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Salt Lake County, Duchesne County, Uintah County, Washington County, and Weber County, Political Subdivisions of the State of Utah, Plaintiffs/Appellants, v. State of Utah, Delta Airlines, Inc. and Sky West, Inc., Defendants/Appellees : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

SALT LAKE COUNTY,
DUCHESNE COUNTY, UINTAH
COUNTY, WASHINGTON
COUNTY, and WEBER COUNTY,
political subdivisions of the State of
Utah,

Plaintiffs/Appellants,

v.

STATE OF UTAH, DELTA
AIRLINES, INC. AND SKY
WEST, INC.,

Defendants/Appellees.

Case No. 20180586-SC

BRIEF OF APPELLANT SALT LAKE COUNTY, ET AL.

On appeal from an Order of the Third District Court,
Judge Kara Pettit, District Court No. 170904525

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INTRODUCTION

On July 17, 2017, the Counties brought a declaratory action asserting eleven (11) causes of action that challenge the constitutionality of Utah Code sections 59-2-201(4) (“Valuation Law”), 59-2-804 (“Allocation Law”), and 59-2-1007(2)(b) (“Review Threshold Law”) (collectively, the “Challenged Laws”), on the basis the Challenged Laws lack uniformity and violate equal protection. Namely, whether independently or collectively the laws violate (1) the Utah Constitution’s (a) uniformity and fair market value clauses for property tax valuations and assessments (Utah Const. Art. XIII, section 2); (b) separation of powers and delegation of assessment authority clauses (Utah Const. Art. V, section 1; Utah Const. Art. XIII, section 6); and (c) uniform operation of laws clauses (Utah Const. Art. I, section 24); and (2) the Fourteenth Amendment of the United States Constitution. (R. 1-30).

The State of Utah (“State”), Delta Airlines, Inc. and Sky West, Inc. (“Airlines”) (collectively “Appellees”) sought dismissal of the Counties’ constitutional claims arguing they were unripe and/or the Counties failed to exhaust administrative remedies with the Utah State Tax Commission (“Tax Commission”). (R. 282-295; R. 562-587). Granting the Appellees’ motions, the district court acknowledged long standing precedent that the Tax Commission lacks authority to rule on the constitutionality of a statute. (R. 913-914, citing *Tax Comm’n v. Wright*, 596 P.2d 634, 636 (Utah 1979)). The district court also ruled that because the Counties’ had affirmatively challenged the Tax Commission’s use of the Valuation and Allocation Laws in 2017 those claims were ripe for judicial review. (R. 912).

The district court, however, dismissed the Review Threshold Law causes of action as unripe because the Counties had not alleged that they had appealed a valuation determination with the Tax Commission that was subsequently rejected because a County or Counties did not meet the 50% or more undervaluation threshold needed to invoke the Tax Commission's jurisdiction. (R.912-913). The district court also dismissed the Counties' remaining causes of action in sweeping fashion for failure to exhaust administrative remedies. (R. 913-915). This appeal follows. (R. 917-920).¹

STATEMENT OF ISSUES

Issue #1: The Review Threshold Law found at Utah Code section 59-2-1007(2)(b), is facially unconstitutional and belies principles of uniformity. What is more, the law insulates certain airline tax assessments from judicial review unless the assessed value of airline property falls below the 50% threshold mandated by the Legislature as a predicate for invoking the Tax Commission's jurisdiction. (R. 366-371; R. 645-647; 650; R. 750-783; R. 803-809; R. 941-946; R 963). Missing those points, the district court erred when it dismissed as unripe the Counties' uniformity challenge to the Review Threshold Law, because no County had first exhausted an appeal before the Tax Commission for which the Tax Commission would lack the jurisdiction to consider. *Id.*

Standard of Review: "A district court's grant of a motion to dismiss based upon the allegations in the plaintiff's complaint presents a question of law that we review for

¹ For purposes of this appeal, the Counties have not challenged the dismissal of the Second, Fourth, Fifth, and Ninth Claims for Relief dismissed by the district court in its Ruling and Order entered June 22, 2018 (R. 908-916.).

correctness.” *Osguthorpe v. Wolf Mt. Resorts, L.C.*, 2010 UT 29, ¶ 10, 232 P.3d 999 (Utah 2010). Jurisdictional questions, such as subject matter jurisdiction, are reviewed for correctness. *Mallory v. Brigham Young Univ.*, 2014 UT 27, ¶8, 332 P.3d 922 (Utah 2014) (citing *Canfield v. Layton Cty.*, 2005 UT 60, ¶10, 122 P.3d 622 (Utah 2005)).

Issue #2: A party seeking judicial review must exhaust its administrative remedies unless a party raises a purely legal question that cannot be finally determined in an administrative proceeding. (R.642-705; R. 750-783; R. 803-809; R. 963-973). Here, the Tax Commission lacks jurisdiction to resolve questions that challenge the constitutionality of a legislative enactment. *Id.* Misapplying this principle, the district court erred when it dismissed the Counties’ First, Third, Sixth, Seventh, Eighth, Tenth and Eleventh causes of action for failure to exhaust administrative remedies where the Counties’ challenges to the constitutionality of Utah Code §§ 59-2-201(4) and 59-2-804, neither can be decided by nor depend upon action taken by the Tax Commission.

Standard of Review: A reviewing court will affirm a judgment on the pleadings only if, as a matter of law, the nonmoving party could not prevail under the facts alleged. Therefore, an appellate court gives such a ruling no deference and reviews it for correctness. *Golding v. Ashley Cent. Irrigation Co.*, 793 P.2d 897 (Utah 1990).

STATEMENT OF THE CASE AND SUMMARY OF THE COUNTIES’

ALLEGATIONS, CLAIMS AND ARGUMENT

This appeal challenges the validity of legislative action contained in the Challenged Laws, Utah Code Ann. §§ 59-2-201(4), 59-2-804 and 59-2-1007(2)(b), that usurps

constitutional mandates of uniformity and equality for airline property assessment. (R. 1-30). Stated differently, this appeal challenges a set of tax laws that single out the airline industry for favorable treatment and intrude upon the Utah's Constitution's mandate that tax laws apply uniformly and equally to all Utah taxpayers. *Id.* Additionally, this appeal challenges whether in enacting the Challenged Laws, the Legislature unlawfully impaired and abated meaningful review of many airline assessments.

Succinctly, the purely constitutional challenges on appeal are:

Constitutional Uniformity Violations:

1. The Valuation Law's implementation of the clear and convincing standard violates uniformity by requiring a different evidentiary standard for airlines' assessments. (R. 20-21 at ¶¶ 83-86).
2. The Valuation Law's mandatory discount violates uniformity because it provides a discount only for those taxpayers who own three or more aircraft, but not to those who own two or own multiple items of property. (R. 22-23 at ¶¶ 94 - 101).
3. The Allocation Law's mandatory allocation factor violates uniformity because it results in an allocation of property less than 100% while other property allocations for property other than airline property use factors that equal 100%. (R.25-26 at ¶¶ 112 - 115).
4. The Review Threshold Law violates uniformity by insulating Commission assessments of airline property from review that are believed to be less than fair market value from review. (R. 27 at ¶¶ 123-124).

Violation of Separation of Powers:

5. The Valuation Law improperly allocates the authority to value airline property—exclusively an executive function—to the Legislature. (R. 25 at ¶¶ 108-111).

De Facto Exemption Violation:

6. The allocation factor in the Allocation Law acts as a defacto property tax exemption which may only be done by constitutional amendment. (R. 26 at ¶¶ 116 - 119).

Equal Protection Violation:

7. Utah Code Sections 59-2-201(4), 59-2-804, 59-2-1007(2)(b) violate state and federal equal protection guarantee. (R. 27 at ¶ 125).

Diversely, this case is not a “property tax appeal” and it does not challenge the assessed value of any airline. (R. 1-30). As such it is not dependent upon any specific assessment of under-valued airline property that would make the Counties’ claims subject to administrative exhaustion. *Id.* Rather, the constitutional questions ask whether the Legislature possessed authority to usurp the constitutional mandates of uniformity in taxation, to intrude upon the separation of powers, and to upset the balance created under the equal protection prongs of Utah Constitution Article I, section 24; Article V; and Article XIII, section (2)(1) to allow the airline industry to benefit from non-uniformity and un-equalization through receiving statutory standards and treatment that no other Utah taxpayers receive. *Id.*

The district court, however, erroneously dismissed, wholesale, the Counties’ causes of action for failure to exhaust administrative remedies without conducting a separate

analysis as to each independently and alternatively pled claim. (R. 913-915). On appeal, the Counties postulate that a court may not grant dismissal in wholesale to *all* claims when a party has independently pled claims that give rise to purely legal questions that cannot be obviated through administrative adjudication and for which adjudication serves no useful purpose.

Equally erroneous, the district court also dismissed the Review Threshold Law causes of action as unripe, finding the complaint failed to specify concrete action by the Commission—as opposed to the language on the face of the statute itself—that deprived the Counties of an opportunity to pursue an appeal of a specific airline assessment. (R. 911-913). The district court's holding misses the point of the Counties' unconstitutional challenge to the Review Threshold Law. The Review Threshold Law found at Utah Code Section 59-2-1007(2)(b) inherently belies principles of uniformity by insulating tax assessments from judicial review unless the assessed value falls below the 50% threshold mandated by the Legislature as a predicate for invoking the Tax Commission's jurisdiction. Therefore, it is the certainty of the statutory rule's deprivation of administrative review that violates the Utah Constitution.

The district court's Ruling appears fundamentally to misapprehend the Counties' claims and causes of action for declaratory relief. (R. 1-30). Instead, there is simply no administrative remedy that will resolve or prove useful to determine the constitutional challenges. (R.642-705). Nor are the legislative enactments that have long since been adopted and implemented by State actors somehow not "ripe" for judicial review. (R. 356-

372; R. 803-809.) Accordingly, the district court's Ruling and Order dismissing the Counties' causes of action should be reversed and the matter remanded to the trial court for further proceedings.

ARGUMENT

The Legislature has created an unconstitutional tax scheme for Airlines that should and must be stricken. The Challenged Laws expressly establish formal classifications and statutory methodologies that are non-uniform, and extinguish the Counties' right to redress the attendant injuries to their resident taxpayers. (R. 1-30). Despite the purely constitutional nature of the claims, the Counties' causes of action were erroneously dismissed by the district court on June 22, 2018. (R. 908-916.)

Specifically, the district court dismissed as unripe the Counties' Ninth and Tenth Claims for Relief because the Counties' Complaint failed to specify the Counties had appealed to the Tax Commission an assessment that failed to meet the 50% or more valuation threshold, for which appeal the Commission would lack jurisdiction. (R. 912-913). The Court then dismissed all remaining causes of action in sweeping fashion for failure to exhaust administrative remedies without separate analysis as to each claim. (R. 913-915). However, none of the subject constitutional violations at issue on this appeal are unripe or can be decided by the Tax Commission. (R. 1-23, 25-27); *TDM, Inc. v. Tax Comm'n*, 2004 UT App 433, ¶¶ 4-5, quoting *Nebeker v. State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180 (Utah 2001) and citing *Brumley v. Tax Comm'n.*, 868 P.2d 796, 799 (Utah 1993).

I. THE COURT ERRED IN DETERMINING THE COUNTIES' TENTH CAUSE OF ACTION WAS UNRIPE.

The Counties' claims and causes of action were brought pursuant to the Utah Declaratory Judgment Act ("Act"), Utah Code section. § 78B-6-401. (R.7. at ¶ 16). Under the Act, district courts are granted jurisdiction and wide discretion "to determine any question or construction or validity of a statute that affects the rights, status, or other legal relations of any person and to declare that person's rights, status, or legal relations under the statute." *Miller v. Weaver*, 2003 UT 12, ¶ 15, 66 P.3d 592, 597; *see also* UTAH CODE ANN. § 78B-6-412 (requiring the Act to be "liberally construed and administered"). In this context, the district court may adjudicate the Counties' claims if: (i) there is a justiciable controversy; (ii) the parties' interests are adverse; (iii) the party seeking relief has a legally protectable interest; and (iv) the issues are ripe for judicial determination.² *Id.*; *see also* *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983). "A justiciable controversy authorizing entry of a declaratory judgment [under the Act] is one wherein the plaintiff possesses a protectable interest at law or in equity and the right to a judgment, and the judgment, when pronounced, must be such as would give specific relief." *Baird v. State*, 574 P.2d 713, 716 (Utah 1978).

All the Counties' factual allegations that give rise to their causes of action under the Valuation and Allocation Laws were found by the district court to be sufficiently pled to

² The Airlines and the State of Utah disputed only the fourth element, i.e., whether the Counties' claims presented a justiciable controversy because the challenges are not based upon any specific assessment." (R. 282-295; R. 562-563). Therefore, only the ripeness requirement for adjudication under the Declaratory Act was addressed by the lower Court and subject to this appeal. (R. 911-913).

demonstrate a justiciable controversy. (R. 912). The district court, however, found the Counties' Review Threshold Law claims unripe because the Complaint "does not contain any allegations where the Counties identified a specific instance in which they were denied [by the Tax Commission] the opportunity to pursue an appeal of airline assessment." (R. 912-913). The district court's holding, however, went awry of the Counties' stated constitutional challenge.

