

1964

American Smelting & Refining Co. v. State Tax Commission of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

MAY 5 - 1964

**AMERICAN SMELTING &
REFINING COMPANY,**
Petitioner and Appellant,
vs.
**STATE TAX COMMISSION
OF UTAH,**
Respondent.

Clerk, Supreme Court, Utah

Case No.
10084

BRIEF OF APPELLANT

Appeal from the
Utah State Tax Commission

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IN THE SUPREME COURT
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BRIEF OF APPELLANT

Appeal from the
Utah State Tax Commission

STATEMENT OF THE CASE

This appeal presents the question of whether a claim for refund of franchise tax is barred by the Statute of Limitations, where said refund resulted from an adjustment in the net income returned to the federal government and reported to the Tax Commission as required by statute, and where the claim for refund was filed prior to three years after the last installment of franchise tax was due, but three years after the last installment was paid.

DISPOSITION BY THE TAX COMMISSION

The Utah State Tax Commission held that the appellant's claim for refund was barred by the Statute of Limitations.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the decision of the Utah State Tax Commission and an order compelling the Tax Commission to grant the appellants claim for refund.

STATEMENT OF FACTS

The material facts of the case are as follows:

1. The appellant, American Smelting and Refining Company, is a foreign corporation organized pursuant to the laws of the State of New Jersey and at all times stated herein was and is qualified to transact business in the State of Utah. (Tr. 28).

2. The appellant, on October 14, 1957, filed its Utah Consolidated Franchise Tax Return for 1956. The franchise tax due as shown by said return was \$35,631.44. (Tr. 26).

3. Appellant, pursuant to Section 59-13-25, *Utah Code Ann. 1953*, elected to pay the franchise tax in four quarterly installments. Section 59-13-25, *Utah Code Ann. 1953*, provides for the payment of quarterly installments on or before the following dates: March 15, June 15, September 15, and December 15. Appellant paid the said franchise tax in four quarterly installments as follows:

April 10, 1957	\$11,000.00
June 7, 1957	11,000.00
September 11, 1957	8,000.00
October 14, 1957	5,631.44
	(Tr. 26)

4. Thereafter, appellant's Federal Income Tax return for 1956 was reviewed by agents of the Internal Revenue Service. As a result of this review, adjustments and changes were made and finally determined on September 16, 1960, which, when properly accounted for by the appellant in its said 1956 Utah Consolidated Franchise Tax Return, would permit a refund from the respondent of taxes paid by appellant as set forth in paragraph 3, herein, in the amount of \$695.30 with interest thereon at 6 per cent annum. (Tr. 27)

5. Appellant reported said adjustments and changes to, and filed a claim for refund in the amount of \$695.30 with the respondent on November 25, 1960. (Tr. 27)

6. On January 9, 1964, appellant's claim for refund came on for hearing before the respondent, at which time a stipulation of facts, exhibits, and testimony was introduced and received into evidence. (Tr. 2-25)

7. In a decision dated January 27, 1964, the appellant's claim for refund was denied by the respondent on the ground that it was barred by the Statute of Limitations, set forth in Section 59-13-43, *Utah Code Ann. 1953*. (Tr. 69-70)

STATEMENT OF POINTS

POINT I

WHERE A TAXPAYER ELECTS TO PAY ITS FRANCHISE TAX IN FOUR QUARTERLY INSTALLMENTS THE THREE YEAR STATUTE OF LIMITATIONS BARRING REFUNDS STARTS TO RUN FROM THE DUE DATE OF THE LAST QUARTERLY INSTALLMENT.

POINT II

WHERE NET INCOME REPORTABLE TO THE UNITED STATES GOVERNMENT IS CHANGED OR ADJUSTED AND SUCH CHANGE OR ADJUSTMENT IS REPORTED TO THE UTAH STATE TAX COMMISSION, THE PERIOD FOR ASSESSMENT OF DEFICIENCIES OR CLAIMS FOR REFUNDS IS EXTENDED FOR A REASONABLE TIME FROM SUCH CHANGE OR ADJUSTMENT.

