1967

Walker Bank & Trust Company, Executor of the Estate of Herbert E. Sargent, Deceased v. The State Tax Commission of Utah : Brief of Defendants

IN THE SUPREME COURT OF THE STATE OF UTAH

WALKER BANK & TRUST COMPANY, Executor of the Estate of HERBERT E. SARGENT, Deceased,

Plaintiff,

— vs. —

THE STATE TAX COMMISSION OF UTAH,

Defendant.

BRIEF OF DEFE

REVIEW OF A DE
STATE TAX COMMIS

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TABLE OF CONTENTS

TABLE OF CONTENTS — (Continued)

Page

AUTHORITIES CITED

Cases

TABLE OF CONTENTS — (Continued)

IN THE SUPREME COURT OF THE STATE OF UTAH

WALKER BANK & TRUST COMPANY, Executor of the Estate of HERBERT E. SARGENT, Deceased,

Plaintiff,

— vs. —

THE STATE TAX COMMISSION OF UTAH,

Defendant.

Case No. 10629

BRIEF OF DEFENDANT

STATEMENT OF NATURE OF CASE

This matter comes before the court on appeal from the decision of the State Tax Commission of Utah. The question presented is whether or not stepchildren in *loco parentis* to a decedent qualify as "children" of that decedent under the provisions of Section 59-12-2, Utah Code Annotated, 1953.

DISPOSITION BEFORE THE STATE TAX COMMISSION

After consideration of all pertinent facts and the law, the State Tax Commission on April 27, 1966, ren-

dered a decision disallowing the $40,000 exemption and denying the refund sought by the petitioner Walker Bank and Trust Company, executor of the estate of Herbert E. Sargent, and plaintiff in this action.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the decision of April 27, 1966, above referred to, and in particular a refund of $1,200.00 paid to the State as inheritance taxes at an earlier point in this proceeding. (Record 24-28)

STATEMENT OF FACTS

The parties to this action have entered into a Stipulation of Facts (R. 64-66). These are restated in substance in the Commission's formal decision (R. 67-69), and set forth with substantial accuracy in the brief of plaintiff, Walker Bank and Trust Company.

One additional fact not found in any of these documents should be noted. The surviving stepchildren, Edward R., William Y., and Richard L. Bywater, had attained adulthood and left the home of Herbert E. Sargent many years before his death.

ARGUMENT

POINT I

THE TERM "CHILDREN" IN SECTION 59-12-2, UTAH CODE ANNOTATED, 1953, IS NOT AMBIGUOUS AND MAY NOT PROPERLY BE CONSTRUED TO EXTEND THE $40,000 EXEMPTION BENEFIT TO STEP-CHILDREN OR OTHERS IN LOCO PARENTIS TO A DECEDENT.

Section 59-12-2, Utah Code Annotated, 1953, sets forth the rates of taxation and exemption of estates of various sizes, and provides in part as follows:

> A tax equal to the sum of the following percentages of the market value of the net estate shall be imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of this state:
>
> Three per cent of the amount by which the net estate exceeds $10,000 and not to exceed $25,000, except where property not exceeding in value the sum of $40,000 goes to the husband, wife and/or children of the deceased or any or all of them by descent, devise, bequest or transfer directly or through a trustee, then in such case the exemptions shall be the amount so going not to exceed $40,000.

Thus, an exemption is created in the amount of $10,000 for any estate, but if property is left to the husband, wife and/or children of the deceased, the exemption can be as great as $40,000.

Plaintiff asserts in Point I of his brief that there is doubt as to the legislative intent in the use of the term

"children" in this provision, and therefore, the term "children" should be applied to include stepchildren in *loco parentis* as well as natural children. Without attempting to pass on the soundness of this logical gambit, we would suggest that the premise on which it is based, that an ambiguity exists in the statute requiring extra-legislative interpretive aid, is clearly erroneous.

Plaintiff cites some cases in support of this contention (p. 5), none of which deal with construction of the term "children," all rather supporting generally the proposition that ambiguities in statutes imposing taxation should be construed in favor of those bearing the burden of the tax (which proposition will be subsequently examined).