For clarity, the Review Threshold Law found at Utah Code section 59-2-1007(2)(b) inherently violates principles of uniformity and equal protection by insulating tax assessments from judicial review unless the assessed value falls below the prerequisite 50% threshold mandated by the Legislature to invoke the Tax Commission's jurisdiction. UTAH CODE ANN. § 59-2-1007(2)(b). Therefore, it is the certainty of the statutory rule's deprivation of administrative review that violates the Utah Constitution.

Put another way, the constitutional violation lies in the fact the Counties are prohibited from seeking administrative review of Tax Commission assessments of airline property that are below market value or that lack uniformity except in those rare instances where the counties contend fair market value is 50% more than the assessed value of the prior year's assessment. *Id.* But depriving the Counties of the ability to challenge the entirety of the statutory scheme unless and until it can allege facts to show that the scheme which is unconstitutional on its face has also been unconstitutionally applied, smacks of legislative overreach. (R. 7 at ¶18; R. 20 at ¶80-81; R. 27 at ¶123-124). But a deprivation of constitutional principles evident on the face of an unconstitutional statute occurred and will

occur, regardless of any affirmative action or inaction by the Commission. It is this statutory prerequisite in effect since 2015 itself that deprived the Counties of an opportunity to pursue an appeal of a specific airline assessment.

Contrary to what the Court found, it is not the correlation of a designated “tax assessment that has been reduced under the [challenged law] with a resulting loss of revenue to the relevant county” that makes the Counties’ Tenth Claim ripe for review. (R. 912, citing *Salt Lake Cty. v. Bangerter*, 928 P.2d 384, 385 (Utah 1996)). Rather, ripeness occurred when the “conflict over the application of a legal provision sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto.” *Boyle v. Nat’l Union Fire Ins. Co.*, 866 P.2d 595, 598 (Utah Ct. App. 1993) (quoting *Redwood Gym v. Salt Lake County Comm’n*, 624 P.2d 1138, 1148 (Utah 1981)).

Although ripeness requires more than “than a difference of opinion regarding the hypothetical application of [a provision] to a situation in which the parties might, at some future time, find themselves, where—as here—enforcement of a statute has already occurred, or where enforcement is imminent and certain, the challenge will not be [and should not be] rejected on ripeness grounds.” *Id.*, quoting *Redwood Gym v. Salt Lake County Comm’n*, 624 P.2d at 1148; *see also Reg’l Rail Reorganization Act Cases*, 419 U.S. 102, 144 (1974) (“Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect.”) (citing *Pennsylvania v. West Virginia*, 262 U.S. 553, 592-593 (1923) and *Pierce v. Society of*

Sisters, 268 U.S. 510, 536 (1925)). Indeed, “one does not have to await the consummations of threatened injury to obtain preventive relief. . . If the injury is certainly impending that is enough.” *Id.* (quoting *Pennsylvania v. West Virginia*, 262 U.S. at 593).

Notwithstanding these basic legal principles, the district court erroneously relied upon *Salt Lake County v. Bangerter*, *supra*, to hold the contrary. (R. 912-913). *Bangerter* involved a statutory remedy under the Equalization Act that could be applied only if and when invoked by a taxpayer, which was never done. *Id.* at 385. Accordingly, the Utah Supreme Court found “there was no justiciable controversy and consequently, the issues between the parties . . . not ripe for judicial determination” because the county could not show that the remedy had ever been, or would ever be, invoked. *Id.* at 385-386.

Here, by contrast, the Review Threshold Law is invoked *ab initio* and prevents any County to appeal valuations that are below the 50% threshold since 2015. (R. 19-20 at ¶¶77-82; R. 750-783; R. 803-809). It is the threshold’s statutory bar that itself demonstrates there is not only a substantial likelihood that a controversy will develop in the future, but that actual controversy has already occurred because the county has been deprived of its right of redress to assessments that fall short of the statute’s percentage prerequisite. *Id.*; *Salt Lake County v. Bangerter*, 928 P.2d at 385. Ripeness does not require a party to file an appeal that is expressly prohibited by the plain language of the statute. The clear and express prohibition itself makes the claim against the statute ripe. Absent the plain language, appeals could have been filed, but because of the prohibition, that opportunity was extinguished.

Furthermore, the court's disregard of subsequent factual evidence that showed that the Tax Commission, in fact, dismissed four appeals for failing to meet the Review Threshold Law was also error when reviewing the claim under Utah Rule of Civil Procedure 12(b)(1). (R. 913). (stating "[a]lthough the Commission dismissed four appeals under § 59-2-1007(2)(b) since the Complaint in this case was filed, the Court agrees with the State that this does not fix the deficiencies in the Counties' Complaint.) A court when considering a Rule 12(b)(1) motion to dismiss, like here, should consider materials outside the pleadings, including supplemented factual allegations to determine whether any set of facts support the cause of action pled. *Coombs v. Juice Works Dev., Inc.*, 2003 UT App 388, ¶ 7, 81 P.3d 769; *Wheeler v. McPherson*, 2002 UT 16, ¶ 20, 40 P.3d 632 (quoting *Spoons v. Lewis*, 1999 UT 82, ¶ 5, 987 P.2d 36). In fact, the District Court should only have dismissed the Complaint "if it clearly appear[ed] that the plaintiff can prove no set of facts in support of his or her claim." *Am. W. Bank Members, L.C. v. State*, 2014 UT 49, ¶7, 342 P.3d 224 (Utah 2014); *Golding*, 793 P.2d at 898 ("The grant of a motion for judgment on the pleadings is reviewed under the same standard as the grant of a motion to dismiss.").

On April 4, 2018, the Counties provided notice to the district court that days prior--on March 28, 2018--the Tax Commission granted summary judgment and dismissed four pending administrative appeals related to taxation of airline property based, in part, upon lack of subject matter jurisdiction under Utah Code Section 59-2-1007 requiring a 50% threshold to hear the appeals. (R. 750-783; R. 803-809, and declining to address the constitutional question, citing *Nebeker v. Utah State Comm'n*, 2001 UT 74, 34 P.3d 180).

These additional, subsequent factual developments indisputably confirmed the Counties had suffered actual injury and that its claim has never been simply a hypothetical application of the challenged statute based on undeveloped facts. (R. 803-809.). Rather, the injury is patent and the Counties have been and continue to be deprived of any appeal of the airline property assessments that fail to meet the unconstitutional, non-uniform threshold.³ *Id.*

The law should not be applied in a manner that requires the Counties to pursue a needlessly time-consuming and wasteful case-by-case challenge to generate an affirmative denial by the Tax Commission of a constitutional issue that it cannot decide. This is especially true when the Review Threshold Law prevents the challenges.⁴ Here, the

³ Consideration of these additional subsequent facts presented in the pleadings does not convert the motion under Utah Rule of Civil Procedure 12(b)(1) into a motion for summary judgment and affirmative evidence relating to the basis for the arguments presented therein should have been considered. *Spoons v. Lewis*, 1999 UT 82, ¶5, 987 P.2d 36 (Utah 1999). Additionally, “[a] court may also consider outside documents of which it would be entitled to take judicial notice, such as public records.” *BMBT, LLC v. Miller*, 2014 UT App 64, ¶¶ 6-7, 322 P.3d 1172 (Utah Ct. App. 2014) (holding that a district court may also consider outside documents of which it would be entitled to take judicial notice, such as public records).

⁴ Although addressing the issue of standing, this court has found such insulation is improper. *See, e.g., Kimball Condos. Owners Ass’n v. County Bd. of Equalization*, 943 P.2d, 647 (Utah 1997) (“[w]e note that if the assessor had no right of appeal from board of equalization decisions, many decisions would be insulated from review altogether. Certainly, taxpayers who successfully contest an assessment would have no reason to appeal, if a board of equalization erred in construing constitutional or statutory provisions in the taxpayer’s favor. In that case, the decision would stand because there would be no one who both would and could appeal. Consequently, the constitutional requirements that assessments be both uniform and represent fair-market value would be undermined.”); *see also, Kennecott Corp., v. Salt Lake County*, 799 P.2d at 455 (stating that “[i]f counties do not have standing to challenge underassessments of state-assessed properties, then underassessments could be effectively insulated from challenges, which would not likely

Review Threshold Law is in force, has been applied, and has real world effects on the Counties' right to challenge assessments. (R. 750-783, R. 803-809.) Accordingly, the Counties' Tenth Claim is not only ripe for review, but critical for the court to address to ensure Utah's constitutional mandates that all property taxpayers are being treated uniformly and equally.

II. DISMISSAL FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES OF ALL REMAINING CLAIMS WITHOUT SEPARATE ANALYSIS WHETHER ADMINISTRATIVE EXHAUSTION APPLIES TO EACH INDEPENDENTLY PLED CLAIM WAS ERROR.

A threshold question central to this appeal is whether a court may grant wholesale dismissal of *all remaining* claims under the doctrine of exhaustion when a party has independently pled claims that give rise to purely legal questions that cannot be obviated through administrative adjudication and for which adjudication serves no useful purpose. The Counties advance it cannot.

A plaintiff generally has a choice of any remedy cognizable at law or equity and may generally plead alternative claims even if based on the same predicate facts. UTAH R. CIV. P. 8(a). Indeed, it is undeniable that a plaintiff is entitled to advance inconsistent theories in alleging a right to recovery in its Complaint. *Id.* Challenges to the alleged facts and causes of actions may be challenged in whole or part with resulting judgment on fewer than all claims asserted. UTAH R. CIV. P. 12(b), 12(c); UTAH R. CIV. P. 54(b).

be made by either a state-assessed property owner, by the Tax Commission (which made the underassessment), or by any county-assessed taxpayer.”)

At the close of the pleadings, a party may challenge the sufficiency of the pleadings under Utah Rule of Civil Procedure 12(c), including attacking a cause or causes of action for lack of subject matter jurisdiction. Utah R. Civ. P. 12(c); *Cheek v. Iron Cty.*, 2018 UT App 116, ¶13, pin (“subject matter jurisdiction goes to the heart of a court's authority to hear a case,” and as such, “it is not subject to waiver and may be raised at any time.”)(quoting *In re adoption of Baby E.Z.*, 2011 UT 38, ¶ 25, 266 P.3d 702)). When reviewing the sufficiency of the pleadings and their factual predicate, a court shall consider all factual allegations admitted and in favor of the non-moving party [the Counties] and determine whether “as a matter of law, the plaintiff could not recover under the facts alleged [for any claim asserted].” *MBNA Am. Bank, N.A. v. Williams*, 2006 UT App 432, ¶2, 147 P.3d 536 (Utah 2006) (quoting *Mountain Am. Credit Union v. McClellan*, 854 P.2d 590, 591 (Utah Ct. App. 1993)). The reviewing court gives the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context “to do substantial justice.” UTAH R. CIV. P. 8(f); *Harvey v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 2017 UT 75, ¶24, 416 P.3d 401 (Utah 2017) (“we construe complaints ‘to do substantial justice,’ often ‘disregard[ing] technicalities’ and looking at the ‘substance,’” (quoting Utah R. Civ. P. 8(f) and *Lang v. Lang*, 17 Utah 2d 10, 403 P.2d 655, 657 (Utah 1965))); see also, *MBNA Am. Bank*, 2006 UT App 432, ¶2 (“judgments on the pleadings are ‘not favored by the courts, and when made[,] great liberality in construing the assailed pleading should be allowed.’”) (quoting *Harman v. Yeager*, 110 P.2d 352, 353 (Utah 1941))).

Here, the district court dismissed *all* remaining Counties' causes of actions "regarding the Valuation and Allocation Laws" pursuant to Utah Rule Civil Procedure 12(c) (R. 914-915). In doing so, the Court reasoned in all-embracing fashion that an administrative action: (1) "may obviate the need to reach some of the as-applied constitutional questions raised by the Counties regarding the Valuation Law"; and (2) that it was "not persuaded that exhaustion of available remedies 'serve no useful purpose' because "a determination of fair market value and whether the airline property is undervalued under the Value and Allocation Laws are factual findings that underlie the Counties' constitutional claims." *Id.* (emphasis added) In its analysis, however, the district court cited only to two of the eleven, independent, "as-applied" causes of action to support its conclusion that administrative exhaustion was required—the Counties' "as-applied" Second Claim for Relief (Clear and Convincing Threshold-Fair Market Value) and the "as-applied" Seventh Claim for Relief (Unconstitutional Interstate Allocation—Uniformity). *Id.* The Ruling and Order is void of any discussion or analysis whether the remaining independently pled facial and/or as-applied challenges could be obviated through administrative exhaustion or whether administrative findings could be made that would be useful to constitutional issue. (See, generally R. 908-916). Where, as here, not all claims are subject to exhaustion, this sweeping approach is error.⁵ See e.g. *Nurse &*

⁵ This threshold question has not been previously decided by the Court and is essential to resolve confusion among the courts on how to apply the administrative exhaustion doctrine and its exceptions when multiple constitutional claims are asserted including pure legal threshold questions that cannot be avoided by any turn the case might have taken in an administrative proceeding.

Griffin Ins. Agency v. Erie Ins. Group, 1999 Ohio App. LEXIS 4992 (Ohio Ct. App. 1999) (reversing lower court's dismissal because not all causes of action pled required administrative exhaustion); *Wilson v. County of Orange*, 881 So. 2d 625 (Florida Ct. App. 2004) (holding that property owners' facial constitutional challenges could not be barred by failure to exhaust administrative remedies.).