ARGUMENT

POINT I

WHERE A TAXPAYER ELECTS TO PAY ITS FRANCHISE TAX IN FOUR QUARTERLY INSTALLMENTS THE THREE YEAR STATUTE OF LIMITATIONS BARRING REFUNDS STARTS TO RUN FROM THE DUE DATE OF THE LAST QUARTERLY INSTALLMENT.

The Utah State franchise tax can be paid at the time the return is filed or in quarterly installments on or be-

fore the following dates: March 15, June 15, September 15, and December 15. Section 59-13-25, *Utah Code Ann.* (1943).

On October 14, 1957, the appellant filed its franchise tax return and paid the last installment of franchise tax for its 1956 taxable year. On September 16, 1960, appellant's federal income tax for the 1956 taxable year was finally determined. On November 25, 1960, after appellant's net income reportable to the federal government had been adjusted by the Internal Revenue Service, the appellant reported such adjustments to the Tax Commission and filed its claim for refund to which it was and is entitled if timely filed.¹ The claim for refund was filed within three years of the date the last installment was actually due, but more than three years after the date actually paid.

Section 59-13-43 (2) (a) *Utah Code Ann.* (1943), provides:

"No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed with the tax commission by the taxpayer."

The appellant submits that, for purposes of claiming a refund, payment of franchise tax prior to the due date should be deemed to have been paid on the due date. A contrary interpretation, in cases as the present one, penalizes the prompt and early payment of the franchise tax by denying a claim for refund which, if the taxpayer

¹There is no dispute as to the amount of refund. (Tr. 27)

had waited to the due date to pay, he would be able to collect.

As the court stated in *Norville v. State Tax Commission*, 98 Utah 170, 97 P2d 937 (1940) at page 177:

“Moreover, in seeking to give effect to the intent of the legislature the court will adopt that interpretation of a taxing statute which lays the tax burden uniformly on all standing in the same degree with relation to the tax adopted. *In re Steebler's Estate*, 195 Cal. 386, 233 P. 972. And will avoid an interpretation which would lead to an impractical, unfair, or unreasonable result.”

Since the appellant's claim for refund was filed within three years of the due date of the last installment, its claim for refund in all fairness should be deemed timely. Certainly this should be so if this Court concludes that the period of limitation was not extended as contended in Point II hereafter.

POINT II

WHERE NET INCOME REPORTABLE TO THE UNITED STATES GOVERNMENT IS CHANGED OR ADJUSTED AND SUCH CHANGE OR ADJUSTMENT IS REPORTED TO THE UTAH STATE TAX COMMISSION, THE PERIOD OF ASSESSMENT FOR DEFICIENCIES OR CLAIMS FOR REFUNDS IS EXTENDED FOR A REASONABLE TIME FROM SUCH CHANGE OR ADJUSTMENT.

The computation and final determination of the amount of franchise tax due the State of Utah depends upon the final determination of the net income as re-

turned on a corporation's federal income tax return. In many cases the amount of net income returnable to the federal government is not finally determined prior to the expiration of the three year Statute of Limitations for the assessment of deficiencies or the granting of refunds.

For example, frequently claimed deductions and exclusions from income are contested and not resolved with the Internal Revenue Service until after the expiration of the three year limitation period. Prior to the 1957 amendment to the Franchise Tax Act set forth below if such contentions were finally resolved against the taxpayer, thereby resulting in a greater taxable income, the change in income was not required to be reported to the Tax Commission and no franchise tax deficiency could be assessed if the three year Statute of Limitations had expired.

Contrariwise, as in the present case, if after the Utah Franchise Tax return was filed, the net income attributable to Utah was subsequently reduced by adjustment in income returnable to the Internal Revenue Service, the change in income was not required to be reported to the Tax Commission and no claim for refund would have been granted by the Tax Commission if the three year period of limitations had expired.