The word "children" is a term of precision and has a definite meaning in legal as well as general usage. Despite counsel's assertion that there are no decisions of this honorable court interpreting this term in the context of Section 59-12-2, Utah Code Annotated, 1953, the case of *In Re Walton's Estate,* 115 Utah 160, 203 P. 2d 293 (1949), involved this precise problem. The court rather summarily rejected the claim of the executrix of the Walton estate, Elizabeth M. Jerrell, that grandchildren are entitled to the larger exemption. Chief Justice Pratt, writing for the majority of the court, spoke of the commonly accepted meaning of the term "children" as being sons and daughters and said that if the term "children" is to be used in any other sense, or extended in its meaning, such use must be as a result of specific legislative directive. He examined the section above quoted and

related provisions, and concluded that the term is therein used in its common meaning. Justice Wolfe, in a concurring opinion, agreed that the word should be given its "plain and literal meaning."

The comments of these justices bring to mind the "plain meaning" rule of statutory construction, which is that when a statute is plain on its face and without ambiguity it means what it says, and ambiguities should not be created by tortured and unnatural construction based upon remote hypotheticals. Generally, words of the statute are to be construed in the ordinary sense and meaning given them and commonly attributable to them. *In Re Thompson's Estate,* 72 Utah 17, 269 Pac. 103 (1927).

We thus submit that the meaning of the word "children" in this statute, and other statutes of this type, is clear. In this type of legislation the term "children" may include adopted as well as natural children, and illegitimate as well as legitimate children, depending upon the particular jurisdiction, but does not extend beyond these relationships. This can be emphasized by reference to Appendix A of plaintiff's brief. *Wherever state legislatures have determined that stepchildren should be included in the same classification as natural or adopted children, for inheritance tax purposes, they have specifically so provided by inclusion in the statute describing that classification, the word "stepchildren" or another word or phrase of similar import. Counsel has cited no case in which a state not having such specific statutory provision has construed the term "children" in these tax statutes to include stepchildren or others not children*

who are in loco parentis relationships. The language chosen in these statutes, and the net result of the application of such language, vary according to legislative intent.

Abundant case authority supports the proposition above set forth. For example, in *Houston* v. *McKinney,* 54 Fla. 600, 45 So. 480 (1907), the court said in discussing a statute involving descent and distribution that "the primary sense of children is offspring and that is the sense of relationship in which it is ordinarily used when the question of relationship is involved. . . . It cannot be properly held when found in a statute or contract to include stepchildren." To the same effect are *Snydor* v. *Palmer,* 29 Wis. 226 (1871), *Blankenbaker* v. *Snyder,* 18 Ky. Law Rep. 437, 36 S.W. 1124 (1896), *Tepper* v. *Supreme Council of Royal Arcanum,* 59 N. J. Eq. 321, 45 Atl. 111 (1899), and *In Re O'Connors Will,* 140 Misc. 757, 251 N. Y. S. 686 (1931).

Plaintiff places great reliance upon the assertion that taxing statutes should be construed in favor of the taxpayer. The Tax Commission has no quarrel with the the proposition that where a statute is ambiguous as to whether or not a particular tax should be imposed, such ambiguity should be resolved in favor of the taxpayer: however, one of the primary principles of revenue statute interpretation is that provisions setting forth exemption from taxes of general imposition must be construed *against the taxpayer and in favor of the taxing power. Farrington* v. *Tennessee,* 95 U. S. 679, 24 L. Ed. 558, 560 (1878), *Judge* v. *Spencer,* 15 Utah 242, 48 Pac. 1097,

(1897); *Stillman* v. *Lynch,* 56 Utah 540, 192 Pac. 272; 12 A. L. R. 552, (1920).

> As a general rule, grants of tax exemptions are given a rigid interpretation against the assertions of the taxpayer and in favor of the taxing power. The basis for the rule here is the same as that supporting a rule of strict construction of positive revenue laws — that the burden of taxation should be distributed equally and fairly among the members of society. Sutherland, Statutory Construction, 3d ed., sec. 6702. See also Cooley, Taxation, 4th ed., sec. 672.

It is clear that the problem of exemption and not the problem of imposition is here involved, since the question before the court is not whether or not the tax is appropriate, but simply whether plaintiff is entitled to a larger or smaller exemption.

Exemption, like taxation, is a matter of legislative privilege and grace, and "not properly to be claimed beyond the extent to which the law-making body has seen fit to allow it." 85 C.J.S. Taxation, sec. 1157. See also *In Re Foss' Estate,* 114 Wash. 681, 196 Pac. 10 (1921); *Peck* v. *State,* 96 Cal. App. 2d 638, 216 Pac. 2d 132 (1950).