In the present case, with the exception of the Second, Fourth, Fifth, and Ninth counts of the complaint, the dismissal of which the Counties do not appeal, the claims for relief are not of the type which are cognizable before the Tax Commission nor do they require administrative review subjecting them to dismissal. Indeed, the court “must look to the purposes of the doctrine and ‘the particular administrative scheme involved’ to determine if the doctrine is applicable to a particular claim.” *Summerhaze Co., L.C. v. FDIC*, 2014 UT 28, ¶14, 332 P.3d 908 (Utah 2014) (quoting *McKart v. United States*, 395 U.S. 185, 193 (1969)). Any wholesale approach to dismissal fails this required standard. Therefore, the district court's wholesale approach to dismissal for failure to exhaust administrative remedies without conducting a separate analysis as to each independently and alternatively pled claim was error.

III. THE COUNTIES CLAIMS ARE NOT SUBJECT TO ADMINISTRATIVE EXHAUSTION.

Administrative exhaustion applies only where the administrative proceeding may obviate the need to reach the constitutional question or authorized factual development will be useful to better frame the constitutional issues. *TDM, Inc. v. Tax Comm'n*, 2004 UT App 433, ¶¶ 4-5 (quoting *Nebeker v. State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180 and

citing *Brumley v. Tax Comm'n.*, 868 P.2d 796, 799 (Utah 1993)). The purpose of administrative exhaustion is to promote judicial economy to prevent premature interference with agency processes by a court. *Summerhaze Co.*, 2014 UT 28, ¶14 (“One purpose of the doctrine is ‘the avoidance of premature interruption of the administrative process’ where the relevant agency ‘is created for the purpose of applying a statute in the first instance.’”) (quoting *McKart*, 395 U.S. at 193). The rationale being to permit an agency to utilize its special expertise to correct its own errors and to compile an adequate record that is more developed and informed for a more precise determination by the court. *Id.* This purpose, however, rests on the premise that a claim or its factual underpinnings are cognizable for the first time in front of an administrative agency.

Here, however, the district court was not faced with those types of causes of action which are cognizable before the Tax Commission. (R. 1-30). The Legislature has purposefully retained exclusive jurisdiction of the courts to hear constitutional challenges of tax statutes. *Mack v. Utah State DOC*, 2009 UT 47, ¶ 33 (“A district court has subject matter jurisdiction over a legal claim unless adjudicative authority for that claim is specifically delegated to an administrative agency.”); UTAH CODE ANN. § 78A-5-102. And the Utah Supreme Court has long held that the Tax Commission lacks subject matter jurisdiction “to determine or resolve questions of legality or the constitutionality of legislative enactments.” *State Tax Comm’n v. Wright*, 596 P.2d 634, 636 (Utah 1979) (quoting *Shea v. State Tax Commission*, 101 Utah 209, 212, 120 P.2d 274, 275 (1941) (emphasis added)); see also, *Nebeker v. State Tax Comm’n*, 2001 UT 74, ¶23, 34 P.3d 180

(internal citations omitted). Accordingly, “exhaustion of administrative remedies is not [and cannot be] required when the legal questions involved are threshold questions, and their determination could not [be] avoided by any turn the case might have taken in [an administrative proceeding].” *TDM, Inc. v. Tax Comm’n*, 2004 UT App 433, ¶ 5 (internal citation omitted; alterations in original).

As discussed below, none of the Counties’ claims in this appeal involve administrative claims or require administrative determinations that would obviate the constitutional issues. Rather, all the claims appealed present purely constitutional challenges that remain regardless of a Tax Commission ruling. (R. 1-30). As such, the Tax Commission is precluded by law from making factual determinations related to the statutes legality or constitutionality. The claims cannot be avoided and factual development of the record cannot prove useful no matter what turn the administrative proceeding may take. *TDM, Inc. v. Tax Comm’n*, 2004 UT App 433, ¶ 5.

A. The Tax Commission Cannot Avoid the Constitutional Challenges.

There is **no** possibility that the administrative proceeding could obviate the constitutional challenges. Irrespective of how the Commission rules on the limited County-challenged assessments that are currently pending before it, the unconstitutionality as to each of the statutes will remain.

For example, under the First Claim for Relief, it is the *application* of the “Clear and Convincing Threshold” that itself violates the uniformity clause. (R. 20, ¶ 85). The clear and convincing threshold applies only to airline property; a preponderance of the evidence

standard applies to all other type of personal property. It is the mere statutory establishment of a different, separate and higher standard of review for this select type of property that belies principles of uniformity and which causes a constitutional violation to occur irrespective of whether the Tax Commission finds that the (unconstitutional) clear and convincing standard has been met.

In other words, the mandatory “clear and convincing” standard applies to every assessment of airline property every assessment year. The Tax Commission has no other option. Therefore, if the Tax Commission finds it is met and other methods should be used, it has applied an unconstitutional standard. If the Tax Commission finds it is not met there by precluding other methods, it has also applied an unconstitutional standard.

The same analysis also controls the Counties’ challenges to the Review Threshold Law and the Allocation Law consisting of a mathematical formula promulgated in Utah Code Section 59-2-804 (“the revenue ton miles factor”). (R. 25-26 at ¶¶ 112 - 119). Similar to the “Clear and Convincing Threshold” mandate, the Commission has no discretion to avoid the 50% threshold mandated by the Legislature as a predicate for invoking the Tax Commission’s jurisdiction nor application of the mathematical formula that fails to capture 100% of fair market value of airline property. *Id.* These remain true no matter what the inputted values are or any subsequent identification or quantification of “what portion of airline property [in any given assessment] [] is [or is] not being taxed.” (R. 575).

The incorrectness of the district court's ruling requiring exhaustion becomes even more apparent as it relates to the Counties' remaining dismissed claims at issue in this appeal. For example, the application of the 20% discount violates uniformity because no matter how it is applied, it is unconstitutional to provide a discount based on the number of items owned when that same discount is not offered to other taxpayers who own multiple items. *See, Board of Equalization v. Utah State Tax Comm'n ex rel. Benchmark*, 864 P.2d 882, 888 (Utah 1993) (holding that the uniformity clause is violated when a discount is offered solely upon the number of property owned).

The district court, however, accepted *cart blanche* the State and the Airlines averred connection between the Counties' causes of action and a specific assessment or assessments. The court found the connection upon an unfounded premise that without a "decision by the Commission concerning implementation of the Challenged Statutes and of the fair market value of airline aircraft property" it cannot determine the validity of the Counties' claims. Such connection is and remains tenuous at best. (R. 574). Rather, the Counties' primary challenges are not that the Challenged Laws will never reach fair market value in any conceivable circumstance, not even that any particular assessment needs to be increased. The challenges are that the standards imposed by statute, on their face, violate the constitution even in the unique case where the standard or methodology happens to coincide with fair market value. Accordingly, there is simply no question of fair market valuation that the Commission needs to resolve. In fact, the Counties' claims are not dependent on any outcome of any specific assessment, cannot be avoided and are properly

situated for redress by this Court—the only forum that has the jurisdiction to do so. *TDM, Inc. v. Tax Comm’n*, 2004 UT App 433, ¶ 5; *Kennecott Corp.*, 702 P.2d at 455. Simply, the issues remain regardless of any determination or outcome of any administrative review. No matter what the Commission does, the constitutional challenges will remain because the challenges are based on the plain language of the statutes and the Commission has no discretion to change statutory language.

B. Administrative exhaustion serves no useful purpose.

In ruling that the Counties’ claims require administrative exhaustion, the district court also erroneously found that “the record before the Commission will be useful to better frame the constitutional claims that may not be obviated by the Commission’s determinations” (R. 915). In doing so, the Court agreed with Appellees “that the determination of fair market value and whether the airline property is undervalued under the Valuation and Allocations Laws are factual findings that underlie the Counties’ constitutional claims.” (R. 914-915).

Findings of fair market value or undervaluation (which *are* pertinent to a challenge that whether a valuation violates the constitutional requirement for fair market value) are simply irrelevant to a determination whether the Challenged Laws violate uniformity, equal protection, and separation of powers. Because the Counties facially challenge the three statutes as unconstitutional, on those grounds, findings of fact will not assist in framing or developing the factual issues before the Court. *United States v. Salerno*, 481 U.S. 739, 745 (1987). Indeed, as argued above, none of the Counties’ constitutional claims at issue rely

on any factual findings. (R. 1-30 at ¶¶ 83 - 125). In the case of the “Clear and Convincing Standard” the Tax Commission must apply it when making the assessments. The same is true considering the Counties’ challenge regarding the Allocation Laws formulaic expression. Again, it is the deficiency in the function of the equation that fails to capture 100% of taxable property. It is of no significance what numeric values are inputted or outputted that determines its unconstitutionality.

The senselessness of requiring exhaustion in this case, becomes even more clear by looking at the Counties’ claims concerning the jurisdictional statutes that limit or extinguish the Counties’ ability to challenge the assessments under the Review Threshold Law at Utah Code Section 59-2-1007(2)(b). (R. 27 at ¶¶ 123-124). As alleged in the Complaint and briefing, many assessments were precluded from being appealed or not appealed because of the 50% undervalue threshold. (R. 19-20 at ¶¶ 77-82; R. R. 27 at ¶¶ 123-124; R. 803-809). Others that were appealed were done so despite not meeting the required threshold and are now dismissed for lack of subject matter jurisdiction without any factual development. (R. 750-783; R. 803-809) (citing and attaching as Exhibit 2 thereto Property Tax Division’s Motion for Summary Judgment in matter *Salt Lake County v. Property Tax Division of the Utah State Tax Commission, Southwest Airlines Co., and Affected Counties*, Appeal No. 17-1161; Property Tax Division’s Motion for Summary Judgment in matter *Salt Lake County v. Property Tax Division of the Utah State Tax Commission, United Continental Holdings, Inc., and Affected Counties*, Appeal No. 17-1162; Property Tax Division’s Motion for Summary Judgment in matter *Salt Lake County*

v. Property Tax Division of the Utah State Tax Commission, Alaska Air Group, Inc., and Affected Counties, Appeal No. 17-1159; Property Tax Division's Motion for Summary Judgment in matter *Salt Lake County v. Property Tax Division of the Utah State Tax Commission, American Airlines, Inc., and Affected Counties*, Appeal No. 17-1158). Clearly, the dismissed appeals evidence that no administrative adjudication would assist when there was no ability by the Tax Commission to make the findings in the first place. (R. 27 at ¶¶ 123-124).

In other words, there is no administrative remedy to exhaust because the statute under challenge prevents administrative adjudication in the first instance. *See, e.g. Kimball Condos. Owners Ass'n*, 943 P.2d at 647 (quoted at length, *infra* p. 19 n.4); *see also Kennecott Corp.*, 799 P.2d at 455 (same). The unconstitutionality of the statutes will remain without administrative factual determination, including the unconstitutionality of:

1. the mandatory imposition and use of a higher and non-uniform assessment standard for a specific industry under Utah Code section 59-2-201(4);
2. the non-discretionary application of the 50% threshold under Utah Code section 59-2-1007(2)(b) for the Commission to have subject matter jurisdiction to determine appeals; and
3. the mandatory statutory allocation methodology in Utah Code section 59-2-804 that is mathematically flawed to not capture 100% of taxable value.

The Tax Commission simply lacks subject matter jurisdiction to make findings of fact or determinations of the legality or constitutionality of these legislative enactments.

State Tax Comm'n v. Wright, 596 P.2d 634, 636 (Utah 1979) (quoting *Shea v. State Tax Commission*, 101 Utah 209, 212, 120 P.2d 274, 275 (1941)); *see also Nebeker*, 2001 UT 74, ¶23, 34 P.3d 180 (internal citations omitted). Any factual findings that could conceivably assist in framing or developing the validity of these statutes, therefore, are squarely within the province of this Court, not the Tax Commission. Under such circumstances as presented here, there is no useful purpose of requiring administrative exhaustion. *TDM, Inc.*, 2004 UT App 433, ¶ 6 (holding that where the matter is solely constitutional challenges with no alternative administrative bases that could resolve the issues, the exhaustion of administrative remedies serves no useful purpose.) Accordingly, because the Commission lacks subject matter jurisdiction to determine the purely constitutional issues presented in this matter, no fact finding or determination through administrative remedy exhaustion is useful or required. This remains true, regardless of how the Tax Commission applies the statutes in any given case.

CONCLUSION

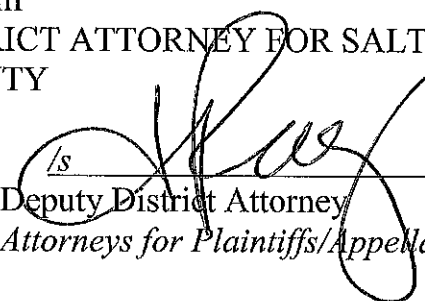
For every statute being challenged, there is simply no administrative remedy the Tax Commission can provide that will resolve the constitutional challenges. In fact, the Commission lacks subject matter jurisdiction to address or determine any legality or constitutionality of the laws. Asking the Commission to address constitutional challenges respecting which it has no authority and cannot resolve serves no purpose; but is wasteful, and stymies judicial economy.

