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Utah Supreme Court

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SUPREME COURT OF UTAH

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.	**APPELLANTS' SUPPLEMENTAL REPLY BRIEF** Appellate Case No. 20180586-SC District Court Case No. 170904525

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SUPPLEMENTAL REPLY BRIEF

The allegations in the Counties' complaint regarding the "2017 assessment" are sufficient to demonstrate harm to the Counties' taxing functions and correlated duties to ensure uniformity and equality in taxation with alleged correlated loss of taxable revenue to demonstrate justiciability and ripeness. The Counties' claims do not arise from a specific tax assessment challenged, unchallenged or forgone, but are structurally based and stem from the Challenged Laws' enactment and unconstitutional assessment mandated methodology. They therefore do not depend upon averments of particular assessments to maintain this action and the holding set forth in *Salt Lake County v. Bangerter* does not alter or command otherwise here when the Counties challenge the constitutionality of relevant tax provisions on their face.

I. APPELLANTS HAVE SUFFICIENTLY ALLEGED ACTUAL AND THREATENED INJURY TO RENDER THIS DECLARATORY JUDGMENT ACTION RIPE FOR ADJUDICATION.

In a declaratory judgment action, "the law itself is the issue," *Salt Lake County v. Bangerter*, 928 P.2d 384, 385 (Utah 1996), and a declaratory judgment may issue when a challenged law gives rise to an "*actual or imminent* clash of legal rights and obligations between the parties." *Clegg v. Wasatch Cty.*, 2010 UT 5, ¶ 26, 227 P.3d 1243 (emphasis added). To this end, a controversy is ripe, and a trial court may therefore adjudicate it, when the moving party has sufficiently alleged actual or threatened harm. The Counties have alleged both.

Here, the Counties challenge a Threshold Law that facially insulates certain airline tax assessments from administrative and judicial review; an Allocation Law that presumes a starting point for fair market value assessments that fails to capture 100% of the value of certain airline property; and a Valuation Law that is designed to advantage large airline operators to the detriment of all other taxpayers. The Counties have not simply challenged these laws in hypothetically, or in abstract theory. But by their Complaint, the Counties stated the actual, not merely threatened, impact of the same.

Namely looking to 2017 alone, the Counties have shown that once the Challenged Laws went into effect, the Utah State Tax Commission was forced to abandon the valuation method it preferred – a method shown to best capture and value airline property according to 100% of its fair market value (R. 000013-000014, Compl. ¶¶ 49-55) – and to instead adopt a statutorily derived valuation method, which when applied to all seven of the major airlines that operate in Utah, resulted in an overall reduction in taxable value between the 2016 and 2017 tax years of 39%, R. 000015, Compl. ¶ 58, and applied to one particular airline, resulted in 2017 in a roughly 44% drop in assessed value. *Id.*, ¶ 59. Further, because many of those assessed values fell below the 50% threshold necessary to invoke the Tax Commission's jurisdiction, the Counties were barred from seeking administrative review. *See* Notice of Supplemental Authority.

More than merely threaten harm to the Counties – and the taxpayers whose interests they represent – the Challenged Laws have created "an actual or imminent clash of legal rights and obligations between the parties." *Clegg*, 2010 UT 5, ¶ 26. This clash

is not merely hypothetical, but ripe for the trial court to remedy. More importantly, this clash in ongoing and applies annually to the central assessments of all benefitted airlines.

II. APPELLEES' RELIANCE ON *SALT LAKE COUNTY V. BANGERTER* PROVES TOO MUCH.

Taking it beyond the facts alleged and thus beyond the actual controversy in that case, Appellees' urge this Court to interpret *Salt Lake County v. Bangerter*, 928 P.2d 384 (Utah 1996), in a manner that is neither supported by the case itself, nor this Court's declaratory judgment jurisprudence. But misapprehending the breadth of the Court's ruling in *Bangerter* and disregarding, that there, the Counties sought to challenge a different legislative act, which had not then resulted in harm, and which was dubious to ever do so, Appellees suggest that in *Bangerter* this Court created a bright line rule, positing that before a county may test the constitutionality of *any provision of the tax code*, the county must first produce a *completed tax assessment* that has been reduced as result of a challenged law. *See* Supplemental Brief of Appellees Delta Airlines, Inc. and Skywest Airlines, Inc. at pp 5-6; Supplemental Brief of Appellee State of Utah at p. 7. Appellees' contention proves too much.

A. The Court's holding in *Bangerter* supports the exercise of jurisdiction over the Counties' complaint.

This Court's decision in *Salt Lake County v. Bangerter* does not create a *per se* rule that to challenge the constitutionality of a tax statute a party must first produce a completed assessment. But read in total, not excerpted as Appellees do here, *Bangerter* set down no firm rules pertaining to tax cases. Rather in *Bangerter,* this Court stated no

more than it has elsewhere; namely, before a party may challenge a law it must show a controversy exists. The Court did not hold, nor intimate, that existence of a completed assessment is a universal requirement for a constitutional tax law challenge, but required instead, the presence of a threat of harm.