As stated in *Corpus Juris Secundum*:

> Generally, statutory exemptions from inheritance or similar taxes should be strictly construed against the claimant thereof, and held applicable only to subject matter or beneficiaries clearly within their terms. 85 C.J.S. Taxation, sec. 1157.
>
> A statutory exemption of a transfer to a person or persons bearing a certain relationship to de-

> cedent, such as that of wife or husband, and a statutory exemption of a transfer to a person or persons bearing a relationship to the decedent such as that of child . . . *applies when, and only when, the person in question is of the designated relationship.* . . . (Emphasis supplied.) 85 C.J.S. Taxation, sec. 1163.

The thesis last set forth is applicable in this jurisdiction, since our Supreme Court has held that the literal terms of our inheritance tax statutes cannot be extended by construction. *In Re Thompson's Estate,* supra.

Thus, if the court should see ambiguities in Section 59-12-2, Utah Code Annotated, 1953, of significance in the instant case, it is by no means clear that these need be resolved in the manner most favorable to plaintiff. We would strongly suggest, however, that such ambiguities are not present, that the statute is clear and comprehensible, and that the court need not resort to any rules of interpretation beyond the plain meaning rule to determine the legislative intent behind Section 59-12-2. "Where the language of the statute is clear, rules of construction applicable in case of doubt do not apply." 85 C.J.S. Taxation, sec. 1135. See also *Tavenor* v. *Tax Commission of Iowa,* 231 Iowa 362, 300 N.W. 653 (1941).

POINT II

AS A RESULT OF THE HISTORICAL EVOLUTION OF INHERITANCE AND SUCCESSION LAW, FROM WHICH INHERITANCE TAX LAW IS IN LARGE PART DERIVATIVE, MEANINGFUL DISTINCTIONS EXIST QUITE UNIVERSALLY BETWEEN CHIL-

DREN AND PERSONS NOT CHILDREN IN LOCO PARENTIS IN THIS AREA EXCEPT IN JURISDICTIONS WHERE SUCH DISTINCTIONS ARE SPECIFICALLY ABROGATED BY STATUTE. UTAH IS NOT SUCH A JURISDICTION.

In the medieval period, the distinctions between an actual child and another person in the household not a child were extremely significant, particularly in relation to such institutions as investiture and primogeniture, as every reader of medieval history and particularly medieval literature is aware. These distinctions have continued as this law has evolved and are almost universally present today in the law of inheritance except where modified by statute, and these principles have carried over into inheritance tax law, which is in large part derivative from the law of inheritance. The general rule is here stated:

> ". . . A stepchild is not ordinarily entitled to inherit from its stepfather or stepmother, as the case may be; but he is so entitled if the case is within the terms of the statute conferring the right of inheritance upon him in a prescribed situation." 26A C.J.C. Descent and Distribution, sec. 34.

The research in plaintiff's brief supports this proposition, and in doing so negates the argument plaintiff advances. The appendices show that certain jurisdictions have by statute extended family inheritance tax exemptions to include stepchildren. In such jurisdictions, the stepchild is entitled to the same advantages as the remainder of the class of which he is made a part by

legislative decree. In the states where the legislature has not seen fit to make such an extension, a stepchild does not receive the same benefits as a natural or (in most cases) an adopted child. It should again be noted that there is no case cited in plaintiff's brief from a jurisdiction without the broader statutory language wherein a stepchild has been granted an inheritance tax exemption existing for "children."

Plaintiff is, in fact, asking this court to substitute itself for the legislature of this state and to extend our law beyond its obvious intent, on the theory that legislatures in many other states have seen fit to do so and therefore it must be a good idea.

A number of cases cited in Point I illustrate the distinction historically drawn between a child, and one not a child in *loco parentis,* in an inheritance or inheritance tax frame of reference. To the same effect, and particularly telling, is *In Re Kurtz's Estate,* 145 Pa. 637, 23 Atl. 322 (1892). Here, the decedent left specific legacies to natural children, and to stepchildren whom he designated in his will as "children." His will also included a residue clause leaving the remainder of his estate after distribution of the specific grants to his "wife and children." *His stepchildren were excluded from this residual distribution.*

Also of interest is *Fulton Trust Company* v. *Trowbridge,* 126 Conn. 369, 11 A. 2d 383, 127 A.L.R. 75 (1940). Gardiner Trowbridge brought a child into his home in 1926, and "became very much attached to him"

and referred to him and treated him in every respect as his son. In 1929, he made a will, making provision for this child. In 1930, he formally adopted the child. The court held that this adoption revoked the 1929 will on assumption of a parental relationship, which under Connecticut law revokes wills previously drawn. To the same effect is *In Re Guilmartin*, 250 App. Div. 762, 293 N.Y. Supp. 665, (1937). Contra, *Bowdlear* v. *Bowdlear*, 112 Mass. 184 (1873).