In order to remedy this situation, the Utah State Legislature in 1957 amended Section 59-13-40 of the Utah Code. The preamble of the amending act provided as follows:

“An Act Amending Sections 59-13-1 and 59-13-20, Utah Code Annotated 1953, and 59-13-40,

Utah Code Annotated 1953, as Amended by Chapter 122, Laws of Utah 1955, Relating to Corporation Franchise Tax; and Providing for Further Defining of the Term 'Doing Business' to Include Other Activities, Providing for the Allocation of Certain Income Either to Utah or Outside Utah; and *Further Providing that for the Purpose of Re-Computing the Franchise Tax Because of Adjustments on Tax Returns Filed with the Federal Government, the Statute of Limitations Shall be Extended Beyond Three Years.*" (Emphasis added) *Laws of Utah* (1957), Chapter 123.

Section 59-13-40, *Utah Code Ann.* (1953), provides as follows:

"Except as provided in Section 59-13-41, the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed, and not [no] proceeding in the court without assessment for the collection of such taxes shall be begun after the expiration of such period.

"If the amount of net income for any year of any corporation as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change of net income, *such taxpayer shall report such change or corrected net income within ninety days after the final determination of such change or correction* as required to the state tax commission, and shall concede the accuracy of such determination or state wherein it is erroneous. Any corporation filing an amended return with such

department shall also file, within ninety days thereafter, an amended return with the state tax commission which shall contain such information as it shall require.

“If a corporation shall fail to report a change or correction by the commissioner of internal revenue or other officer of the United States or other competent authority or shall fail to file an amended return, any deficiency resulting from such adjustment may be assessed and collected within three years after said change, correction or amended return is reported to or filed with the federal government.

“If any corporation agrees with the United States commissioner of internal revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period for mailing notices of proposed deficiency tax for such year shall be three years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in federal income tax, whichever period expires the later.”
(Emphasis added)

From the preamble it is apparent that the purpose of the amendment was to extend the Statute of Limitations beyond three years “for the Purpose of Re-Computing the Franchise Tax Because of Adjustments on Tax Returns Filed with the Federal Government.” Section 59-13-40 provides that if an adjustment or change in the net income returnable to the federal government is made, such adjustment or change must be reported to the Utah State Tax Commission within ninety days after the final

determination of such change. *The taxpayer here complied explicitly with that mandate.* The appellant's federal income tax was finally determined on September 16, 1960. The adjustments in federal income were reported to the Tax Commission on November 25, 1960, the same day appellant's claim for refund was filed, precisely as required by the statute. The only logical reason for reporting such adjustments or changes to the Tax Commission, as stated by the preamble is, "for the purpose of Re-Computing the Franchise Tax Because of Adjustments on Tax Returns Filed with the Federal Government". If a deficiency results, it should be assessed. If an over-payment results, a refund should be granted.

The Utah State Tax Commission contends that even though a taxpayer is compelled to report adjustments and changes in its net income returnable to the federal government, if the three year limitation period has elapsed no assessment of a deficiency or claim for refund can be allowed. Such an interpretation gives no intelligent meaning to the statute and is contrary to the unmistakable intent of the Utah legislature as set forth in the preamble. Such an interpretation is not compelled by the statute when construed with the announced intent of the preamble.

It is the contention of the appellant that where adjustments or changes are reported to the Utah State Tax Commission, as required by the statute, and in the absence of a specified time period, a reasonable time is implied in which additional assessments could be made or claims for refunds filed. This gives purpose and meaning to the statute and is equitable and just to both the tax-

payer and the Tax Commission and makes effectual the clear legislative intent.