In *Bangerter,* the plaintiff counties challenged the Equalization Act, claiming an adjustment factor contained in *that act*, would diminish tax revenues and thereby impact county budgets. Absent from the counties' challenge were any facts to show a diminution in collected revenues. Contrasted with the facts here, the Court determined "from the record before us, no taxpayer has actually received a reduction in his property tax under the statute." And *on those facts* the Court found that "[t]o render the constitutionality of the [Equalization] Act ripe for adjudication, the Counties must produce a tax assessment that has been challenged under the [Act] with a resulting loss of revenue. . ." *Id.* at 385 (emphasis added). Put another way, the Court held because the counties had not there alleged any harm caused solely by the Equalization Act's enactment nor even demonstrated the likelihood of harm caused by the Act's application in the future, no controversy existed and the matter was not ripe for adjudication. *Id*. Rather than an invoke a new rule that pertains to tax code challenges, the Court's holding repeats the familiar refrain that to challenge any law, a plaintiff must allege actual or threatened harm thereunder. In *Bangerter*, the existence of a completed assessment was the point.

B. Appellees' reading of *Bangerter* conflicts with other decisions by this Court.

Applying *Bangerter*'s limited holding in an overarching fashion, Appellees' maintain the Counties' claims (and essentially all constitutional tax law challenges) may never be ripe absent a completed assessment challenge in the Tax Commission below. Such an expansive reading belies not only *Bangerter,* but runs afoul of other, controlling Utah law. *See e.g. Moon Lake Electric Association, Inc. v. Utah State Tax Commission*, 345 P.2d 612 (Utah 1959) (upholding on facial grounds Tax Commission's refusal to apply certain tax statutes the Commission urged violated the Utah Constitution's guarantees of tax uniformity and proportionality); *see also Baker v. Matheson*, 607 P.2d 233 (Utah 1979) (entertaining without concern over jurisdiction State Treasurer's challenge to facial constitutionality of certain threshold tax laws); *Brumley v. Utah State Tax Commission*, 868 P.2d 796, 799 (Utah 1993) (holding that declaratory judgment act supports a party's resort to district court to obtain ruling on threshold legal question); *Kennecott Corp. v. Salt Lake County*, 702 P.2d 451, 455 (Utah 1985) (recognizing county possessed standing to challenge not merely validity of particular assessment, but the constitutionality of the assessment statute and methods in general: "When the overvaluation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction, and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity...." (citing *Stanley v. Supervisors of Albany*, 121 U.S. 535, 551 (1887)).

Here, the actual enforcement and application of the Challenged Laws by the Tax Commission to airline property assessment is at issue. The State and Airlines admit the Challenged Laws are in force and since 2017 have been applied to the Commission's assessment of airline property. (R. 000001-000030, Compl. ¶¶ 1, 14.); (State of Utah's Answer, R. 000260-000271, ¶¶ 1, 14); (Answer by Intervenor Airlines, R. 000610-000622, ¶¶ 1, 14, 53.) And though now attempting to distance themselves from those prior admissions; contending here the Counties failed to state with particularity the Challenged Laws' application to a completed assessment, such distinction is without difference. (State's Supplemental Brief at pp. 6-9.) Simply, the complaint adequately put Appellees on notice of the actual harm.

Instead, and consistent with the counties in *Kennecott,* the Counties here, challenge rules of appraisement and bars to entry, which "conflict[ ] with a constitutional or statutory direction, and operate[ ] unequally not merely on a single individual but on a large class of individuals or corporations," such that they may resort directly to a court of equity for their relief. *Id.,* 702 P.2d at 455. The alleged omission of a more particularized or affirmative statement that the Challenged Laws have been applied in a manner that causes harm *vis a vis* a completed assessment does not alter the fact the Challenged Laws are in force and applied by the Commission in every assessment of airline property, including those in 2017.