The court's attention is particularly directed to the case of *Olson* v. *United States*, 175 F. 2d 510 (1949). Here Grace Olson raised a boy "as her own child" until the child was killed in an airplane crash. The court, *interpreting Utah law*, denied the mother the right to sue as the heir of such child, because she failed to meet her "burden" "affirmatively to prove the fact of adoption."

In Point III of his brief, counsel for plaintiff enumerates a number of cases in various fields of law in which stepchildren, foster children, etc., have for certain purposes been treated as if they were natural children. In our pluralistic and increasingly complex civilization it is inevitable that a number of such cases should arise, and in their particular factual contexts many of them undoubtedly do reach desirable results. By no means, however, do they represent a pattern. There are a comparable number of cases where existing laws, coupled with pragmatic considerations of fact and equity, have led to contrary holdings. For instance, in *Smith* v. *Atlantic Coast Railroad Company*, 212 S. C. 332, 47 S.E. 2d 725 (1948), Odessa Jackson had treated Nelson But-

ler in all respects as her actual child since bringing h
into her household when nine months old, even though s
failed to formally adopt him. Butler instituted an act
for her wrongful death under a statute authorizing
"child" to bring such a claim. The court ruled that
was not a child of the deceased and therefore witho
standing to bring such an action.

The really significant thing about the cases cited
Point III of plaintiff's brief is that none of them rel
even remotely to inheritance taxes; they stand aside a
apart from the evolution which has resulted in the c
trolling legal concepts in this area. They deal with
verse possession, liability for medical services, real est
transactions, seduction, interest payments, gratuit
services, automobile injuries — just about everything
cept descent and distribution and the tax consequen
of the same. This is the area of law with which we are h
concerned, and in this area a clear distinction betwe
children, and unadopted stepchildren or others in *l*
parentis, exists, and we respectfully suggest that in t
jurisdiction only natural or adopted children are
titled to the higher exemption rate.

POINT III

AN ADOPTION OF THE POSITION URG
BY PLAINTIFF WOULD RESULT IN A
MINISTRATIVE PROBLEMS AND INVI
INEQUITIES NOT PRESENT IN CURRE
PRACTICE.

In Point V of his brief plaintiff argues that the Co
mission could administer the statutory exemption w

ease if it were extended to include others than natural or adopted children. While the relevance of this type of assertion is not completely apparent, since the Commission has the responsibility to administer laws given it by the Legislature to the best of its ability, and it is primarily the prerogative of the latter body to worry about whether or not a particular law might lend itself to ease of administration, it is clear that an acceptance of plaintiff's position would in fact bring great administrative difficulties, the number and variety of which can only be estimated at this time.

The term "*in loco parentis,*" in spite of its imposing Latin phraseology, is not a precise legal term or in any sense a term of art, but simply a phrase describing a general supervisory-responsibility relationship existing temporarily or permanently between two people, one of whom will usually be considerably older than the other. When plaintiff states that the phrase has "a fairly definite meaning," he makes the stongest possible case.

To use this test as determinative as to whether or not a person should be entitled to the higher exemption provided for in Section 59-12-2, Utah Code Annotated, 1953, would bring a number of dimensions and considerations into the administration of this law that have heretofore been fortunately absent. For example, what if a boy lived in five foster homes during his childhood? If each of the foster parents left property to him, would each estate be entitled to the full $40,000 exemption? If not, would each be entitled to 20% of the exemption; and if the latter, would this be 20% of the full $40,000 or 20% of the $30,000, separating the lower and higher

exemption? (There are no proration problems in the law as currently administered.) And what if the child lived (as he undoubtedly would have) different periods of time in the various homes? If he lived 37.4% of his childhood in one home, would a 37.4% exemption apply? And what if the child married and left home late, say at 27 or 28, would this be the end of the period of mathematical computations involved, or would it be the attainment of majority at 21? Conversely, what if the child married at 17?

Perhaps it might be urged that the exemption should only apply if the child were living in the home in *loco parentis* at the time of the death of the decedent. In this case, if a child lived 18 years in one foster home, moved into a second home, and had both foster fathers die within a few days after the move, would not a gross inequity be done by allowing the second estate the full exemption? Incidentally, if this type of requirement were adopted, the instant problem would result in a denial of any consideration since the Bywater children had long since moved out of the Sargent home.

