
IN THE UTAH SUPREME COURT

SALT LAKE COUNTY,

Petitioner/Appellant,

vs.

UTAH STATE TAX COMMISSION and
DELTA AIR LINES, INC.,

Respondents/Appellees.

**BRIEF OF APPELLEE
DELTA AIR LINES, INC.**

Appellate Case No. 20210938-SC

Appeal No. 17-979

ON APPEAL FROM THE UTAH STATE TAX COMMISSION

GARY R. THORUP (3259)
JAMES D. GILSON (5472)
COLE P. CROWTHER (16432)
DENTONS DURHAM JONES PINEGAR
111 S. Main Street, Ste. 2400
Salt Lake City, Utah 84111
gary.thorup@dentons.com
james.gilson@dentons.com
cole.crowther@dentons.com
*Attorneys for Appellee
Delta Air Lines, Inc.*

SARAH GOLDBERG
LARON J. LIND
MICHELLE A. LOMBARDI
Assistant Utah Attorneys General
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114
sgoldberg@agutah.gov
llind@agutah.gov
mlombardi@agutah.gov
*Attorneys for Appellee
Utah State Tax Commission*

SIM GILL
Salt Lake County District Attorney
TIMOTHY A. BODILY
BRADLEY C. JOHNSON
TIMOTHY J. BYWATER
Deputy District Attorneys
35 East 500 South
Salt Lake City, UT 84111
tbodily@slco.org
bcjohnson@slco.org
tbywater@slco.org
Attorneys for Appellant

FILED
UTAH APPELLATE COURTS

FEB 16 2023

CURRENT AND FORMER PARTIES

Appellant:

Salt Lake County

Represented by: Salt Lake County District Attorney's Office
35 East 500 South, Salt Lake City, Utah 84111
Timothy Bodily, Bradley C. Johnson, Timothy J. Bywater,
and Jacque M. Ramos (former)

Appellees:

Utah State Tax Commission

Represented by: Office of the Utah Attorney General
160 East 300 South, 5th Floor, Salt Lake City, Utah 84114
Sarah Goldberg, Laron J. Lind, and Michelle A. Lombardi

Delta Air Lines, Inc.

Represented by: Dentons Durham Jones Pinegar P.C.
111 South Main Street, Suite 2400, Salt Lake City, UT 84111
Gary R. Thorup, James D. Gilson, and Cole P. Crowther

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
STATEMENT OF THE ISSUES	2
STATEMENT OF THE CASE	4
SUMMARY OF THE ARGUMENT	9
ARGUMENT.....	11
I. RESPONSE TO COUNTY’S “BACKGROUND ON THE PROPERTY TAX SYSTEM AND THE CONSTITUTIONAL MANDATE TO ASSESS ALL PROPERTY UNIFORMLY AT FAIR MARKET VALUE.”	11
A. There Is No Requirement That “All Property” Be Assessed In A “Uniform Manner.”	11
B. Prior To Enactment Of The Aircraft Valuation Law In 2017, There Was No Uniform Method For The Valuation Of Mobile Flight Equipment.	14
II. THE AIRCRAFT VALUATION LAW IS FACIALLY CONSTITUTIONAL.....	17
A. The Legislature’s Enactment Of The Aircraft Valuation Law Did Not Violate UTAH CONST. art. XIII, § 6(3)(B).	18
B. The Legislature’s Enactment Of The Aircraft Valuation Law Did Not Facially Violate UTAH CONST. art. XIII, § 2(1).....	21
1. The Legislature has the constitutional authority to prescribe valuation methods to the Commission.	22
2. The Aircraft Valuation Law does not strip the Commission of its discretion to reach fair market value.	26
3. A fleet adjustment does not render the Aircraft Valuation Law unconstitutional.	31
III. THE COMMISSION’S 2017 ASSESSMENT OF DELTA’S TAXABLE PROPERTY IN 2017 SATISFIES THE CONSTITUTION’S FAIR MARKET VALUE REQUIREMENT.	34
A. The County Failed To Establish That Delta’s Property Was Not Assessed At Fair Market Value.	35
B. The County Mischaracterizes The Facts And Law To Argue Fair Market Value Was Not Reached.	37
C. The County’s Appraiser Wrongfully Relied On Commission Rule 62.	41

D. The APG Does Value Aircraft Consistent With Highest And Best Use. 42

E. The County’s Appraiser Wrongly Considers Intangible Property And
Delta’s Business As A Whole To Derive Values For Its Aircraft. 43

CONCLUSION 46

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Airlines, Inc. v. Cnty. of San Mateo, 912 P.2d 1198 (CA 1996)..... 44