The statute specifically provides that if a taxpayer *does not* report changes and adjustments of income to the Tax Commission, the Tax Commission may assess and collect any deficiency resulting from the changes three years after the change was reported to the federal government. This provision, taken in conjunction with the Tax Commission's construction of the statute in question, would mean that in some instances a taxpayer would be compelled to report changes, which would result in a deficiency, so that the state could *not* collect the additional tax due.

For example, if after the expiration of the three year period of limitations, an adjustment in a taxpayer's federal income was made which resulted in a franchise tax deficiency and if the taxpayer reported the changes within the ninety-day period, under the Tax Commission's interpretation, no deficiency could be assessed. However, if the taxpayer did not report the change, the Tax Commission would have an additional three years to assess deficiencies. To require a taxpayer to report changes in income so that the Tax Commission cannot collect the additional tax due is an illogical and unnecessary interpretation which should not be placed on this statute, and obviously does not bring about the correction of the situation intended by the legislature.

In *Norville v. State Tax Commission*, 98 Utah 170, 97 P2d 937 (1940) this court on pages 176-177 stated:

“The duty of this court in construing and interpreting legislative acts is to give effect to the intent of the legislature. *State ex rel. Pincock, Sheriff v. Franklin*, 63 Utah 442, 266 P. 674; *Buttery v. Guaranteed Securities Co.*, 78 Utah 39, 300 P. 1040; *In re Parrott's Estate*, 199 Cal. 107, 248 P. 148; *Territory ex rel. Sampson v. Clark*, 2 Okl. 82, 35 P. 882; *Gayler v. Wilder*, 10 How. 477, 13 L. Ed. 504; *Brown v. Duchesne*, 19 How. 183, 15 L. Ed. 595.

“As stated in Sutherland on Statutory Construction, Sec. 241, at p. 320:

‘In the exposition of a statute the intention of the law-maker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit the intention is to be collected from the context; from the occasion and necessity of the law, from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion.’

“In *Helvering v. New York Trust Co.*, 292 U. S. 455, 54 S. Ct. 806, 809, 78 L. Ed. 1361, the United States Supreme Court reaffirmed what is said in *Ozawa v. United States*, 260 U. S. 178, 43 S. Ct. 65, 67 L. Ed. 199:

‘We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose sacrificing, if necessary, the literal meaning in order that the purpose may not fail.’

“See also *State v. Livingston Concrete Bldg. & Mfg. Co.*, 34 Mont. 570, 87 P. 980, 9 Ann. Cas. 204, and *Terri-*

tory ex rel. Sampson v. Clark, supra [2 Okl. 82, 35 P. 883], wherein the Court said:

'When the intention [of the legislature] can be gathered from the statute, words may be modified, altered, or supplied to give to the enactment the force and effect which the legislature intended.'

"Moreover, in seeking to give effect to the intent of the legislature the court will adopt that interpretation of a taxing statutes which lays the tax burden uniformly on all standing in the same degree with relation to the tax adopted. *In re Steebler's Estate*, 195 Cal. 386, 233 P. 972. And will avoid an interpretation which would lead to an impractical, unfair, or unreasonable result. *In re Parrott's Estate*, supra.

* * *

"The doctrine that taxing statutes are, in case of doubt as to the intention of the legislature to be, construed strictly against the taxing authority and in favor of those on whom the tax is levied, has been well set out in the case of *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 55 S. Ct. 50, 79 L. Ed. 211."

In *Hartley v. Vitiello, et, al.*, 113 Conn. 74, 154 Atl. 255 (1931) the court on page 257 stated:

"Where a statute imposes a duty and is silent as to when it is to be performed, a reasonable time is implied."

See also, *State v. Pohl*, 214 Minn. 227, 8 NW2d 227 (1943).

Conversely, where a statute, properly interpreted, gives a taxpayer the right to a refund due to reported

changes in his net income and the statute is silent as to a time limit for its exercise, a reasonable time is implied.

Under a proper interpretation of Section 59-13-40, the appellants claim for refund was timely filed.

Respectfully submitted,

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