Suppose another possibility — a child living in one home, but being supported for the most part by another adult. In this case a whole new series of possibilities arise to challenge the imagination.

Another hypothetical presents yet another series of potential problems. What if a child were temporarily, say a month every year, in a *loco parentis* situation with a relative or other supervising adult. Three months a year? Eight months?

An extension of the law to include stepchildren would be a little easier to handle, since this term is somewhat less vague, but again interpretive and especially equitable problems present themselves. Just to cite one example, suppose John Jones married the widow Smith (who has a fifteen-year-old daughter) on October 8, 1966. Suppose further that John Jones died October 9, 1966. Would equity and the public interest be served by giving the daughter a full exemption should Mr. Jones happen to have written a will making her a beneficiary prior to or on the day of his marriage? Another problem area would be that of former stepchildren. What if divorce terminated a stepfather-stepchild relationship of long standing? Would the exemption be present or would it have been terminated with the divorce?

If the exemption were extended to include plaintiff's precise situation, a stepchild in *loco parentis*, the administrative problems involved in both of these concepts would be cumulatively present.

Counsel for plaintiff repeatedly stresses that love, affection, trust, respect, etc., often exist in these relationships. Would it be suggested that the Commission should attempt to measure or evaluate these intangible and subjective emotions in resolving the difficult borderline cases that would of necessity arise under any regulatory scheme?

We would suggest that an adoption of petitioner's position, or any part thereof, would not result in a continuation of the administrative ease with which the stat-

ute is now handled, but rather in administrative chaos. We would respectfully petition the court to keep the lid firmly closed on this Pandora's box.

POINT IV

AFFIRMANCE OF THE TAX COMMISSION DECISION WOULD INSURE IN MOST CASES THAT THE WISH OF THE TESTATOR IS HONORED, AND WOULD ENCOURAGE ADOPTION.

Plaintiff argues in Point IV of his brief that an affirmance of the Tax Commission's decision would frustrate the statutory policy of encouraging testators to leave estates to members of their immediate family. It is submitted that the Tax Commission's decision would have exactly the opposite effect.

Great emphasis is placed in plaintiff's brief on the love, affection and sentiment, and mutual need that can exist between stepchildren and step-parents and between adults and other minors in their home who are not children of such parents. It is further suggested that the step-parent, foster parent, etc., would in such a situation of necessity have the same motives and desires in relation to disposition of their property to the stepchildren or other minor as would a natural parent to his child. While this may or may not be true in any given situation, and while it is obviously impossible in this situation, in spite of all the affidavits and arguments offered by counsel for plaintiff, to determine whether or not Mr. Sargent had that type of affection and sentiments

toward the Bywater children, since Mr. Sargent, the only person who would really be competent to testify to the presence or absence of such subjective emotions and motives, is deceased, we point out to the court that the law has established a procedure by which a step-parent or other adult in this type of situation can make certain that the stepchild or other minor receive exactly the same benefits and consideration at the time his estate is distributed as a natural child. This procedure is adoption.

Examination of the record can leave little doubt that Mr. Sargent had ample opportunity over a large number of years to adopt these children and assure that they would be treated in all respects as his natural children, including in respect to inheritance and inheritance taxes.

Since it is presumed that every man knows the law, it may be argued that Mr. Sargent knew of the inheritance and inheritance tax consequences of both adoption and non-adoption and chose the latter. Certainly it is inconsistent with the record for plaintiff to suggest that Mr. Sargent, because of his purported love and affection for the Bywater boys, would have been very anxious for them to have the same tax benefits as natural children, when it was solely within his power for many years to make certain that such benefits would be attained by them, and he failed to take the necessary steps to insure that such would be the case. If any legal inference can be drawn from his failure to adopt, it is certainly not an inference that he wished these stepchildren to be treated in all respects as if they had been adopted.

Under Utah law as now administered, it is thus often the testator who determines in this type of case whether or not the larger exemption may be allowed.

Title 78, Chapter 30, Utah Code Annotated, 1953, contains the adoption laws in this jurisdiction. Section 10 provides:

> A child when adopted may take the family name of the person adopting. *After adoption the two shall sustain the legal relation of parent and child, and have all the rights and be subject to all the duties of that relationship.* (Emphasis supplied)

It seems axiomatic that if through adoption two people attain the relationship of parent and child, with all attendant rights and obligations, that before adoption such relationship did not exist. As has previously been pointed out, an abundance of case authority supports this proposition.