All of the Challenged Laws, including the Review Threshold Law, are in force, have been applied, and have had real world effects on the Plaintiffs and taxpayers. The controversy over the application of the Review Threshold Law is anything but hypothetical and has sharpened into an actual clash of legal rights and obligations between the Counties and State. For these reasons, the district court's Ruling and Order dismissing the Counties' First, Third, Sixth, Seventh, Eighth, Tenth, and Eleventh causes of action should be reversed and the matter remanded to the trial court for further proceedings.

Dated this 13th day of December 2018.

Sim Gill
DISTRICT ATTORNEY FOR SALT LAKE
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By:


/s
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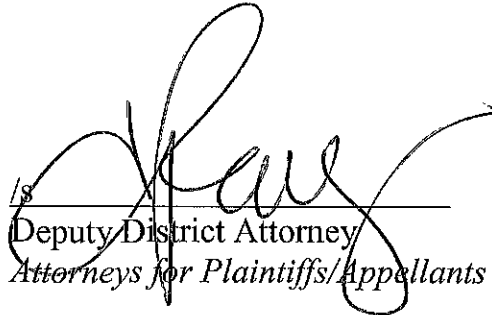
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1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because:
this brief contains **27** pages, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2), or
2. This brief complies with the addendum requirements of Utah R. App. P. 24(a)(12) because the addendum contains a copy of:
any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;
the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and
materials in the record that are the subject of the dispute and that are of central importance to the determination of the issues presented for review, such as challenged jury instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase contracts.
3. This brief complies with rule 21(g).

Dated this 13th day of December 2018.

By:


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PROOF OF SERVICE

I certify that on the 13th day of December, 2018, a true and correct copy of the foregoing APPELLANT'S BRIEF was sent via email with hardcopies to be serve via email within 7 days hereof to the following:

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**IN THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH**

SALT LAKE COUNTY, DUCHESNE
COUNTY, UINTAH COUNTY,
WASHINGTON COUNTY, and WEBER
COUNTY, all political subdivisions of the
State of Utah,

Plaintiffs,

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(Tier 2)**

Case No. _____

<p>v.</p> <p>STATE OF UTAH,</p> <p>Defendant.</p>	<p>The Honorable _____</p>
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Salt Lake County (“Salt Lake”), Duchesne County (“Duchesne”), Uintah County (“Uintah”), Washington County (“Washington”), and Weber County (“Weber”) (collectively, “Plaintiff Counties”) file this complaint and allege as follows:

PRELIMINARY STATEMENT

1. In Utah, taxpayers may know little about how their property tax rates are set each year, or by whom, and whether their taxes are fair and proportional to those paid by others. Most taxpayers likely understand that properties owned by individual and small business taxpayers are valued by locally elected county assessors. Taxpayers may be less likely to understand that properties owned by large businesses operating in more than one county—generally called “Centrally Assessed” properties, *see* Utah Code Ann. § 59-2-201—are valued not by locally elected county assessors, but by the State of Utah through the Utah State Tax Commission (“State Tax Commission”). These Centrally Assessed entities are generally valued using the same fair market value standard applied by county assessors to value local homes and small businesses. Although performed by a different entity, i.e., the State rather than local governments, annual valuations of Centrally Assessed properties have a direct impact on all other property taxpayers, both individuals and small businesses, because any decrease in the valuations of, and resulting taxes paid by, Centrally Assessed entities is shifted, by way of the annual certified rate for property taxes, to every other taxpayer in the State of Utah.

2. Although their own interests may be adversely affected by Centrally Assessed valuations, locally assessed taxpayers—i.e., those who pay more when Centrally Assessed entities pay less—have no ability themselves to challenge the valuations of Centrally Assessed entities. Consequently, for decades counties in Utah monitored Centrally Assessed property assessments made by the State Tax Commission and would occasionally challenge those assessments in order to protect those counties' local taxpayers. By legislative action in 2015 (SB165), however, the State of Utah significantly limited the circumstances in which counties could bring assessment challenges on their residents' behalf.

3. In other words, in the zero sum game that is the State of Utah's property tax system, absent other offsetting factors, when a large Centrally Assessed entity (or, as discussed below, an industry of Centrally Assessed entities) receives a reduction in the property taxes they must pay through valuations that depart from fair market value, that entire amount is shifted onto other taxpayers, including individual and small business taxpayers. Those other, non-Centrally Assessed taxpayers are expected to make up the difference without any ability—on their own or through their most directly accessible local elected officials—to object or to seek administrative or judicial review.

4. Plaintiff Counties bring this action to challenge a series of legislative actions that: (i) cause property tax assessments in the airline industry to fall well below fair market value (SB157 (2017 General Session)), Ex. 1 hereto); SB237 (2008 General Session), Ex. 2 hereto), thus shifting the resulting tax burdens from airlines to other individual or small business taxpayers within the State of Utah; and (ii) insulate any below-market valuations of Centrally Assessed properties, including the affected airline valuations, from almost any administrative

and judicial review—including, in most instances, by the various counties who must rely on those valuations and others to collect property taxes for the taxing entities imposing them (SB165 (2015 General Session), Ex. 3 hereto). These legislative actions and statutes are referred to collectively herein as “Challenged Laws.”

5. The Challenged Laws violate important principles of due process, equal protection, uniformity, and fairness. The unfairness to individual and small business taxpayers cannot be overstated. For example, if the tax shift from one Centrally Assessed industry is \$5 million per year, then individual and small business taxpayers will collectively pay \$5 million more, in perpetuity, to make up that difference.

6. The Challenged Laws violate the Utah State Constitution and United States Constitution in that they carve out one subset of taxpayers and require that those taxpayers’ property be valued below fair market value by a statutory methodology, and be subject to a different evidentiary standard, than any other property in the State of Utah.

7. The Challenged Laws violate the Separation of Powers Doctrine, because by Legislative enactment the laws curtail the ability of the State Tax Commission (an Executive Branch agency), through its Property Tax Division (“Division”), to value airlines at their true market value—which, indeed, is mandated pursuant to Article XIII, section 2 of the Utah State Constitution (*see* Ex. 4 hereto), which states (emphases added):

- (1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:
 - (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law;
and
 - (b) taxed at a uniform and equal rate.

Indeed, the Division in 2017 was required by the methodology set forth by the Legislature in SB157 to value airlines at an average of 39% less than what their values would have been using 2016 methods—for a total loss in airline tax revenues of roughly \$5 million.

8. The Challenged Laws also contravene the “Truth in Taxation” procedures found in Utah Code section 59-2-919, in that they effectively raise property tax burdens by Legislative enactment without complying with the strict public notice and hearing requirements required by State law. As a result, the Challenged Laws increase individual and small business property tax burdens while allowing those property owners no real notice and opportunity to object, and leaving affected taxpayers with little opportunity to lobby directly or to remove from office the elected officials actually responsible for the tax increase.

9. This unreasonable and unconstitutional shift of tax burdens challenged by Plaintiff Counties here provides a windfall to one Centrally Assessed industry while unfairly penalizing the average individual taxpayer or small business owner, who has few if any avenues for redress.

10. Plaintiff Counties, on behalf of their taxpaying constituents, have no redress other than to file this action to enjoin enforcement of the offending laws.

NATURE OF ACTION

11. This Complaint seeks declarations that the following statutes violate the Utah Constitution:

- a. Unconstitutional Airline Valuation Method. The Amendments to Utah Code § 59-2-201(4) (2017) by the Utah Legislature in Senate Bill 157 (*see* Ex. 1 hereto), which require the State Tax Commission to assess “Airline Property”¹ using a price guide and discounts;
- b. Unconstitutional Airline Allocation Factor. Utah Code § 59-2-804 (2017), which requires the State Tax Commission to use an interstate allocation factor to allocate the value of Airline Property to Utah, and, if applied uniformly by all states, results in property and value escaping taxation (*see* SB237, Ex. 2 hereto); and
- c. Unconstitutional Bar to Administrative Review. Utah Code § 59-2-1007(2)(b) (2017), which limits a county’s right to appeal an assessment to the State Tax Commission for administrative review to those circumstances where the county reasonably believes fair market value is 50% greater than the assessment or the prior year’s assessment (*see* SB165, Ex. 3 hereto).

12. This Complaint further seeks injunctive relief prohibiting the State Tax Commission from applying the Challenged Laws identified above.

¹ The term “Airline Property” includes “all operating property of an airline, air charter service, and air contract service” and includes aircraft therein. *See* Utah Code § 59-2-201(1)(a)(iii).

PARTIES

13. Defendant State of Utah is a governmental entity within the United States of America authorized under an Act of Congress approved on July 16, 1894, the Enabling Act, and by the Utah Constitution of 1895, and as thereafter amended.

14. Defendant State of Utah, though its Legislature, enacted the Challenged Laws, and through its agency, the State Tax Commission, applies the Challenged Laws.

15. Plaintiffs Salt Lake County, Duchesne County, Uintah County, Washington County, and Weber County are all political subdivisions of the State of Utah, and through their elected officials, the Assessor, Board of Equalization, Auditor, and Treasurer, they administer, assess, and collect property taxes.

JURISDICTION AND VENUE

16. This Court has jurisdiction under Utah Code section 78B-6-401(1) to issue declaratory judgments.

17. The District Court has jurisdiction to hear the “legality or constitutionality of tax statutes.” *Kennecott Corp v. Salt Lake County*, 702 P.2d 451, 455-56 (Utah 1985) (“*Kennecott I*”).

18. The District Court has jurisdiction because Utah Code section 59-2-1007(2)(b) restricts the Counties’ right to an administrative review of Commission assessments to only those rare instances where they contend fair market value is 50% more than the assessed value or the prior year’s assessment, leaving Plaintiff Counties with no meaningful administrative remedy.

19. This Court is the proper venue under Utah Code section 78B-3-307.

DISCOVERY TIER

20. The relief sought by Plaintiff Counties is non-monetary and thus qualifies for Tier 2 discovery limits under Utah Rule of Civil Procedure 26(c)(3).

STANDING

21. All tangible property in the State of Utah, unless exempt by the Utah Constitution, is subject to property tax.

22. Elected county assessors assess all property located within their respective counties, except for property assigned by statute to the State Tax Commission for assessment, e.g., Centrally Assessed property.

23. The State Tax Commission has statutory authority to assess operating mining property, public utilities, Airline Property, or property that crosses county lines, such as telecommunication, pipelines, and rail roads.

24. The State Tax Commission generally assesses transportation properties, telecommunication properties, energy properties, and public utilities using the unitary appraisal method.

25. The State Tax Commission defines “transportation properties” as “the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.” Utah Admin. Code, R884-24P-62 (emphasis added) (Ex. 5 hereto).

26. The unitary appraisal method assesses property at a unit level reflecting the highest and best use of the property. In the case of Airline Property, the unit level is often the national or international operating unit of an airline.

27. The unitary value is allocated to the State of Utah using an interstate allocation method resulting in State taxable income. The State taxable value is then apportioned to the tax areas within Utah where the property is located.

28. Once that apportionment occurs, the counties levy property tax on all Centrally Assessed property within their tax area, and collect all property taxes levied on that Centrally Assessed property, on behalf of taxing entities within their jurisdiction.²

29. For example, in Salt Lake County, the taxing entities levying a property tax on Airline Property are Salt Lake County, Salt Lake County School District, Salt Lake City, Salt Lake Library, Salt Lake Metropolitan Water District, Salt Lake City Mosquito Abatement District, and the Central Water Conservancy District.

30. In Duchesne County, the taxing entities levying a property tax on Airline Property are Duchesne County, Duchesne County School District, Duchesne County Library, Roosevelt City, Mosquito Abatement District, Duchesne County Water Conservancy District, Central Utah Water, and the Johnson Water District.

31. In Uintah County, the taxing entities and funds levying a property tax on Airline Property are Central Utah Water Conservancy District, Uintah County (including Local Assessing and Collecting and Multi-County Assessing and Collecting), Uintah County Mosquito Abatement, School Funds (including Uintah County School District, State Charter School Levy, and Basic School Levy), Uintah Water Conservancy District, Ashley Valley Water & Sewer Improvement District, Vernal City, and Naples City.

² The State of Utah does not levy property taxes except for the State school levy.

32. In Washington County, the taxing entities and funds levying a property tax on Airline Property are St. George City, Washington County Water Conservancy District, Washington County (Local Assessing and Collecting, Multi-County Assessing and Collecting, General Fund, Washington County Library Operations, General Obligation Bonds), Washington County Mosquito Abatement Special Service District, Local School Fund, State School Fund, and Charter School Fund.

33. Last, in Weber County, the taxing entities and funds levying a property tax on Airline Property are Ben Lomond Cemetery District, Bona Vista Water District, Central Weber Sewer District, Eden Cemetery District, Ogden City, Ogden City School District, Riverdale City, South Ogden City, Uintah Highlands Improvement District, Washington Terrace City, Weber-Morgan Health Department, Weber Area Dispatch 911 and Emergency Services District, Weber Basin Water Conservancy District, Weber County, Weber County Library, Weber Fire District, Weber Mosquito Abatement District, Weber School District, and West Weber-Taylor Cemetery District.

34. To ensure equal and uniform tax burdens among all taxpayers owning property, assessments must reflect fair market value.

35. The County Boards of Equalization are directed by the Utah Constitution to adjust and equalize the valuation and assessment of the real and personal property within the County. *See* Utah Const. art. XIII, § 7 (Ex. 4 hereto).

