

1964

# San Juan County and State Tax Commission of Utah v. Jes, Inc. : Newly Uncovered Authority

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SAN JUAN COUNTY and :  
STATE TAX COMMISSION :  
OF UTAH, :

Plaintiffs and : NEWLY UNCOVERED  
Appellants, : AUTHORITY

vs. :

JEN, INC., a corpora- :  
tion, :

Case No. 10146

Defendant and :  
Respondent . :

**FILED**

OCT 7 - 1964

Clerk, Supreme Court, Utah

Pursuant to Rule 75(p)(2) of the Utah Rules  
of Civil Procedure, the appellant, State Tax Com-  
mission of Utah, hereby submits a quotation from  
the case of Garrett Freight Lines, Inc. v. State  
Tax Commission, 103 Utah 390, decided March 29,  
1943, but newly uncovered as to the subject matter  
pertinent to this appeal, and particularly calls  
the Court's attention to the following quotation  
from page 400 thereof, which stands for the propo-

sition that the diesel fuel tax may be personally imposed upon a user of such fuel:

"The appellant's case is based upon the assumption that the Diesel fuel tax is a tax upon use and not upon the user, and that it is not within the power of the Legislature to levy a tax upon a use already consummated. This, we think, puts too much emphasis on the theory that taxes are laid upon property, privileges, or transactions and not upon persons. We need to be reminded that a tax is an enforced contribution of money or other property by authority of a sovereign state from persons or property within its jurisdiction for the purpose of defraying the public expenses. It is true that it is usually said that taxes are levied upon property, privileges, occupations or transactions. But in each case the payers of the tax are persons. Confusion results when this fact is overlooked.

"Taxation is eminently practical, and is in fact brought to every man's door; and for the purpose of deciding upon its validity, a tax should be regarded in its actual, practical results, rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy.' Nichol v. Ames, 173 U.S. 509, 19 S.Ct. 522, 525, 43 L.Ed. 786; Knowlton v. Moore, 178 U.S. 41, 109, 20 S.Ct. 747, 764, 44 L.Ed. 969."

...the fact that the tax is levied upon a use of property...

The appellant's case is based upon the assumption that the Diesel fuel tax is a tax upon use and not upon the user, and that it is not within the power of the legislature to levy a tax upon a use already consummated. True, we think, quite too much emphasis on the theory that taxes are laid upon property, privileges, or transactions and not upon persons. We need to be reminded that a tax is an enforced contribution of money or other property by authority of a sovereign state from persons or property within the jurisdiction for the purpose of defraying the public expenses. It is true that it is usually said that taxes are levied upon property, privileges, or occupations or transactions. But in each case the payers of the tax are persons. Conclusion results when this fact is over-

Taxation is eminently practical, and it is fact brought to every man's door; and for the purpose of deciding upon its validity, a tax should be regarded in its social, practical results, rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political

economy. Nichol v. Ames, 173 U.S. 509, 19 20, 22, 23, 43 L.Ed. 786; Knowlton v. Moore, 178 U.S. 41, 109, 20 21, 24, 704, 44 L.Ed. 99