equal to two times the average net annual proceeds thereof for the three calendar years next preceding or for as many years next preceding as the mine has been operating, whichever is less; but there shall be no valuation based upon net annual proceeds for the purpose of assessment of any such mine or mining claim for any one year in which there were no gross proceeds realized in the year next preceding the year of assessment. All other mines or mining claims and

other valuable mineral deposits, including lands containing coal or hydrocarbons, shall be assessed at 20% of their reasonable fair cash value. 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 at 20% of their reasonable fair cash value. In all cases where the surface of lands is owned by one person and the mineral underlying such lands is owned by another, such property rights shall be separately assessed to the respective owners. In such cases the value of the surface if it is used for other than mining purposes shall be assessed by the assessor of the county in which the property is situated.

1981

Effective through December 31, 1985

59-5-57. (Effective January 1, 1986). Assessment of mines.

All metalliferous mines and mining claims, both placer and rock in place, shall be assessed at \$50 per acre and in addition thereto at a value equal to ten times the average net annual proceeds thereof for the three calendar years next preceding or for as many years next preceding as the mine has been operating, whichever is less; but there shall be no valuation based upon net annual proceeds for the purpose of assessment of any such mine or mining claim for any one year in which there were no gross proceeds realized in the year next preceding the year of assessment. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons, shall be assessed at 100% of their reasonable fair cash value. 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 at 100% of their reasonable fair cash value. In all cases where the surface of lands is owned by one person and the mineral underlying such lands is owned by another, such property rights shall be separately assessed to the respective owners. In such cases the value of the surface if it is used for other than mining purposes shall be assessed by the assessor of the county in which the property is situated.

1985

59-5-58. "Net annual proceeds" defined - Deductions - Costs and depreciation.

The words, "net annual proceeds," of a metalliferous mine or mining claim are defined to be the gross proceeds realized during the preceding calendar year from the sale or conversion into money or its equivalent of all ores from such mine or mining claim extracted by the owner or lessee, contractor or other person working upon or operating the property, including all dumps and tailings, during or previous to the year for which the assessment is made; provided, that in cases where the ores are sold under a contract existing between a parent and a subsidiary company or between companies which are wholly or partially owned by a common parent or between companies otherwise affiliated and the gross proceeds realized from the ore is disproportionate to its reasonable fair cash value, the tax commission shall place a value on the ore which is equal to its reasonable fair cash value, and said amount shall be taken as the basis for the tax. The following, and no other, deductions may be taken:

(1) The amount of money actually expended

during the year for labor, tools, appliances and supplies used in the mining operations, including the labor of the lessee and his employees and the amount expended by the lessee for tools, appliances, and supplies used by him in his mining operation; provided, the personal labor of lessees shall be computed at the prevailing wage.

(2) The actual and necessary office, engineering, and clerical expenses and the salaries of employees, other than corporate officers within the state.

(3) An amount for depreciation of machinery, buildings, structures, and other improvements and of the installation, construction, maintenance and repair of same made during the year in and about the workings of the mine for use in extracting the ores. The method of determining the amount for depreciation shall be the same as used in determining tax liabilities under the Internal Revenue Code. No depreciation shall be allowed where actual costs have been deducted in prior taxable years. However, previous to the amendment of this subsection a taxpayer was allowed to deduct actual costs expended during the year and was allowed up to a three-year carry forward if such costs resulted in negative net proceeds for the year. For taxable years 1982 and 1983, the taxpayer may deduct actual costs and for taxable years 1983, 1984, 1985, and 1986, a taxpayer may elect to exhaust its three-year carry forward of actual costs derived negative net proceeds before adopting the depreciation method; provided, however, that all taxpayers shall use the depreciation method for all taxable years after 1986. All actual costs expended in 1984 and years thereafter shall be subject to the depreciation methods even if the taxpayer elects to exhaust its carry forward in years 1983, 1984, 1985, and 1986. Once the taxpayer commences using the depreciation method it may depreciate all actual costs not previously deducted.

(4) An amount for depreciation of reduction works and mills, and improvements thereof, constructed during the year and operated in connection with the mine. The method of determining the amount for depreciation shall be the same as used in determining tax liabilities under the Internal Revenue Code. No depreciation shall be allowed where actual costs have been deducted in prior taxable years. However, previous to the amendment of this subsection a taxpayer was allowed to deduct actual costs expended during the year and was allowed up to a three-year carry forward if such costs resulted in negative net proceeds for the year. For taxable years 1982 and 1983, the taxpayer may deduct actual costs and for taxable years 1983, 1984, 1985, and 1986, a taxpayer may elect to exhaust its three-year carry forward of actual costs derived negative net proceeds before adopting the depreciation method; provided, however, that all taxpayers shall use the depreciation method for all taxable years after 1986. All actual costs expended in 1984 and years thereafter shall be subject to the depreciation methods even if the taxpayer elects to exhaust its carry forward in years 1983, 1984, 1985, and 1986. Once the taxpayer commences using the depreciation method it may depreciate all actual costs not previously deducted.

(5) The actual cost not exceeding a reasonable cost of the transportation of the ore from the mine to the market or reduction works.

(6) The charge made for sampling, assaying, reducing and smelting the ore and extracting the metals and minerals therefrom, provided, where a

U.C.A., Section 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.