36. A shift in property tax burden from Airline Property to other property taxpayers in each of the Plaintiff Counties, as a result of the Challenged Laws or otherwise, impacts the

property tax rates of each County and other taxing entities who levy property taxes in the same tax area where Airline Property is located.

37. Utah Code sections 59-2-201(4) and 59-2-804 cause tax rates to increase.

38. Utah Code sections 59-2-201(4) and 59-2-804 shift a portion of the tax burden from the owners of Airline Property to owners of other property in the same tax areas.

39. Thus, any assessment on Airline Property below fair market value (*see* SB157, Ex. 1 hereto) creates a shift in property tax burden from Airline Property to other individual and small business taxpayers located in the same tax area.

40. In addition, any interstate allocation factor that facially fails to allocate all of the property and value when uniformly applied (*see* SB237, Ex. 2 hereto) creates a shift in property tax burden from Airline Property to other individual and small business taxpayers located in the same tax area.

41. Assuming all other factors in the property tax process remain constant, including the fair market values of the properties involved, sections 59-2-201(4) and 59-2-804 cause taxpayers owning Airline Property located in each Plaintiff County to pay less property taxes. That means all other taxpayers will pay more property taxes, despite the fact that the fair market value of their properties was unchanged.

42. Plaintiff Counties, as the levying authorities and collecting authorities of property taxes from Airline Property assessed by the State Tax Commission, have standing to ensure the property tax burden is shared equally among all property taxpayers as required by the Utah Constitution.

43. The Counties have standing because the Challenged Laws directly affect their property tax revenue.

44. The Counties have standing because they are best positioned to represent the interest of all taxpayers and taxing entities within their jurisdiction.

45. The Counties have standing because the allegations relate to the constitutionality of “assessment statutes and assessment methods generally.” *Kennecott I*, 702 P.2d at 455.

GENERAL ALLEGATIONS

46. “So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at uniform and equal rate.” Utah Const. art. XIII, § 2(1) (Ex. 4 hereto).

47. The term “fair market value” for property tax purposes under the Utah Constitution “means that all property shall be valued for the purposes of assessment as near as is reasonably practicable, at its full cash value; in other words, that the valuation for assessment and taxation shall be, as near as reasonably practicable, equal to the cash price for which the property valued would sell in the open market” *Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156, 1159-60 (Utah 1990) (“*Kennecott II*”) (quoting *Cunningham v. Thomas*, 50 P. 615, 615-16 (Utah 1897)).

48. “The hallmarks of these constitutional [Utah Const. art. XIII, § 2(1)] and statutory directives [Utah Code § 59-2-103(1)] are the notions of uniformity, equality, and a universal

measure of valuation--fair market value.” *Mt. Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶ 12, 100 P.3d 1206.

Unconstitutional Airline Valuation Method—Utah Code Section 59-2-201(4) (SB157 (2017 General Session))

Legislative History

49. The State Tax Commission has historically used the traditional measures of fair market value—i.e., income approach, cost approach and market approach—to value Airline Property.

50. As background, in 2009, the Legislature passed a similar statute requiring the use of price guides, effective for only a two-year period, to allow the State Tax Commission time to review and decide on the appropriate methods to value Airline Property for property tax purposes. *See* Senate Bill 210 (2009 General Session) (Ex. 6 hereto).

51. As a result, the State Tax Commission conducted rulemaking hearings and considered whether price guides should be used as a method to value Airline Property assessed by the Commission.

52. At the conclusion of those rulemaking hearings, the State Tax Commission determined price guides should not be used as the preferred method to value Airline Property. The State Tax Commission therefore specified by Rule that the preferred methods to value Airline Property were the income approach and cost approach, not a price guide. *See* Utah Admin. Code, R884-24P-62 (Ex. 5 hereto).

53. Despite the Commission’s earlier conclusion, the Utah Legislature in 2017 amended Section 59-2-201(4) by Senate Bill 157 (*see* Ex. 1 hereto), to prevent the Commission

from using these traditional measures of fair market value and to instead require the Commission to assess aircraft using the “Airliner Price Guide,” or other alternative price guide publication, unless the Commission “(i) has clear and convincing evidence that the aircraft values reflected in the air craft pricing guide do not reasonably reflect fair market value of the aircraft; and (ii) cannot identify an alternative aircraft pricing guide from which the commission may determine aircraft value.” This change is hereafter referred to as the “Clear and Convincing Threshold.”

54. SB157 also amended Section 59-2-201(4) to require a fleet adjustment as outlined in the pricing guide and, if not outlined, a reduction to the “value of each aircraft in the fleet by .5% for each aircraft over three aircraft up to a maximum 20% reduction.” This change is hereafter referred to as the “20% Discount.”

55. The Airliner Price Guide requires sales of one or two aircraft using “Current Market Value,” sales of three aircraft using Wholesale Values, and sales of four or more aircraft, Wholesale Values less .5 % for each aircraft over three aircraft up to a maximum 20% from Current Market Value. The Division interprets this adjustment to be the “fleet adjustment” required by Section 59-2-201(4).

56. The fiscal note published by the Fiscal Analyst for the Utah Legislature stated that changes by SB157 “may shift some portion of the \$12 million in property tax burden of airlines to other individuals and businesses.” (Ex. 7 hereto (emphases added).)

Impact of SB157

57. The State Tax Commission's original 2016 assessments of the seven major passenger airlines³ in Salt Lake County gave 100% weight to the preferred indicators, the income and cost indicators, and zero weight to the market approach using the Airliner Price Guide.

58. The assessments issued by the State Tax Commission for the January 1, 2017, lien date for the seven major passenger airlines utilized the SB157-required valuation method, rather than the preferred valuation methods used by the State Tax Commission for the 2016 assessments. This significantly affected the assessed value of Airline Property. For example, application of Utah Code section 59-2-201(4), as amended, reduced the 2017 assessed system value of one airline from \$26.2 billion to less than \$14.7 billion (a roughly 44% decrease).

59. By applying the SB157 methodology rather than applying the methodologies used the previous year, the 2017 Utah taxable values for the seven major passenger airlines decreased by roughly 39% overall.

60. Had the State Tax Commission used the preferred valuation methods it used in 2016 instead of the SB157 methodology, the 2017 Utah taxable values for the seven major airlines would be on average 43% higher.

Valuation Issues with Price Guides

61. Section 59-2-201(4)(a) defines the term "aircraft price guide" as "a nationally recognized publication that assigns value estimates for individual commercial aircraft that are (i)

³ Major passenger airlines were selected based upon highest Utah taxable income.

identified by year, make, and model and (ii) in average condition typical for the aircraft's type and vintage."

62. For commercial jet powered aircraft, there are principally two national publications, i.e., AVITAS and Airliner Price Guide. These publications are only available for a substantial fee. For example, in the case of AVITAS, the annual subscription fee is \$2,000 for "Jet Aircraft Values."

63. SB157 does not explain why the Airliner Price Guide was selected in Section 59-2-201(4) as the preferred aircraft price guide. (*See generally* Ex. 1 hereto.)

64. The State Tax Commission considered the use of the Airliner Price Guide in valuation hearing Appeal No. 06-0725 for the aircraft of a passenger airline. (*See* Ex. 8 hereto.)

65. Quentin Brasie, the publisher of the Airliner Price Guide, testified in Appeal 06-0725. (*See* Ex. 8 hereto at ¶ 28.)

66. Mr. Brasie testified that "the Airliner Price Guide is not an appraisal book. You would not use that book as a sole basis for conducting an appraisal." (Ex. 8 hereto at ¶ 33.) Another expert witness in that case also criticized the Airliner Price Guide because of its lack of transparency, testifying that an "appraiser should not place total reliance on the work of another without adequate disclosure." (Ex. 8 hereto at ¶ 37.)

67. The Airliner Price Guide prohibits the use of the 20% discount for "multiple aircraft appraisals or fleet appraisals." (Ex. 9 hereto (excerpt, Airliner Price Guide (Winter 2017)) at 20.)

68. The State Tax Commission, based in part on the foregoing, "conclude[d] that it [would be] merely coincidental if the values of each individual airplane summed either under the

APG [Airliner Price Guide] Retail or APG Wholesale Column plus the book value of the nonmobile assets results in a value near the fair market unitary value valuation of the airline itself.” (Ex. 8 hereto at ¶ 42.)

69. The State Tax Commission therefore found that the Airliner Price Guide “cannot be used directly to value any single aircraft in the [subject taxpayer’s] fleet, or another fleet for that matter.”⁴ (Ex. 8 hereto at p. 19.)

70. Despite the State Tax Commission’s earlier explicit rejection in Appeal No. 06-0725 of the Airliner Price Guide as an appropriate means to determine value, as well as the State Tax Commission’s two-year rulemaking process and determination that price guides are not a preferred valuation method for airlines, the Legislature in SB157 nevertheless required the State Tax Commission to use such guides, and to further adjust the values downward using the 20% Discount, for every airline valuation unless the Clear and Convincing Threshold is met.

Unconstitutional Airline Allocation Factor—Utah Code Section 59-2-804 (SB237 (2008 Legislative Session))

71. Utah Code section 59-2-804 allocates mobile flight equipment to Utah using two factors (fractions) weighted equally, i.e., the “revenue ton miles factor” and the “ground hours factor.” Utah Code § 59-2-804(1)(e) and (i).

⁴ Even in a non-unitary valuation context, such as the valuation of one commercial jet engine aircraft, the use of aircraft price guides is problematic because such guides assume an aircraft in an average state, while in reality, the value of an aircraft is determined by the type of jet engine, the hours of use on the engines, its placement on the maintenance cycle, and the configuration of the seating or cargo arrangements, including flight entertainment equipment. For example, commercial passenger jet aircraft are configured based upon the unique needs of an airline, such as a first class, business class, and economy. Such configurations can impact passenger load and flight prices. An average value offered by an aircraft price guide will not recognize the value related to the unique configurations.

72. The “revenue ton miles factor” is a fraction with the numerator consisting of “Utah revenue ton miles” and the denominator consisting of the total of all “airline revenue ton miles.” Utah Code § 59-2-804(1)(i).

73. “Fly over miles,” defined as miles flown over a state, but where the aircraft did not land or take off from such state, are included in the denominator, but not in the numerator. As a result, if the “revenue ton miles factor” was applied uniformly by all taxing jurisdictions, the allocations would sum to less than 1 (or 100%) leaving property and value untaxed.

74. The following example illustrates the unconstitutional allocation factor. Over the course of one year, an airline has a total of 10,000 flight miles, including fly over miles, over States A, B, C. State A has 3,500 flight miles (excluding fly over miles). State B has 2,500 flight miles (excluding fly over miles). State C has 1,500 flight miles (excluding fly over miles). The revenue ton miles factors for each state under Section 59-2-804 would be calculated as follows:

Interstate Allocation	State A	State B	State C	Total
Factor as a fraction	3,500/10,000	2,500/10,000	1,500/10,000	7,500/10,000
Factor as a percentage	35%	25%	15%	75%

Under this example, use of the Section 59-2-804 allocation results in 25% of the taxable property and its value not being allocated to any taxing jurisdiction, including Utah.

75. In 2008, in SB237, the Utah Legislature amended Section 59-2-804 to require use of the revenue ton miles factor. (*See generally* Ex. 2 hereto.)

76. The fiscal note issued for SB237 showed that “individuals and businesses are likely to experience an ongoing shift in property tax liability in counties of the first class with an international airport of \$5.7 million from central assessed to locally assessed property.” (Ex. 10 hereto (emphases added).)

Unconstitutional Bar to Administrative Review—Section 59-2-1007(2)(b) (SB165 (2015 Legislative Session))

77. Each county assessor and county Board of Equalization must ensure that all the property in that county is assessed at fair market value, in a uniform and equal manner, so that all taxpayers share their proportionate tax burden. A county’s right to appeal what it believes may be an inaccurate valuation by the State Tax Commission of a given Centrally Assessed property is a critical tool in ensuring that all taxpayers in that county are being assessed uniformly in proportion to the fair market value of their property, which in turn helps protect all county taxpayers from having to shoulder a disproportionate share of the tax burden.

78. Prior to 2015, counties could seek administrative review of Centrally Assessed valuations without a value restriction.

79. The Utah Supreme Court has explained the constitutional imperative that all assessments be subject to review (*see Kimball Condos. Owners Ass’n v. County Bd. of Equalization*, 943 P.2d 642, 647 (Utah 1997)):

[W]e note that if the assessor had no right of appeal from board of equalization decisions, many decisions would be insulated from review altogether. Certainly, taxpayers who successfully contest an assessment would have no reason to appeal, if a board of equalization erred in construing constitutional or statutory provisions in the taxpayer’s favor. In that case, the decision would stand because there would be no one who both would and could appeal. Consequently, the constitutional requirements that assessments be both uniform and represent fair-market value would be undermined.

80. In 2015, however, the Utah Legislature amended section 59-2-1007(2)(b) in SB165 (*see* Ex. 3 hereto) to limit significantly a county's ability to seek administrative review of an assessment by the State Tax Commission, allowing an appeal only in those circumstances where the county reasonably believes fair market value is 50% greater than the assessment or the prior year's assessment.