Amax Magnesium Corp. v. Tax Comm'n, 796 P.2d 1256 (Utah 1990)..... 3

Bd. of Equalization of Salt Lake Cty. v. Utah State Tax Comm'n ex rel. Benchmark, Inc., 864 P.2d 882 (Utah 1993) 37

Beaver Cnty. v. WilTel, Inc., 2000 UT 29, 995 P.2d 602 4, 12, 39, 44

Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n, 953 P.2d 435 (Utah 1997)..... 22

Gillmor v. Summit Cnty., 2010 UT 69, 246 P.3d 102 38

In Re E.K.S., 2016 UT 56, 387 P.3d 1032..... 19, 20

Kennecott Corp. v. State Tax Comm'n, 858 P.2d 1381 (Utah 1993)..... 3

Moon Lake Elec. Ass'n, Inc. v. Tax Comm'n, 345 P.2d 612 (Utah 1959)..... 34

Nelson v. Bd. of Equalization, 943 P.2d 1354 (Utah 1997) 12, 13, 14, 31

Nw. Airlines v. Minnesota, 322 U.S. 292 (1944)..... 50

Pub. Serv. Comm'n v. S. Pac. Co., 79 P.2d 25 (Utah 1938) 22

Rio Algom Corp. v. San Juan Cnty., 681 P.2d 184 (Utah 1984) 11, 26, 28

Salt Lake City Corp. v. Prop. Tax Div. of Utah State Tax Comm'n, 1999 UT 41, 979 P.2d 346 11, 44, 50

Salt Lake City S. R.R. Co. v. State Tax Comm'n, 1999 UT 90, 987 P.2d 594 4

Summit Water Distrib. Co. v. Tax Comm'n, 2011 UT 43, 259 P.3d 1055..... 13

T-Mobile v. Tax Comm'n, 2011 UT 28, 254 P.3d 752)..... 42

U.S. Smelting, Ref. & Mining Co. v. Haynes, 176 P.2d 622 (Utah 1947)..... passim

W. Contracting Corp. v. State Tax Comm'n, 414 P.2d 579 (Utah 1966)..... 32, 33

Statutes

GA. CODE ANN. § 48-5-299..... 43

GA. CODE ANN. § 48-5-510..... 44

GA. CODE ANN. § 48-5-541..... 43

UTAH CODE § 59-1-601 23

UTAH CODE § 59-1-610 3, 4

UTAH CODE § 59-2-102 36, 42

UTAH CODE § 59-2-103(1) 14

UTAH CODE § 59-2-201 passim

UTAH CODE § 59-2-804(2) 6

UTAH CODE § 59-4-101 8

UTAH CODE § 72-10-109 6

UTAH CODE § 72-10-110.5 6

Other Authorities

UTAH CONST. art. XIII.....passim

Rules

UTAH ADMIN CODE r. 861-1A-10 7, 42, 45

UTAH ADMIN. CODE r. 884-24P-62 passim

Utah R. Civ. P. 30(b)(6) 16, 30

INTRODUCTION

The Court should hold that UTAH CODE § 59-2-201(4) (the “Aircraft Valuation Law”) is not unconstitutional on its face, or as applied, in the assessment of Delta Air Lines, Inc.’s (“Delta”) tangible property in Utah for the 2017 tax year. Specifically, the Court should affirm the Utah State Tax Commission’s (“Commission”) Findings of Fact, Conclusions of Law, and Final Decision dated November 30, 2021 (“Decision”), which included a determination of the fair market value of Delta’s aircraft located in Salt Lake County in 2017.

The Commission’s assessment authority with respect to property of airlines is “as the Legislature may provide by statute.” UTAH CONST. art. XIII, § 6(3)(b). And this Court has expressly recognized the authority of the Legislature under Article XIII, § 2(1) to prescribe methods for valuing property. *U.S. Smelting, Ref. & Mining Co. v. Haynes*, 176 P.2d 622 (Utah 1947). The Legislature clearly had the constitutional authority to enact the Aircraft Valuation Law.

With respect to the Appellant Salt Lake County’s “as applied” challenge, the County failed to meet its burden of proof regarding the fair market value of Delta’s aircraft. The County did not provide the Commission with a sound evidentiary basis to contend that the Commission should have adopted a higher valuation of Delta’s aircraft. The Property Tax Division of the Commission (the “Division”), and the Commission, properly determined the fair market value of Delta’s aircraft by following the Airliner Price Guide (“APG”), which was the preferred method under the Aircraft Valuation Law. The County offered no evidence, let alone no clear or convincing

evidence, that the APG values do not reflect the fair market value of Delta’s aircraft, nor has the County proved substantial error or impropriety in the assessment.