Some states make certain distinctions between adopted and natural children; for instance, in this jurisdiction an adopted child is not "issue." *Amy* v. *Amy*, 12 Utah 278, 42 Pac. 1121 (1895), aff'd, 171 U. S. 179, 43 L. Ed. 127, 18 Sup. Ct. 802, *In Re Harrington's Estate*, 96 Utah 252, 85 P. 2d 630, 128 A.L.R. 130 (1938). In most jurisdictions, however, adopted children are accorded the same rights in the areas of inheritance and inheritance tax benefits as natural children, and the clear trend seems to be toward broader implementation of this laudatory policy. See cases summarized in 105 A.L.R. 1176, 127 A.L.R. 750 and, most recently, in 43 A.L.R. 2d 118.

Utah is clearly committed to the proposition that, for purposes of inheritance taxation, adopted children are to be treated exactly as natural children. See Sections 74-1-31, 74-1-32, 74-4-5 as amended, and 74-4-12, Utah Code Annotated, 1953. This makes it possible for any testator who wishes to carry out his desire to have stepchildren, foster children, etc., treated in all respects as his own children to do so. The Tax Commission has long recognized the identity of interests and rights of natural and adopted children as being in the best interests of society. An adherence to the policy urged by plaintiff would discourage adoption proceedings, and thereby discourage family unity and solidarity, which are desirable public policy goals.

The Commission has through the years consistently interpreted the relevant statutory provisions to not allow the higher exemption to apply to stepchildren, foster children, or others not natural or adopted children who are in *loco parentis* to decedents. It is submitted that this long-standing interpretation and practice is correct and should be considered in the court's deliberations, for "where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time, it will be regarded as of great importance in arriving at the proper construction of a statute." Sutherland, Statutory Construction, 3d ed., sec. 5107.

The citizens and the Legislature of this State, and its Bar and Bench have for decades acquiesced without challenge in the Commission's interpretations and administration of this law. This acquiescence is persuasive evi-

dence of the correctness of the Commission's interpretation. *Couch* v. *Independent Brotherhood of Teamsters*, 308 P. 2d 117 (Okla. 1956); *State* v. *Yelle*, 52 Wash. 2d 158, 324 P. 2d 247 (1951); *Shockley* v. *Abbott Supply Co.*, 50 Del. 510, 135 A. 2d 607 (1957); *Dixie Coaches* v. *Ramsden*, 238 Ala. 285, 190 So. 92 (1939); *Murray Hospital* v. *Angrove*, 92 Mont. 101, 10 P. 2d 577 (1932).

CONCLUSION

Section 59-12-2, Utah Code Annotated, 1953, establishes a special exemption from inheritance tax imposition when properties are devised or bequeathed to the husband, wife, or children of the decedent. The term "children" by its plain meaning is limited to natural or adopted children in this jurisdiction and this limiting interpretation evolved from and is totally consistent with the body of Anglo-American law, particularly that part dealing with descent and succession.

Some states have chosen to modify this common law approach by extending special inheritance tax exemption provisions to a larger class, sometimes including stepchildren or others not natural or adopted children in *loco parentis*. In such jurisdictions a more liberal exemption is appropriate according to the statutory directive. In jurisdictions such as Utah, however, which have not by statute extended the common law concept to permit step-

children or others not in *loco parentis* to the decedent to be treated as children for inheritance purposes, relief such as the executor is here seeking is not available.

Our statute is clear but even if it were ambiguous, any doubt as to its meaning would have to be resolved against the taxpayer asserting exemption and in favor of the taxing authority.

No inequity would be done by affirming the Commission's decision, since the Legislature has provided a means — adoption — whereby persons can secure to a stepchild or another in *loco parentis* the same benefits that accrue to a natural child. Had the decedent, Herbert E. Sargent, adopted the Bywaters as he could have done, he could have provided for them the exemption they are now seeking. Since he had this power and he failed to exercise it, it is not consistent for the estate to argue — for whatever such argument is worth — that he wanted these boys to be treated in all particulars as his natural children.

A reversal of the Commission's decision in this matter would bring into what is at this time a very clean and equitable administration of a law uncertainty and sometimes even chaos. As compared to "children," which is a clear and precise legal concept in this frame of reference, requiring no strained interpretation, the phrase "*in loco parentis*" is vague indeed, since a child may be "*in loco parentis*" to any number of adults during his lifetime.

In view of the above, and in reliance on existing case law, particularly the Walton case, it is respectfully submitted that the decision of the Tax Commission was correct and equitable, and it is urged that this decision be affirmed by this honorable court in its review at this time.

Respectfully submitted,

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