81. If an assessment is below fair market value, but not below the 50% threshold of Section 59-2-1007(2)(b), only the taxpayer can seek administrative review. A Centrally Assessed taxpayer has no incentive to file an appeal for an assessment below fair market value, such that assessments below fair market value, but not more than the 50% threshold, will likely go unchallenged due to SB165's amendment to section 59-2-1007(2)(b).

82. All other taxpayers—including those who will bear an increased tax burden caused by below fair market value assessments of airline property—have no right to file for administrative or judicial review of those assessments. Nor do they have any ability to remove from office the non-elected State Tax Commissioners who are responsible for those assessments.

FIRST CLAIM FOR RELIEF
(Clear and Convincing Threshold—Uniformity)

83. Utah Constitution Article XIII, section 2(1) requires that all tangible property be assessed and taxed at a uniform and equal rate in proportion to fair market value.

84. The Clear and Convincing Threshold requires the State Tax Commission to meet a clear and convincing standard to depart from the required methodology of Section 59-2-201(4) for arriving at fair market value, while the State Tax Commission and local assessors must only

meet a preponderance of the evidence standard in establishing fair market value for all other property assessed in the State.

85. Utah Code section 59-2-201(4) violates the uniformity requirements of Utah Constitution Article XIII, section 2(1), both facially and as applied to the 2017 tax assessments, by requiring a different evidentiary standard to reach fair market value.

86. Utah Code section 59-2-201(4) violates the uniformity requirements of Utah Constitution Article XIII, section 2(1), both facially and as applied to the 2017 tax assessments, by causing assessments and tax burdens that are not uniform and equal.

SECOND CLAIM FOR RELIEF
(Clear and Convincing Threshold—Fair Market Value)

87. The Utah Constitution requires that all property assessments reflect fair market value.

88. “The choice of valuation methodology in assessing property is a question of fact [and] the resulting determination of fair market value is also a question of fact.” *Salt Lake City S. R.R v. State Tax Comm’n*, 1999 UT 90, ¶13, 987 P.2d 954 (citations omitted).

89. The Utah Supreme Court has held, “Valuation is an art, not a science. It is a function of judgment, not of natural law. [] For example—true market value for purposes of ad valorem taxation is always an estimate, always an expression of judgment, always a result built on a foundation of suppositions about knowledgeable and willing buyers and sellers endowed with money and desire” *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344, 355 (Utah 1996); *see Rio Algom Corp v. San Juan County*, 681 P.2d 184, 192 (Utah 1984) (“[Fair] market value is at best an approximation.”).

90. Because fair market value is an approximation, the clear and convincing standard is difficult, if not impossible, to satisfy in most complex property tax valuations.

91. The Clear and Convincing Threshold prevents a finding of fair market value in all instances where a preponderance of the evidence requires a methodology other than Section 59-2-201(4) in order to arrive at fair market value, but the Clear and Convincing Threshold prevents that methodology from being used.

92. Utah Code section 59-2-201(4) facially violates Utah Constitution Article XIII, section 2(1) by preventing fair market value due to the Clear and Convincing Threshold.

93. Utah Code section 59-2-201(4) violates Utah Constitution Article XIII, section 2(1) as applied because fair market value is not reached where the preponderance of the evidence requires a fair market value finding different than the value arrived at using the required method under Section 59-2-201(4).

THIRD CLAIM FOR RELIEF
(20% Discount—Uniformity)

94. Utah Code section 59-2-201(4) requires the State Tax Commission to discount the value of aircraft based solely upon the number of aircraft owned by the taxpayer, with the required discount typically escalating at 0.5% for each aircraft owned after three, up to 20%, i.e., the 20% Discount.

95. Utah law prohibits discounts that are not uniformly applied to all properties assessed according to the same method of appraisal. *See Bd. of Equalization v. Utah State Tax Comm'n ex rel Benchmark*, 864 P.2d 882, 887 (Utah 1993).

96. Utah Code section 59-2-201(4) facially violates Utah Constitution Article XIII, section 2(1) because it applies a different discount depending on the number of aircraft owned. For example, an aircraft owned by Taxpayer A, who owns two aircraft, will have a higher value under section 59-2-201(4) than the identical aircraft owned by Taxpayer B, who owns four aircraft.

97. Utah Code section 59-2-201(4) facially violates Utah Constitution Article XIII, section 2(1) because it does not extend the same discount for transitory property assessed by the local assessor using a published price guide.

98. Utah Code section 59-2-201(4) facially violates Utah Constitution Article XIII, section 2(1) because it does not extend the same discount to owners of multiple items of property other than aircraft.

99. Utah Code section 59-2-201(4) facially violates Utah Constitution Article XIII, section 2(1) because it does not extend the same discount to owners of multiple transportation properties assessed by the State Tax Commission.

100. Utah Code section 59-2-201(4) facially violates Utah Constitution Article XIII, section 2(1) because it does not extend the same discount to owners of multiple items of properties also assessed by the State Tax Commission using the unitary method.

101. The State Tax Commission's application of section 59-2-201(4) violates Utah Constitution Article XIII, section 2(1) because the discount has been applied only to aircraft and has not been applied to other property.

FOURTH CLAIM FOR RELIEF
(20% Discount—FMV)

102. Utah Code section 59-2-201(4) requires a discount from fair market value of an aircraft based upon the number of aircraft owned.

103. Utah Code section 59-2-201(4)'s 20% Discount does not result in a fair market value.

104. Utah Code section 59-2-201(4), facially and as applied, violates Utah Constitution Article XIII, section 2(1) because it does not value property using the fair market value standard.

FIFTH CLAIM FOR RELIEF
(Improper Delegation of Constitutional Authority)

105. Utah Constitution Article XIII, section 6 establishes and empowers the State Tax Commission with the authority to make original assessments and to “adjust and equalize the valuation and assessment of property among the counties.”

106. Utah Code section 59-2-201(4) violates Utah Constitution Article XIII, section 6 and is facially unconstitutional because it places the assessment and valuation of aircraft for property tax purposes within the control of third-party publications rather than within the control of the State Tax Commission.

107. Utah Code section 59-2-201(4) as applied by the State Tax Commission is unconstitutional because it places the assessment and valuation of aircraft for property tax purposes within the control of third-party publications in violation of Utah Constitution Article XIII, section 6.

SIXTH CLAIM FOR RELIEF
(Violation of the Separation of Powers Doctrine)

108. Utah Constitution Article V, section 1 distributes the power of government into three branches of government—the Legislative, the Executive, and the Judicial—and mandates that “no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others,” except as specifically allowed by the Constitution.

109. Utah Constitution Article XIII, section 6 establishes and empowers the State Tax Commission with the authority to make original assessments and to “adjust and equalize the valuation and assessment of property among the counties.”

110. The State Tax Commission is part of the Executive branch of government.

111. Utah Code section 59-2-201(4) is an attempt by the Legislature to assess and value Airline Property, i.e., to “exercise any functions appertaining to” the Executive Branch, in violation of Utah Constitution Article V, section 1.

SEVENTH CLAIM FOR RELIEF
(Unconstitutional Interstate Allocation—Uniformity)

112. Utah Constitution Article XIII, section 2(1) requires all tangible property to be assessed and taxed at a uniform and equal rate in proportion to fair market value.

113. The “revenue ton miles factor” set forth in Utah Code section 59-2-804 results in an allocation of less than 1 (or 100%), if applied uniformly by all taxing jurisdictions, which leaves property and value untaxed, while all other interstate allocation factors used by the Commission, if applied uniformly by all taxing jurisdictions, result in an allocation of 1 or (100%).

114. Utah Code section 59-2-804 facially violates Utah Constitution Article XIII, section 2(1) because it excludes property and value through the “revenue ton miles factor,” with the same exclusion not provided to all other property assessed by the State Tax Commission or by county assessors.

115. The State Tax Commission’s application of section 59-2-804 violates Utah Constitution Article XIII, section 2(1) because the State Tax Commission has never applied it to any property assessed by the State Tax Commission other than Airline Property.

EIGHTH CLAIM FOR RELIEF
(Unconstitutional Interstate Allocation—De Facto Exemption)

116. Utah Constitution Article XIII, section 2(1) requires all tangible property “that is not exempt under the laws of the United States or under this Constitution” to be assessed and taxed.

117. There is no constitutional exemption for Airline Property.

118. The “revenue ton miles factor” of Utah Code section 59-2-804 facially violates Utah Constitution Article XIII, section 2(1) because it exempts tangible property from property tax without a constitutional exemption.

119. The State Tax Commission’s application of the “revenue ton miles factor” of section 59-2-804 violates Utah Constitution Article XIII, section 2(1) because it exempts tangible property from property tax without a constitutional exemption.

NINTH CLAIM FOR RELIEF
(Unconstitutional Bar to Administrative Review—Open Courts)

120. Utah Constitution Article I, section 11 provides that “all courts shall be open” and “every person shall have a remedy by due course of law.”

121. Utah Code section 59-2-1007(2)(b) limits a county's right to seek administrative review of State Tax Commission assessments to only those circumstances where fair market value is 50% greater than the assessment or the prior year's assessment.

122. The limitation on appeal rights by section 59-2-1007(2)(b) facially violates Utah Constitution Article I, section 11 by precluding counties, including through an elected county assessor or Board of Equalization, from appealing State Tax Commission assessments on behalf of those counties' taxpayers who would bear unfair and disproportionate tax burdens in the case of assessments that are below fair market value or are not uniform.

TENTH CLAIM FOR RELIEF
(Unconstitutional Bar to Administrative Review—Uniformity)

123. Utah Constitution Article XIII, section 2(1) requires all tangible property to be assessed and taxed at a uniform and equal rate in proportion to fair market value.

124. Utah Code section 59-2-1007(2)(b) facially violates Utah Constitution Article XIII, section 2(1) by insulating from administrative or judicial review State Tax Commission assessments that are below market value or are non-uniform.

ELEVENTH CLAIM FOR RELIEF
(Equal Protection—Uniformity of Laws)

125. Utah Code sections 59-2-201(4), 59-2-804, and 59-2-1007(2)(b), both facially and as applied by the State Tax Commission, violate Utah Constitution Article I, section 24 and the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Counties pray for judgment against Defendant State of Utah as follows:

1. An order declaring SB157's amendment to Section 59-2-201(4) unconstitutional;
2. An order declaring the "revenue ton miles factor" of Section 59-2-804 unconstitutional;
3. An order declaring Section 59-2-1007(2)(b) unconstitutional;
4. An order enjoining the State Tax Commission from applying the unconstitutional statutes identified above;
5. For the counties' reasonable attorney fees, investigative costs, and court costs as allowed by law; and
6. For all other and further relief, at law and in equity, as the circumstances merit and as allowed by law.

DATED this 17th day of July, 2017.

BY:

SIM GILL
Salt Lake County District Attorney's Office

/s Darcy M. Goddard
Darcy M. Goddard
Timothy Bodily
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* Electronically signed with permission of Messrs. Clarke, Erickson, Stearmer, and Tingey

Plaintiffs' addresses:

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ADDENDUM B

FILED DISTRICT COURT
Third Judicial District

JUN 22 2018

Salt Lake County

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE COUNTY, DUCHESNE
COUNTY, UINTAH COUNTY,
WASHINGTON COUNTY, and WEBER
COUNTY,

Plaintiffs,

v.

STATE OF UTAH,

Defendant,

and

DELTA AIRLINES, INC.; and SKYWEST,
INC.,

Intervenor Defendants.

RULING AND ORDER

Case No. 170904525

Judge Kara Pettit

Before the Court are two motions:

1) Defendant State of Utah's ("State") October 11, 2017 Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Motion to Dismiss"), and

2) Intervenor Defendants Delta Air Lines, Inc. and Skywest, Inc.'s ("Airlines") January 23, 2018 Motion for Judgment on the Pleadings and Joinder in the State's Motion to Dismiss ("Motion for Judgment on the Pleadings") (combined "Motions").

The Court heard argument on the Motions on February 20, 2018. Thereafter, the parties filed supplemental briefing on the Motions to present their positions as to whether and how recent Utah Tax Commission decisions affected their arguments. The Motions were submitted to the Court for decision on April 24, 2018. Having considered the pleadings, briefing, oral argument, relevant law, and for good cause, the Court now rules as follows.

BACKGROUND

Plaintiffs Salt Lake County, Duchesne County, Uintah County, Washington County and Weber County ("Counties") filed the Complaint in this action on July 17, 2017 to challenge the constitutionality of three laws: Utah Code §§ 59-2-201(4); 59-2-804; and 59-2-1007(2)(b). *See* Complaint at ¶¶ 4-12.

The first challenged law ("Valuation Law"), enacted in 2017, generally requires the Utah State Tax Commission ("Commission") to use an aircraft pricing guide to determine the fair market value of centrally assessed aircraft, unless the Commission has clear and convincing evidence that the aircraft values reflected in the pricing guide do not reasonably reflect fair market value of the aircraft and cannot identify an alternative guide from which the Commission may determine value. Utah Code §§ 59-2-201(4)(b) and (d). Plaintiffs seek a declaratory judgment that this law violates uniformity requirements of Utah Constitution Article XIII, section 2(1), both facially and as applied to the 2017 tax assessments, as well as Utah Constitution Article 1, section 24 and the Fourteenth Amendment of the United States Constitution. Complaint ¶¶ 85-86; 92-93; and 125. Plaintiffs also challenge the constitutionality of the portion of this law that requires the Commission to use a fleet adjustment to reflect the value of an aircraft fleet that is used as part of the operating property of an airline. Utah Code § 59-2-201(4)(c). Plaintiffs argue the fleet adjustment provided in § 59-2-201(4)(c) is unconstitutional, both facially and as applied to the 2017 Assessments, because the provision prevents uniformity, prevents finding fair market value, is an unconstitutional delegation of authority, and violates separation of powers. Complaint ¶¶ 96-111.