The Commission’s Decision should be affirmed.

STATEMENT OF THE ISSUES

1. Whether the Aircraft Valuation Law (UTAH CODE § 59-2-201(4)) is unconstitutional on its face under UTAH CONST. art. XIII, § 6(3)(b) (providing that the Commission shall have such powers of original assessment as the Legislature may provide by statute) or under Article XIII, § 2(1) (requiring tangible property to be assessed at a uniform and equal rate in proportion to its fair market value).¹

- a. Standard of Review. A challenge to the constitutionality of a statute is a question of law that is reviewed for correctness. *Amax Magnesium Corp. v. Tax Comm’n*, 796 P.2d 1256, 1258 (Utah 1990); UTAH CODE § 59-1-610. “The party attacking the constitutionality of a statute has the burden of affirmatively demonstrating that the statute is unconstitutional. Moreover,

¹ Despite the County’s representation that this appeal “involves an as-applied challenge” (Br., p. 1 n.1, and p. 2), the thrust of the County’s Brief is that the Aircraft Valuation Law is facially unconstitutional. (Br., p. 34 (explaining that “[if] *the Legislature* had allowed the Commission . . . discretion use other methodologies . . . , the County would not have challenged the statute”) (emphasis added); Br., p. 1 (“[a]t its core *and* when applied to Delta,” section 59-2-201(4) violates art. XIII, § 2(1); Br., 29 (because “the statute” mandated use of the APG, “it” violated the fair market value requirement “by reaching a below market value for Delta’s property”); Br., p. 46 (“[b]y *enacting* section 201(4), the Legislature . . . [violated] Article XIII, § 6(3)(b)”). Whether the Aircraft Valuation Law is unconstitutional on its face is a threshold matter that should be resolved before the Court reaches an “as-applied” constitutional challenge. For this reason, Delta considers this to be the first issue.

there is a strong presumption that tax statutes are constitutional.” *Kennecott Corp. v. State Tax Comm'n*, 858 P.2d 1381, 1384 (Utah 1993).

- b. Preservation of Issue. Delta does not challenge the County’s preservation of its challenge to UTAH CONST. art. XIII, § 2. However, Delta contends the County has failed to preserve its challenge to UTAH CONST. art. XIII, § 6. Indeed, Article XIII, § 6 is not even mentioned in the County’s record cites where it claims the issue was preserved.

2. Whether the Commission’s application of the Aircraft Valuation Law for the 2017 tax year resulted in the valuation and assessment of Delta’s taxable property at fair market value consistent with UTAH CONST. art. XIII, § 2(1)?²

- a. Standard of Review. The determination of fair market value is a question of fact. *See Salt Lake City S. R.R. Co. v. State Tax Comm'n*, 1999 UT 90, ¶ 13, 987 P.2d 594. “When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall . . . grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review.” UTAH

² Although the lead-in phrase in the County’s formulation of its first issue (Delta’s second issue) might suggest a facial challenge to the constitutionality of the Aircraft Valuation Law by stating categorically that the statute prevents a valuation at fair market value, the ultimate question raised by the County (beginning with “did”) entails the application of the Aircraft Valuation Law and, thus, presents an as-applied challenge. Whether the statute, as applied, violated Article XIII, § 2(1), simply raises the factual question of whether Delta’s property was assessed at fair market value. *See Nelson v. Bd. of Equalization*, 943 P.2d 1354, 1357 (Utah 1997) (finding Article XIII, § 2(1) is satisfied by valuing and assessing property at fair market value).

CODE § 59-1-610(1)(a); *see also* *Beaver Cnty. v. WilTel, Inc.*, 2000 UT 29, ¶ 16, 995 P.2d 602 (*superseded by statute*) (“[P]etitioner is obligated not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a [different] valuation. It is not [this Court’s] prerogative on review to reweigh the evidence. Instead, [this Court] defer[s] to the Commission’s findings because, when reasonably conflicting views arise, it is the Commission’s province to draw inferences and resolve these conflicts.”) (cleaned up).

- b. Preservation of Issue. Delta does not challenge the County’s preservation of this issue.