As this Court has explained "[a] plaintiff may seek and obtain a declaration as to whether a statute is constitutional by averring in his pleading the grounds upon which he

will be directly damaged in his person or property by its enforcement; by alleging facts indicating how he will be damaged by its enforcement; that defendant is enforcing such statute or has a duty or ability to enforce it; and the enforcement will impinge upon plaintiff's legal or constitutional rights." *Baird v. State*, 574 P.2d 713, 716 (Utah 1978); *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983). Indeed, "a law may be facially attacked whenever it causes injury to a particular plaintiff" either through harm caused by the statute's enactment or through its application. *Gillmor v. Summit County*, 2010 UT 69, ¶ 33, 246 P.3d 102 (differentiating between statutes that cause harm through their enactment - e.g. a statutory regulatory taking - and those that cause harm through their application and holding it is the articulated harm, not whether the challenge is facial or applied, that demonstrates ripeness.) *See also Salt Lake City Corp. v. Property Tax Div. of Utah State Tax Com'n*., 1999 UT 41, ¶ 17, 979 P.2d 346 (holding Salt Lake City stated distinct and palpable injury sufficient to confer standing by alleging it had been deprived of taxable aircraft value and thus taxable base as result of unconstitutional and illegal apportionment methodology). Here, the Counties' have sufficiently alleged harm to their protectable interest caused by the Challenged Laws' enactment – the abridgement of the Counties taxing functions and correlated duties to ensure uniformity and equality in taxation – because on their face the Challenged Laws prescribe an unconstitutional, non-uniform and inaccurate fair market assessment of airline property. (Appellant's Supplemental Brief at pp. 12-14); (R. 1-30 at ¶¶ 4, 7, 10, 15, 28-33, 35, 77-82, 120-124.)

C. <u>Adopting the bright line rule that Appellees suggest eviscerates the principles that underlie this Court's exhaustion case law.</u>

Generally a party must exhaust applicable administrative remedies before seeking judicial review. But exceptions to this rule exist when exhaustion serves no useful purpose. *See Johnson v. Utah State Ret. Office,* 621 P.2d 1234, 1237 (Utah 1980). Pertinent here, this Court has recognized that exhaustion is not required in the area of taxation when only pure questions of law exist: "It is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments . . . Th[o]se questions, however, [can] be raised by an independent action in a district court . . ." *Nebeker v. Utah State Tax Comm'n,* 2001 UT 74, ¶ 23, 34 P.3d 180, 184 (internal quotation marks and citations omitted). Adopting the bright line rule urged by Appellees and requiring a completed assessment in every instance in which a tax law is challenged, creates in the area of tax law, alone a de facto rule of exhaustion. Doing so upends the principles set out in *Nebeker* and the cases that rest on it. It also frustrates the ends of judicial economy. *See State Tax Comm'n v. Wright*, 596 P.2d 634, 636 (Utah 1979) (finding exception to doctrine of administrative exhaustion guards against needless, time-consuming and wasteful case-by-case challenges to laws the Commission lacks authority to decide) (citing *Shea v. State Tax Commission*, 101 Utah 209, 212, 120 P.2d 274, 275 (1941); *see also Nebeker,* 2001 UT 74, ¶ 23. All the while, the Challenged Laws are applied pursuant to their express language to every assessment.

Moreover, suggesting - as Appellees must - that a bright line rule advances the ends of justice by creating a record for the district court's "de novo" review, presumes the

Counties possess the ability to challenge the airlines' assessments in all instances. This assumption, however, is unsupported and precluded by the challenged statutory scheme. As previously stated, the Threshold Law, ab initio, denies taxing entities—and the taxpayer's they represent—the ability to appeal certain valuations that they reasonably believe fall below fair market value yet fail to meet the jurisdictional threshold. *See* Utah Code § 59-2-1007(2)(b). And without the ability to administratively appeal an assessment, the Counties right to have a law's constitutionality determined would be eliminated, thereby infringing and prohibiting the Counties' constitutional duties to ensure and protect against the unequal and non-uniform taxing structure promulgated by the Challenged Laws. (Appellant's Supplemental Brief at p. 12.)

CONCLUSION

Here, the Counties have sufficiently alleged an actual and imminent clash of legal rights and obligations between the parties. The Counties' challenges are not merely hypothetical. They are abundant, present on the face of the challenged laws, and evident from the 2017 tax assessments that operation of the challenged laws produced. The Counties' case presents a ripe controversy over which the trial court may properly exercise jurisdiction. Dismissing the Counties' appeal and upholding the trial court's ruling will frustrate, not advance the ends of justice. The trial court's authority to render constitutional determinations of the Challenged Laws should be upheld, and contrary to Appellees' contentions, remains irrespective of "whether or not further relief *is* or could

be claimed." *Gray v. Defa, et al*., 135 P.2d 251, 254 (Utah 1943) (holding that declaratory relief may be given in a separate proceeding) (emphasis in original).

Dated this 8th day of August 2019.

By: */s* Bridget K. Romano
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CERTIFICATE OF COMPLIANCE WITH RULE

UTAH RULE OF APPELLATE PROCEDURE 24(a)(11)

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Dated this 8th day of August 2019.

By: /s Iris Pittman

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CERTIFICATE OF SERVICE

I certify that on the 8th day of August 2019, a true and correct copy of the foregoing APPELLANT'S SUPPLEMENTAL REPLY BRIEF was sent via email to the following:

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