The second challenged law (“Allocation Law”), enacted in 2008, provides the method for allocating airline property to Utah using two factors: revenue ton miles factor and ground hours factor. Utah Code § 59-2-804. Plaintiffs allege the revenue ton miles portion of this law violates the Utah Constitution XIII, section 2(1), because it excludes property, but the same exclusion is not provided to other property, and because it exempts tangible property from taxation. They also seek a declaration that it violates Utah Constitution Article I, section 24 and the Fourteenth Amendment of the United States Constitution both facially and as applied by the Commission. Complaint ¶ 125.

The third challenged law (“Review Threshold Law”), enacted in 2015, limits the Counties’ ability to seek administrative review of central assessments to instances in which the Counties allege the fair market value is 50% more than the assessed value or the prior year’s assessment. Utah Code § 59-2-1007(2)(b). Plaintiffs complain that this provision violates the open courts and uniformity provisions of the Utah State Constitution and the Fourteenth Amendment of the United States Constitution. Complaint ¶¶ 120-125.

The Complaint alleges that the Commission’s use of the aircraft pricing guide for the January 1, 2017 lien date caused the assessments for the “seven major passenger airlines” to be reduced by roughly 39% overall from 2016, for a total loss in airline tax revenues of roughly \$5 million. Complaint ¶¶ 7, 58 and 59. The Complaint does not identify the specific assessments to which the Counties are referring, nor does it challenge any particular assessment. As the Counties’ explained in their memorandum: “Plaintiff Counties’ as-applied challenge relies not on specific decisions made for specific taxpayers based on specific and unique facts, but instead

in [sic] the impact of SB157 on the 2017 airline assessments industry-wide." Opp. to State Motion to Dismiss at 11-12, fn.8 (emphasis in original).

In 2017, administrative appeals were either initiated or joined by Salt Lake County to eight of the Property Tax Division's 2017 assessments: American Airlines, Inc. (appeal number 17-1158), Alaska Air Group, Inc. (17-1159), Southwest Airlines Co. (17-1161), United Continental Holdings, Inc. (17-1162), Delta Air Lines, Inc. (17-979), JetBlue Airways Corp. (17-1160), Frontier Airlines, Inc. (17-1163), and SkyWest, Inc. (17-977). On March 28, 2018, Administrative Law Judge Phan dismissed four of Salt Lake County's appeals (12-1158, 1159, 1161 and 1162) because the County did not meet the 50% threshold under Utah Code § 59-2-1007, and the Commission did not have jurisdiction to decide the constitutional challenge to the statute. The County has filed petitions for review of those four cases in the District Court (*see* Case Nos. 180902754, 180902757, 180902758, 180902759). The other four appeals (Delta (17-979), JetBlue (17-1160), Frontier (17-1163) and Skywest (17-977)) remain pending.

DISCUSSION

Two legal issues are presented by the Motions. First, the State and Airlines assert that the Counties' Complaint should be dismissed because the challenges to all three laws fail to present a justiciable controversy because the challenges are not based upon any specific assessment. Second, the Airlines argue that the challenges to the Valuation and Allocation Laws should be dismissed because the Counties have failed to exhaust administrative remedies.

I. Justiciability and Ripeness

To proceed in a declaratory judgment action, "(1) there must be a justiciable controversy; (2) the interests of the parties must be adverse; (3) the parties seeking relief must have a legally

protectible interest in the controversy; and (4) the issues between the parties must be ripe for judicial determination.” *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983) (*quoting Jenkins v. Finlinson*, 607 P.2d 289, 290 (Utah 1980)).

The Utah Supreme Court has explained that “[t]o render the constitutionality of [a tax law] ripe for adjudication, the Counties must produce a tax assessment that has been ... reduced under the [challenged law] with a resulting loss of revenue to the relevant county. In the absence of such a reduced assessment, [the court’s] hands are tied because a justiciable controversy necessarily involves an accrued state of facts as opposed to a hypothetical state of facts.” *Salt Lake Cty. v. Bangerter*, 928 P.2d 384, 385 (Utah 1996) (internal quotation marks omitted) (*quoting Baird v. State*, 574 P.2d 713, 715 (Utah 1978)). In *Bangerter*, the challenged law had not actually been applied to any tax assessment at the time of suit. Therefore, the Court held there was no justiciable controversy ripe for adjudication.

As distinguished from *Bangerter*, the Complaint in this case alleges that the Valuation and Allocation Laws were in fact applied in 2017 to determine airline assessments, as opposed to a hypothetical situation that has not yet arisen. Although the Complaint does not set forth specifics of a particular assessment, it alleges that the Commission used the Valuation and Allocation Laws to determine airline assessments in 2017, which resulted in reduced tax revenue from airlines. The Court finds the allegations regarding the 2017 airline assessments sufficiently demonstrate a justiciable controversy exists with respect to the Valuation and Allocation Laws.

However, the Complaint does not contain any allegations regarding the application of the Review Threshold Law. For instance, the Complaint does not allege that the Counties attempted to appeal an assessment but could not because of the 50% limitation imposed by the Review

Threshold Law. Although the Commission dismissed four appeals under § 59-2-1007(2)(b) since the Complaint in this case was filed, the Court agrees with the State that this does not fix the deficiencies in the Counties' Complaint. The Complaint does not specifically reference any of the dismissed appeals or otherwise identify a specific assessment or Commission decision that creates a justiciable controversy regarding the Review Threshold Law. See e.g. Complaint ¶¶ 77-82 and 121-124.

Because Plaintiffs have not identified a specific instance in which they were denied the opportunity to pursue an appeal of an airline assessment under the Review Threshold Law, their constitutional claims as to that law are not ripe for adjudication and must be dismissed. *Baird v. State*, 574 P.2d 713, 716 (Utah 1978) ("When it is ascertained that there is no jurisdiction in the court because of the absence of a justiciable controversy, then the court can go no further, and its immediate duty is to dismiss the action.").

Accordingly, the Court hereby GRANTS the State's and Airlines' Motion to Dismiss with respect to the Review Threshold Law and DISMISSES the claims regarding the Review Threshold Law without prejudice, but DENIES the Motion with respect to the Valuation and Allocation Laws.

II. Failure To Exhaust Administrative Remedies

Prior to seeking judicial review, parties must exhaust administrative remedies, except where "it appears that exhaustion would serve no useful purpose," *TDM, Inc. v. Tax Comm'n*, 2004 UT App 433, ¶ 4, 103 P.3d 190 (quoting *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180). Although the Commission cannot "determine questions of legality or constitutionality of legislative enactments," *Tax Comm'n v. Wright*, 596 P.2d 634, 636 (Utah

1979), the introduction of a constitutional issue does not necessarily avoid the requirement to exhaust administrative remedies. *See Johnson v. Utah State Ret. Office*, 621 P.2d 1234, 1238 (Utah 1980). "Exhaustion of administrative remedies is still required when the administrative proceeding may obviate the need to reach the constitutional question." *TDM, Inc. v. Tax Comm'n*, 2004 UT App 433, ¶ 5, 103 P.3d 190, 191. Moreover, "an administrative proceeding may be useful to better frame the issues before the court." *Id.*

As discussed above, Plaintiffs present a justiciable controversy because they allege the application of the Valuation and Allocation Laws in 2017 to at least seven major airlines was unconstitutional. The four administrative appeals that remain pending as to those 2017 assessments may obviate the need to reach some of the as-applied constitutional questions raised by the Counties regarding the Valuation Law. For example, the Commission, upon clear and convincing evidence, may apply an alternative method for valuation of aircraft. This may obviate the constitutional challenges that the clear and convincing evidentiary standard prevents the Commission from finding fair market value and that the valuation/assessment of the aircraft was placed in the control of third-party publications. *See Johnson v. Utah State Ret. Office*, 621 P.2d 1234, 1237 (Utah 1980).

Additionally, the record before the Commission will be useful to better frame the constitutional claims that may not be obviated by the Commission's determinations. *TDM, Inc. v. Tax Comm'n*, 2004 UT App 433, ¶ 5, 103 P.3d 190. The Court agrees with the Airlines that the determination of fair market value and whether the airline property is undervalued under the Valuation and Allocation Laws are factual findings that underlie the Counties' constitutional claims. The Commission's findings in the administrative appeals will be useful to frame the

constitutional claims, and inconsistent findings could result if both the Commission and this Court rendered factual findings regarding fair market value of the airlines' property in simultaneous proceedings. Similarly, the Commission will make findings regarding allocations using the revenue ton miles factor that will be useful to frame the constitutional claims regarding the Allocation Law. The Court is not persuaded that exhaustion of available remedies "serve no useful purpose." *TDM, Inc.*, 2004 UT App 433, ¶ 4.


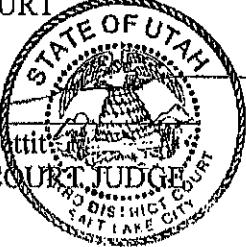
Consequently, the Court GRANTS the Airlines' Motion and DISMISSES the Counties' claims regarding the Valuation and Allocation Laws without prejudice for failure to exhaust administrative remedies.

ORDER

For the reasons stated in this Ruling and Order, this action is dismissed without prejudice.

DATED this 23rd day of June, 2018.

BY THE COURT


Judge Kara Pettit
DISTRICT COURT JUDGE


CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 170904525 by the method and on the date specified.

EMAIL: TYLER C ALLRED tallred@duchesne.utah.gov
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06/22/2018

/s/ TONI BIGLER

Date: _____

Deputy Court Clerk

ADDENDUM C

Effective 5/8/2018

59-2-1007 Objection to assessment by commission -- Application -- Contents of application -- Amending an application -- Information provided by the commission -- Hearings -- Appeals.

- (1)
 - (a) Subject to the other provisions of this section, if the owner of property assessed by the commission objects to the assessment, the owner may apply to the commission for a hearing on the objection on or before the later of:
 - (i) August 1; or
 - (ii) 90 days after the day on which the commission mails the notice of assessment in accordance with Section 59-2-201.
 - (b) The commission shall allow an owner that meets the requirements of Subsection (1)(a) to be a party at a hearing under this section.
- (2) Subject to the other provisions of this section, a county that objects to the assessment of property assessed by the commission may apply to the commission for a hearing on the objection:
 - (a) for an assessment with respect to which the owner has applied to the commission for a hearing on the objection under Subsection (1), if the county applies to the commission to become a party to the hearing on the objection no later than 60 days after the day on which the owner applied to the commission for the hearing on the objection; or
 - (b) for an assessment with respect to which the owner has not applied to the commission for a hearing on the objection under Subsection (1), if the county:
 - (i) reasonably believes that the commission should have assessed the property for the current calendar year at a fair market value that is at least the lesser of an amount that is:
 - (A) 50% greater than the value at which the commission is assessing the property for the current calendar year; or
 - (B) 50% greater than the value at which the commission assessed the property for the prior calendar year; and
 - (ii) applies to the commission for a hearing on the objection no later than 60 days after the last day on which the owner could have applied to the commission for a hearing on the objection under Subsection (1).
- (3) Before a county may apply to the commission for a hearing under this section on an objection to an assessment, a majority of the members of the county legislative body shall approve filing an application under this section.
- (4)
 - (a) The commission shall allow a county that meets the requirements of Subsections (2) and (3) to be a party at a hearing under this section.
 - (b) The commission shall allow an owner to be a party at a hearing under this section on an objection to an assessment a county files in accordance with Subsection (2)(b).
- (5) An owner or a county shall include in an application under this section:
 - (a) a written statement:
 - (i) setting forth the known facts and legal basis supporting a different fair market value than the value assessed by the commission; and
 - (ii) for an assessment described in Subsection (2)(b), establishing the county's reasonable belief that the commission should have assessed the property for the current calendar year at a fair market value that is at least the lesser of an amount that is:
 - (A) 50% greater than the value at which the commission is assessing the property for the current calendar year; or

- (B) 50% greater than the value at which the commission assessed the property for the prior calendar year; and
 - (b) the owner's or county's estimate of the fair market value of the property.
- (6)
- (a) Except as provided in Subsection (6)(b), an owner or a county assessor may amend an estimate on an application under this section of the fair market value of the property prior to the hearing as provided by rule.
 - (b) A county may not amend the fair market value of property under this Subsection (6) to equal an amount that is less than the lesser of:
 - (i) the value at which the commission is assessing the property for the current calendar year plus 50%; or
 - (ii) the value at which the commission assessed the property for the prior calendar year plus 50%.
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules governing the procedures for amending an estimate of fair market value under this Subsection (6).
- (7) In applying to the commission for a hearing on an objection under this section:
- (a) a county may estimate the fair market value of the property using a valuation methodology the county considers to be appropriate, regardless of:
 - (i) the valuation methodology used previously in valuing the property; or
 - (ii) the valuation methodology an owner asserts; and
 - (b) an owner may estimate the fair market value of the property using a valuation methodology the owner considers to be appropriate, regardless of:
 - (i) the valuation methodology used previously in valuing the property; or
 - (ii) the valuation methodology a county asserts.
- (8)
- (a) An owner who applies to the commission for a hearing in accordance with Subsection (1) shall, for the property for which the owner objects to the commission's assessment, file a copy of the application with the county auditor of each county in which the property is located.
 - (b) A county auditor who receives a copy of an application in accordance with Subsection (8)(a) shall provide a copy of the application to the county:
 - (i) assessor;
 - (ii) attorney;
 - (iii) legislative body; and
 - (iv) treasurer.
- (9)
- (a) Upon request, the commission shall provide to a nonprofit organization that represents counties in the state the following information regarding an appeal filed under this section:
 - (i) the name of the property owner filing the appeal;
 - (ii) each year at issue in the appeal;
 - (iii) the value assessed by the commission for the property that is the subject of the appeal; and
 - (iv) the owner's estimate of value for the property that is the subject of the appeal as submitted under Subsection (5)(b).
 - (b)
 - (i) Except as provided in Subsection (9)(b)(ii), a nonprofit organization may not disclose the information described in Subsection (9)(a)(iv).
 - (ii) A nonprofit organization may disclose information described in Subsection (9)(a)(iv) to an individual listed under Subsection 59-1-403(1)(a).