STATEMENT OF THE CASE

1. Factual and Procedural History.

Delta provides air transportation for persons and cargo throughout the United States and around the world. (R. 2237). As of January 1, 2017, Delta had an operating fleet of 832 aircraft comprised of 19 different aircraft types.³ (R. 2255; R. 7410). As of January 1, 2017, Delta also had contractual commitments to purchase 245 aircraft comprised of 51 B-737-900ER, 67 A321-200, 75 Bombardier CS100, 25 A330-900neo, 25 A350-900, and 2 A350-300 aircraft. (R. 2276). Two of these orders—the 25 A330-900neo aircraft and 75 CS100 aircraft—would be new fleets of aircraft for Delta.

³ An aircraft type is generally the model of the aircraft. Aircraft types include, *e.g.*, the Boeing 737-900ER and the Airbus A321-200. (R. 2255).

(R. 2273). None of these commitments were pursuant to agreements to purchase an airline. (*Id.*).

For the 2017 tax year, Delta’s operating property in Utah was located entirely in Salt Lake County, and it is the assessment of this property that is on appeal. (R. 1233). In addition to mobile flight equipment,⁴ Delta’s property in Salt Lake County included spare engines, spare parts, ramp equipment, communication equipment, furniture, fixtures, and certain buildings and improvements. (R. 1256; R. 7440).

Because aircraft are mobile assets, and because any single operating aircraft is generally not located in any particular taxing jurisdiction on a permanent basis, Utah law requires that “[f]or 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 formula. UTAH CODE § 59-2-804(2). The valuation of Delta’s mobile flight equipment is at the heart of this case.

In 2017, the Legislature enacted the Aircraft Valuation Law, retroactive to January 1, 2017, to provide a method for determining the fair market of aircraft required to be assessed by the Commission (i.e., centrally assessed aircraft).⁵ All aircraft that are subject

⁴ “Mobile flight equipment” is a term used in Utah statutes that is generally synonymous with operating aircraft. *See* Utah Code § 59-2-102(27) (2017) (defining “mobile flight equipment) (now section 59-2-102(25)).

⁵ *See* S. B. 157 (Utah 2017) (Central assessment refers to assessment by the Commission).

to property tax in Utah are centrally assessed and, thus, the Aircraft Valuation Law applies uniformly to the valuation and assessment of all aircraft.⁶

The Aircraft Valuation Law generally requires the Commission to utilize a nationally recognized aircraft pricing guide to determine the fair market value of aircraft, unless it has clear and convincing evidence that the price guide values do not reasonably reflect fair market value, in which case the Commission may use alternative valuation methods to reach fair market value. *See* UTAH CODE § 59-2-201(4). By statute, the preferred guide is the “Airliner Price Guide” (“APG”). *Id.* The APG is a nationally recognized aircraft pricing guide that is used by purchasers, lessors, and lenders (R. 2917) and that the Division has also long utilized in assessing mobile flight equipment.⁷ (R. 514; R. 517). Other states also use aircraft pricing guides. (R. 8714, p. 14).

Since 2011, an administrative rule of the Commission has similarly allowed the use of a nationally recognized aircraft pricing guide for valuing and assessing mobile flight equipment. UTAH ADMIN. CODE r. 884-24P-62 (“Rule 62”). Under Rule 62, the price guide method is allowed although it is not the Commission’s “preferred method” for determining fair market value of airline property. However, the Commission has not

⁶ Pursuant to UTAH CONST. art. XIII, § 2(6), the Legislature has generally exempted aircraft from property tax and imposed, in lieu of property tax, a uniform statewide fee of \$25. UTAH CODE § 72-10-110.5(1). However, the exemption does not apply to aircraft of an airline, air charter service, and air contract service, and aircraft of these type of companies are required to be assessed by the Commission. *See* UTAH CODE § 72-10-109(2); *see also* UTAH CODE § 59-2-201(1)(a)(iii) (2017).

⁷ The Commission has delegated to the Division authority to prepare assessments of property required by law to be assessed by the Commission. *See* UTAH ADMIN CODE r. 884-24P, *et seq.* Although the Aircraft Valuation Law directs the Commission how to assess aircraft, it is the Division that actually performs this work.

yet amended Rule 62, as required by law, to reflect the Legislature’s enactment of its preferred method for valuing mobile flight equipment in the Aircraft Valuation Law. *See* UTAH ADMIN CODE r. 861-1A-10.C (discussed in footnote 19, *infra*).

In May of 2017, the Division issued to Delta an assessment dated May 1, 2017, for both property tax and the separate privilege tax imposed under chapter 4 of title 59 (the “Original Assessment”).⁸ (R. 1232). The Original Assessment was subsequently revised (the “Revised Assessment”) to take into account additional information provided by Delta with respect to the privilege tax, but the property tax portion of the Revised Assessment did not change from the Original Assessment. (R. 1232). The Revised Assessment is also dated May 1, 2017. (R. 1232 n.2). For the property tax portion of the Original Assessment and the Revised Assessment, the Division utilized the APG to determine the value of Delta’s operating aircraft. (R. 1232; R. 1256).