(10)

- (a) On or before November 15, the commission shall conduct a scheduling conference with all parties to a hearing under this section.
- (b) At the scheduling conference under Subsection (10)(a), the commission shall establish dates for:
 - (i) the completion of discovery;
 - (ii) the filing of prehearing motions; and
 - (iii) conducting a hearing on the objection to the assessment.

(11)

- (a) The commission shall issue a written decision no later than 120 days after the later of the day on which:
 - (i) the commission completes the hearing under this section; or
 - (ii) the parties submit all posthearing briefs.
 - (b) If the commission does not issue a written decision on an objection to an assessment under this section within a two-year period after the date an application under this section is filed, the objection is considered to be denied, unless the parties stipulate to a different time period for resolving the objection.
 - (c) A party may appeal to the district court in accordance with Section 59-1-601 within 30 days after the day on which an objection is considered to be denied.
- (12) At the hearing on an objection under this section, the commission may increase, lower, or sustain the assessment if:
- (a) the commission finds an error in the assessment; or
 - (b) the commission determines that increasing, lowering, or sustaining the assessment is necessary to equalize the assessment with other similarly assessed property.

(13)

- (a) The commission shall send notice of a commission action under Subsection (12) to a county auditor if:
 - (i) the commission proposes to adjust an assessment the commission made in accordance with Section 59-2-201;
 - (ii) the county's tax revenues may be affected by the commission's decision; and
 - (iii) the county is not a party to the hearing under this section.
- (b) The written notice described in Subsection (13)(a):
 - (i) may be sent by:
 - (A) any form of electronic communication;
 - (B) first class mail; or
 - (C) private carrier; and
 - (ii) shall request the county to show good cause why the commission should not adjust the assessment by requesting the county to provide to the commission a written statement setting forth the known facts and legal basis for not adjusting the assessment within 30 days after the day on which the commission sends the written notice.
- (c) If a county provides a written statement described in Subsection (13)(b) to the commission, the commission shall:
 - (i) hold a hearing or take other appropriate action to consider the good cause the county provides in the written statement; and
 - (ii) issue a written decision increasing, lowering, or sustaining the assessment.
- (d) If a county does not provide a written statement described in Subsection (13)(b) to the commission within 30 days after the day on which the commission sends the notice described

in Subsection (13)(a), the commission shall adjust the assessment and send a copy of the commission's written decision to the county.

(14) Subsection (13) does not limit the rights of a county as provided in Subsections (2) and (4)(a).

(15)

(a) On or before the November 2018 interim meeting, the Revenue and Taxation Interim Committee shall study the process for a county to object to an assessment of property assessed by the commission.

(b) As part of the study required by Subsection (15)(a), the Revenue and Taxation Interim Committee shall determine whether to draft legislation to modify the process for a county to object to an assessment of property assessed by the commission.

Amended by Chapter 368, 2018 General Session

Effective 5/9/2017

59-2-201 Assessment by commission -- Determination of value of mining property -- Determination of value of aircraft -- Notification of assessment -- Local assessment of property assessed by the unitary method -- Commission may consult with county.

(1)

- (a) By May 1 of each year, the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:
 - (i) except as provided in Subsection (2), all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state;
 - (ii) all property of public utilities;
 - (iii) all operating property of an airline, air charter service, and air contract service;
 - (iv) all geothermal fluids and geothermal resources;
 - (v) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; and
 - (vi) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters that are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.

(b)

- (i) For purposes of Subsection (1)(a)(iii), operating property of an air charter service does not include an aircraft that is:
 - (A) used by the air charter service for air charter; and
 - (B) owned by a person other than the air charter service.
 - (ii) For purposes of this Subsection (1)(b):
 - (A) "person" means a natural person, individual, corporation, organization, or other legal entity; and
 - (B) a person does not qualify as a person other than the air charter service as described in Subsection (1)(b)(i)(B) if the person is:
 - (I) a principal, owner, or member of the air charter service; or
 - (II) a legal entity that has a principal, owner, or member of the air charter service as a principal, owner, or member of the legal entity.
- (2) The commission shall assess and collect property tax on state-assessed commercial vehicles at the time of original registration or annual renewal.
- (a) The commission shall assess and collect property tax annually on state-assessed commercial vehicles that are registered pursuant to Section 41-1a-222 or 41-1a-228.
 - (b) State-assessed commercial vehicles brought into the state that are required to be registered in Utah shall, as a condition of registration, be subject to ad valorem tax unless all property taxes or fees imposed by the state of origin have been paid for the current calendar year.
 - (c) Real property, improvements, equipment, fixtures, or other personal property in this state owned by the company shall be assessed separately by the local county assessor.
 - (d) The commission shall adjust the value of state-assessed commercial vehicles as necessary to comply with 49 U.S.C. Sec. 14502, and the commission shall direct the county assessor to

apply the same adjustment to any personal property, real property, or improvements owned by the company and used directly and exclusively in their commercial vehicle activities.

(3)

- (a) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property.
- (b) The commission shall determine the rate of capitalization applicable to mines, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions.
- (c) In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

(4)

- (a) As used in this Subsection (4), "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are:
 - (i) identified by year, make, and model; and
 - (ii) in average condition typical for the aircraft's type and vintage.
- (b)
 - (i) Except as provided in Subsection (4)(d), the commission shall use an aircraft pricing guide, adjusted as provided in Subsection (4)(c), to determine the fair market value of aircraft assessed under this part.
 - (ii) The commission shall use the Airliner Price Guide as the aircraft pricing guide, except that:
 - (A) if the Airliner Price Guide is no longer published or the commission determines that another aircraft pricing guide more reasonably reflects the fair market value of aircraft, the commission, after consulting with the airlines operating in the state, shall select an alternative aircraft pricing guide;
 - (B) if an aircraft is not listed in the Airliner Price Guide, the commission shall use the Aircraft Bluebook Price Digest as the aircraft pricing guide; and
 - (C) if the Aircraft Bluebook Price Digest is no longer published or the commission determines that another aircraft pricing guide more reasonably reflects the fair market value of aircraft, the commission, after consulting with the airlines operating in the state, shall select an alternative aircraft pricing guide.
- (c)
 - (i) To reflect the value of an aircraft fleet that is used as part of the operating property of an airline, air charter service, or air contract service, the fair market value of the aircraft shall include a fleet adjustment as provided in this Subsection (4)(c).
 - (ii) If the aircraft pricing guide provides a method for making a fleet adjustment, the commission shall use the method described in the aircraft pricing guide.
 - (iii) If the aircraft pricing guide does not provide a method for making a fleet adjustment, the commission shall make a fleet adjustment by reducing the aircraft pricing guide value of each aircraft in the fleet by .5% for each aircraft over three aircraft up to a maximum 20% reduction.
- (d) The commission may use an alternative method for valuing aircraft of an airline, air charter service, or air contract service if the commission:
 - (i) has clear and convincing evidence that the aircraft values reflected in the aircraft pricing guide do not reasonably reflect fair market value of the aircraft; and

- (ii) cannot identify an alternative aircraft pricing guide from which the commission may determine aircraft value.
- (5) Immediately following the assessment, the commission shall send, by certified mail, notice of the assessment to the owner or operator of the assessed property and the assessor of the county in which the property is located.
- (6) The commission may consult with a county in valuing property in accordance with this part.
- (7) The local county assessor shall separately assess property that is assessed by the unitary method if the commission determines that the property:
 - (a) is not necessary to the conduct of the business; and
 - (b) does not contribute to the income of the business.

Amended by Chapter 425, 2017 General Session

Effective 1/1/2015

59-2-804 Interstate allocation of mobile flight equipment.

(1) As used in this section:

- (a) "Aircraft type" means a particular model of aircraft as designated by the manufacturer of the aircraft.
 - (b) "Airline ground hours calculation" means an amount equal to the product of:
 - (i) the total number of hours aircraft owned or operated by an airline are on the ground, calculated by aircraft type; and
 - (ii) the cost percentage.
 - (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during the calendar year that immediately precedes the January 1 described in Section 59-2-103.
 - (d) "Cost percentage" means a fraction, calculated by aircraft type, the numerator of which is the airline's average cost of the aircraft type and the denominator of which is the airline's average cost of the aircraft type:
 - (i) owned or operated by the airline; and
 - (ii) that has the lowest average cost.
 - (e) "Ground hours factor" means the product of:
 - (i) a fraction, the numerator of which is the Utah ground hours calculation and the denominator of which is the airline ground hours calculation; and
 - (ii) .50.
 - (f)
 - (i) Except as provided in Subsection (1)(f)(ii), "mobile flight equipment" is as defined in Section 59-2-102.
 - (ii) "Mobile flight equipment" does not include tangible personal property described in Subsection 59-2-102(27) owned by an:
 - (A) air charter service; or
 - (B) air contract service.
 - (g) "Mobile flight equipment allocation factor" means the sum of:
 - (i) the ground hours factor; and
 - (ii) the revenue ton miles factor.
 - (h) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.
 - (i) "Revenue ton miles factor" means the product of:
 - (i) a fraction, the numerator of which is the Utah revenue ton miles and the denominator of which is the airline revenue ton miles; and
 - (ii) .50.
 - (j) "Utah ground hours calculation" means an amount equal to the product of:
 - (i) the total number of hours aircraft owned or operated by an airline are on the ground in this state, calculated by aircraft type; and
 - (ii) the cost percentage.
 - (k) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within the borders of this state:
 - (i) during the calendar year that immediately precedes the January 1 described in Section 59-2-103; and
 - (ii) from flight stages that originate or terminate in this state.
- (2) For purposes of the assessment of an airline's mobile flight equipment by the commission, a portion of the value of the airline's mobile flight equipment shall be allocated to the state by calculating the product of:
- (a) the total value of the mobile flight equipment; and

(b) the mobile flight equipment allocation factor.

Amended by Chapter 65, 2014 General Session

ADDENDUM D

Article I, Section 24 [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Article V, Section 1 [Three departments of government.]

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Article XIII, Section 2 [Property tax.]

- (1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:
 - (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
 - (b) taxed at a uniform and equal rate.
- (2) Each corporation and person in the State or doing business in the State is subject to taxation on the tangible property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax.
- (3) The Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.
- (4) The Legislature may by statute determine the manner and extent of taxing livestock.
- (5) The Legislature may by statute determine the manner and extent of taxing or exempting intangible property, except that any property tax on intangible property may not exceed .005 of its fair market value. If any intangible property is taxed under the property tax, the income from that property may not also be taxed.
- (6) Tangible personal property required by law to be registered with the State before it is used on a public highway or waterway, on public land, or in the air may be exempted from property tax by statute. If the Legislature exempts tangible personal property from property tax under this Subsection (6), it shall provide for the payment of uniform statewide fees or uniform statewide rates of assessment or taxation on that property in lieu of the property tax. The fair market value of any property exempted under this Subsection (6) shall be considered part of the State tax base for determining the debt limitation under Article XIV.

Article XIII, Section 6 [State Tax Commission.]

- (1) There shall be a State Tax Commission consisting of four members, not more than two of whom may belong to the same political party.
- (2) With the consent of the Senate, the Governor shall appoint the members of the State Tax Commission for such terms as may be provided by statute.
- (3) The State Tax Commission shall:
 - (a) administer and supervise the State's tax laws;
 - (b) assess mines and public utilities and have such other powers of original assessment as the Legislature may provide by statute;
 - (c) adjust and equalize the valuation and assessment of property among the counties;
 - (d) as the Legislature provides by statute, review proposed bond issues, revise local tax levies, and equalize the assessment and valuation of property within the counties; and
 - (e) have other powers as may be provided by statute.
- (4) Notwithstanding the powers granted to the State Tax Commission in this Constitution, the Legislature may by statute authorize any court established under Article VIII to adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission relating to revenue and taxation.

ADDENDUM E

USCS Const. Amend. 14, USCS Const. Amend. 14, § 1

Current through PL 115-269, approved 10/16/18

**United States Code Service - Constitution of the United States > CONSTITUTION OF THE
UNITED STATES OF AMERICA > AMENDMENTS > AMENDMENT 14**

Sec. 1. [Citizens of the United States.]

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

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