The County appealed the Revised Assessment to the Commission. (R. 1233). Delta appealed only the privilege tax portion of the Revised Assessment to the Commission. (R. 1233).⁹ A formal hearing before the Commission was conducted on December 7 to 11, 2020 (the “Hearing”). (R. 1232; R. 8712-15).¹⁰

⁸ The privilege tax is assessed on the same forms, and collected at the same time and in the same manner, as property tax. UTAH CODE § 59-4-101(5).

⁹ The privilege tax issues decided by the Commission are not a part of the appeal before this Court.

¹⁰ At the Hearing, the Division offered a new appraisal of Delta’s property, which included a higher assessed value for property tax purposes due to five aircraft the Division had missed in its earlier assessments (the “Hearing Appraisal”). (R. 1233). The property tax portion of the Hearing Appraisal appraised Delta’s Utah property at \$173,011,564, comprised of mobile flight equipment valued at \$159,310,532 and

The County argued at the Hearing that the Revised Assessment did not assess Delta's property at fair market value. (R. 1249). To support its position, the County relied on an appraisal by its retained expert, Mr. Brent Eyre (the "Eyre Appraisal"). (R. 1249). In the Eyre Appraisal, Mr. Eyre declared that he "did *not* adhere[] to the provisions of [the Aircraft Valuation Law] which requires the value of centrally assessed aircraft in Utah to be valued through the use of the [APG]." (R. 601) (emphasis added). Mr. Eyre explained that "his assignment" from the County was to prepare an appraisal in accordance with Rule 62. (R. 600; R. 6010). Mr. Eyre also testified that he did not calculate APG values as part of his appraisal due to his "limited assignment" to value Delta's property pursuant to Rule 62. (R. 8713, pp. 247-48). He further testified that he compared his higher appraised value to the Division's assessment and, in his opinion, "*that* was clear and convincing evidence that the APG did not get to fair market value." (R. 1252; R. 8713, pp. 248-50). The Commission was not so convinced, finding that the County has not presented sufficient evidence supporting an alternative valuation method. (R. 1259).

2. Disposition by the Utah State Tax Commission.

The Commission's Decision affirmed that the Division correctly applied the Aircraft Valuation Law and, in accordance with the Division's Hearing Appraisal, found that the proper Utah assessed value for Delta's 2017 taxable property is \$173,011,564. (R. 1294). The Commission found that "[t]he Division has valued the operating property

terminal property valued at \$13,701,032. (R. 1259-60). Delta did not dispute the higher value contained in the Hearing Appraisal.

of Delta based on the statutory provisions of Utah Code Subsection 59-2-201(4) and the County has not supported the use of an alternative method under Utah Code Subsection 59-2-201(4).” (R. 1282). The County filed its notice of appeal of that Decision on December 23, 2021. This Court entered an order retaining this case on January 25, 2022.

SUMMARY OF THE ARGUMENT

Although the County suggests in a footnote that its “current challenge involves an as-applied challenge involving Delta” as opposed to a facial challenge to the Aircraft Valuation Law, its Brief is replete with arguments reflecting that the County is really challenging the statute on its face. (County’s Principal Brief (“Br.”), p. 1 n.1). For example, the County argues the Aircraft Valuation Law “[a]t its core” violates Utah’s Constitution (*Id.*). The County also dedicates an entire section of its brief arguing the Legislature unconstitutionally removed the Commission’s assessment power over airlines. (Br., pp. 45-47). And as noted above, even the County’s “Statement of the Issue” is unclear whether it is challenging the Aircraft Valuation Law as applied, on its face, or both. (Br., p. 2).

Regardless, the question whether the Aircraft Valuation Law intrudes upon the Commission’s constitutional authority and thereby violates UTAH CONST. art. XIII, § 6(3)(b)—should be answered in the negative. This section provides that the Commission “shall assess mines and public utilities *and have such other powers of original assessment as the Legislature may provide by statute[.]*” UTAH CONST. art. III, § 6(3)(b). The County rightfully explains that “[t]he Legislature, through Utah Code § 59-2-201(1)(a)(ii), has provided that the Commission shall assess all operating property

of airlines.” (Br. p. 46). However, such powers of original assessment are “as the Legislature may provide by statute.” This Court has long recognized the authority of the Legislature to prescribe methods by which property is to be valued by the Commission for tax assessment purposes. *U.S. Smelting, Ref. & Mining Co. v. Haynes*, 176 P.2d 622, 623 (Utah 1947) (“*U.S. Smelting*”) (involving assessment of a *mine*).

The question whether the Aircraft Valuation Law violated the fair market value and uniformity requirements under UTAH CONST. art. XIII, § 2(1) should also be answered in the negative. It is well established that the Legislature has the constitutional authority under Article XIII, § 2(1) to prescribe methods by which fair market value of tangible property is determined, and it is not required that the same method for determining value be used with respect to every kind of property. *See U.S. Smelting*, 176 P.2d at 627; *see also Rio Algom Corp. v. San Juan Cnty.*, 681 P.2d 184, 191-92 (Utah 1984) (“*Rio Algom*”). The Aircraft Valuation Law applies to all aircraft subject to property tax under Utah law, and these aircraft are simply not the same kind of property as the properties of other centrally assessed taxpayers (nor of any properties that are locally assessed). *See Salt Lake City Corp. v. Prop. Tax Div. of Utah State Tax Comm'n*, 1999 UT 41, ¶ 25, 979 P.2d 346, 356 (“*SLC Corp.*”) (finding that the Tax Commission’s analogy of aircraft to mobile assets that travel on the ground is inapt). The uniformity requirements of Article XIII, § 2(1) are satisfied when property is valued and assessed at fair market value. *Nelson v. Bd. of Equalization*, 943 P.2d 1354, 1357 (Utah 1997) (“*Nelson*”). The Aircraft Valuation Law is not unconstitutional on its face.

As for the County’s “as-applied” challenge—whether the application of the Aircraft Valuation Law to Delta’s property for tax year 2017 violated UTAH CONST. art. XIII, § 2(1)—this argument should also be answered in the negative. The County has not shown substantial error or impropriety in the Commission’s Decision, and it has not provided a sound evidentiary basis upon which the Commission should have adopted a different valuation. *See Beaver Cnty. v. WilTel, Inc.*, 2000 UT 29, ¶ 16, 995 P.2d 602 (*superseded by statute*) (“*WilTel*”). In fact, the County’s own expert declined to even consider the Aircraft Valuation Law in performing his appraisal, although required to do so by both the Aircraft Valuation Law and the applicable Commission Rule that the expert claimed he followed. (R. 600-01; R. 610; R. 8713, pp. 247-48).

As such, because the County has failed to meet its burden in showing the application of the Aircraft Valuation Law in assessing Delta’s property in 2017 was unconstitutional, the Commission’s Decision should be affirmed.

ARGUMENT

I. RESPONSE TO COUNTY’S “BACKGROUND ON THE PROPERTY TAX SYSTEM AND THE CONSTITUTIONAL MANDATE TO ASSESS ALL PROPERTY UNIFORMLY AT FAIR MARKET VALUE.”

A. There Is No Requirement That “All Property” Be Assessed In A “Uniform Manner.”

At the beginning of its argument, the County states that what is “critical” to understanding its appeal is “the constitutional mandate to assess all property at fair market value *in a uniform manner*[.]” (Br., p. 14) (emphasis added). By the term

manner, Delta understands the County to mean *methodology*. (See Br., p.20).¹¹ However, the County’s statement misstates the constitutional requirements, and clarifying the actual constitutional mandate is critical to understanding why the County’s arguments fail.

Article XIII, § 2 requires that all tangible property in the State that is not exempt be “assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law[.]” UTAH CONST. art. XIII, § 2(1)(a). It also requires that such property be “taxed at a uniform and equal rate.” UTAH CONST. art. XIII, § 2(1)(b). There is no requirement that “all property” be assessed in a “uniform manner.”

In *Nelson*, this Court explained the uniformity requirements of Article XIII, § 2 and, more particularly, when such requirements are satisfied.¹² The petitioner in that case, a property owner, appealed a final order of the Commission determining the value of his private dwelling. *Nelson*, 943 P.2d at 1355. The Court affirmed the Commission’s order “[b]ecause Nelson failed to satisfy his burden of marshaling the evidence and showing that the Commission's finding is not supported by substantial evidence[.]” *Id.* at 1356. Like the County here, the petitioner also claimed that the Commission’s valuation violated the equal and uniform rate of assessment and taxation requirements found in

¹¹ The County argues that the Aircraft Valuation Law violated Article XIII, § 2(1) by (1) mandating a methodology that did not result in fair market value; (2) by removing discretion to choose appropriate methodologies for valuation; (3) by requiring a 20% discount not applied to the valuation of multiple items of similar property, and (4) by requiring a clear and convincing evidence to use another methodology. (Br., pp. 13-14).

¹² Although Article XIII, § 2 was altered by constitutional amendment after this decision, current Article XIII, § 2(1) is substantially similar to the relevant constitutional provisions addressed in *Nelson*. See *Summit Water Distrib. Co. v. Tax Comm'n*, 2011 UT 43, ¶ 22 n.6, 259 P.3d 1055.

Article XIII, §§ 2 and 3 (now found in Article XIII, § 2(1)). *Id.* at 1357. This Court answered as follows:

Because petitioner failed to meet his burden of demonstrating that the Commission's fair market valuation is erroneous, this claim is unfounded. Article XIII, section 2 states, "All tangible property in the state . . . shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law." ***Utah's property tax system satisfies this requirement by valuating and assessing property according to "fair market value."*** UTAH CODE ANN. § 59-2-103(1) Because Nelson has not marshaled the evidence to show that the Board's valuation does not reflect fair market value and cannot be supported by substantial evidence, his claim that the State violated the uniform and equal taxation requirement cannot be sustained. Therefore, we must defer to the Commission's finding that the Board's valuation reflects the fair market value of Nelson's property and satisfies the constitutional requirement of uniform and equal taxation.

Nelson, 943 P.2d at 1357 (emphasis added) (cleaned up).

Moreover, in *U.S. Smelting*, the Court explained that "[i]t is not required that the same . . . method of determining value shall be used with respect to all kinds of property." *U.S. Smelting*, 176 P.2d at 627. The Court further explained that "the *different* formulae which may be applied to *different* kinds of property" should be such that they tend to secure a fair and equitable valuation commensurate with "the valuation of *other kinds of property.*" *Id.* (emphasis added). Delta contends that where the *same kind of property* is being assessed (i.e., aircraft), it is appropriate that the same formula, or methodology be generally followed to secure a fair and equitable valuation, which is consistent with the Aircraft Valuation Law.

B. Prior To Enactment Of The Aircraft Valuation Law In 2017, There Was No Uniform Method For The Valuation Of Mobile Flight Equipment.

From 2011 to 2015, although the Division prepared an APG market indicator of value for Delta's property as required by Rule 62, the Division did not place any weighting on this APG value indicator in assessing Delta's property. (R. 2724-2846). However, in discovery conducted by Delta, the Division acknowledged that, for each year from 2011 to 2016, it did utilize the APG in arriving at the assessed value of the property of one or more other airlines. (R. 517). Furthermore, the Division acknowledged in discovery that it gave 100% weighting to the APG market indicator to one or more airlines in those same years (*id.*), notwithstanding that this was not one of the "preferred" methodologies under Rule 62.

In the deposition of a Division representative pursuant to Utah R. Civ. P. 30(b)(6), the representative was asked how the Division determined prior to 2017 which airlines it would value using the APG. The Division answered as follows:

[i]f the activity in the state was such that it constituted a real burden to report all of the information required of someone like Delta, for example, and the benefit of that information was negligible, we just allowed these airlines to do an abbreviated reporting to us, saving a lot of expense, us a lot of effort, and resulted in an assessment that we felt still reasonably reflected the value of that airline within the state.

(R. 3682-83). This statement is noteworthy for at least two reasons. First, the Constitution does not provide that there should be uniform assessment, except when "it is a real burden to report all of the information required of someone like Delta" or if it can save

the assessor a lot of time.¹³ Second, and more importantly, in valuing the same kind of property—i.e., mobile flight equipment—the Division acknowledged that its use of the APG in valuing those airlines still reasonably reflected fair market value.

In 2016, when the Division’s income approach produced a value for Delta’s system-wide tangible property that would have been nearly *double* its value in 2015, the Division reduced the weighting of its income approach to 25%, and placed 75% weight on its cost approach. (R. 2879). In explaining its weighting of the value indicators, the Division stated that “[t]he income approach potentially captures value for *exempt* intangible property.” (R. 2909) (emphasis added).

This 25% weighting of the income approach in 2016 undermines the County’s speculative argument that, “[a]bsent the [Aircraft Valuation Law], the Division would have put most, if not all, of the weight on the income indicator in 2017.” (Br., pp. 8-9). Far more important, however, is the import of the County’s argument.

As the County’s argument goes, had the Legislature not enacted the Aircraft Valuation Law, the Division would have put most, if not all, weight on the very indicator of value that the Division, in 2016, believed potentially captures value for exempt intangible property. **This** sums up both the aim and the problem with the County’s entire argument not only against the use of the APG in 2017, but also for its argument urging

¹³ Delta is not critical of the Division for considering practical considerations in administering its duties. This is why mass appraisal valuation techniques are used. However, if, as the Division’s witness testified, the Division believed that the APG reasonably reflected the fair market value of the aircraft of some companies, then its belief should not change when valuing the property of other companies. The market value of an aircraft should not vary based upon who owns the aircraft.

unimpeded discretion to use other approaches besides the APG when they result in higher values. (See Br., pp. 4-5 (explaining the use of the APG in prior years for valuing property when Delta was losing money since it was “difficult” to use an income approach)).

At least for now, the County seeks a higher valuation of Delta’s *aircraft, ramp equipment, etc.* through a valuation of *Delta* based on the *income of Delta*, even though the income approach inherently results in the taxation of exempt intangible property. This is so, notwithstanding the presence of an active market for aircraft and nationally recognized pricing guides for those aircraft, as well as long-used appropriate methods for valuing ground property (e.g., a cost approach or methods followed for assessing business property that is locally assessed). Utah law requires the determination of fair *market* value. The best indicator of value is what the actual market for that property says it is. The other indicators of value—cost, income and stock and debt—are only surrogates for determining fair market value when there is no actual market for the property being valued. There is an active market for aircraft owned and used by airlines, and the aircraft pricing guides reflect that active market.

It is this unfettered discretion and inconsistent reliance on valuation methods, including methods that potentially capture the value of exempt intangible property, which the Legislature addressed with the Aircraft Valuation Law. And when circumstances arise in which an airline argues for the use of an income or other approach because it may support a lower value, that airline will also have to prove by clear and convincing

evidence that the APG or other nationally recognized pricing guide used by the Commission does not reasonably reflect the fair market value of aircraft.

The Division also disclosed in discovery the variation in the weighting of different valuation approaches among airlines in 2016, which is summarized below.

Weighting of Value Indicators Airline	2016		2017
	Cost	Income	APG
Alaska Air Group Inc.	80%	20%	100%
Allegiant Air LLC	100%	-	100%
Alpine Aviation, Inc.	100%	-	100%
American Airlines Inc.	75%	25%	100%
Ameriflight LLC	50%	50%	100%
Compass Airlines Inc	-	100%	100%
Delta Air Lines Inc	75%	25%	100%
Envoy Air Inc.	-	-	100%
Frontier Airlines Inc	50%	50%	100%
Jetblue Airways Corp	75%	25%	100%
Mesa Air Group	50%	50%	100%
Skywest Inc.	-	100%	100%
Southwest Airlines	75%	25%	100%
United Continental Holdings Inc	75%	25%	100%
XOJET Inc	-	100%	100%

(R. 2913). Again, it is precisely the prior lack of uniformity in valuing airline property that the Aircraft Valuation Law remedies. The Aircraft Valuation Law actually helps ensure compliance with UTAH CONST. art. XIII, § 2(1).

II. THE AIRCRAFT VALUATION LAW IS FACIALLY CONSTITUTIONAL.

“By asserting a facial challenge to [a] statute, [the County] bears the burden of establishing that no set of circumstances exist under which the statute would be valid.” *In Re E.K.S.*, 2016 UT 56, ¶ 15, 387 P.3d 1032 (cleaned up). “This is a high bar, as [the

Court is] reluctant to declare a legislative enactment facially unconstitutional, and [the Court] resolve[s] all doubts in favor of the constitutionality of a statute.” *Id.* (cleaned up). Here, the County’s facial challenge to the Aircraft Valuation Law appears to be two-fold: (1) “the Legislature effectively removed the Commission’s assessment power over airlines, in violation of Article XIII, § 6(3)(b)” (Br., p. 46), and (2) “[a]t its core . . . [the Aircraft Valuation Law] violates uniformity and fair market value mandates of Article XIII, § 2(1).”¹⁴ (Br., p. 2). As set forth below, both of the County’s arguments fail.

A. The Legislature’s Enactment Of The Aircraft Valuation Law Did Not Violate UTAH CONST. art. XIII, § 6(3)(B).

The County argues that by enacting the Aircraft Valuation Law, “the Legislature effectively removed the Commission’s assessment power over airlines, in violation of Article XIII, § 6(3)(b).” (Br., p. 46). Article XIII, § 6(3)(b) of the Constitution provides that the Commission “shall assess mines and public utilities **and have such other powers of original assessment as the Legislature may provide by statute[.]**” (Emphasis added). As explained in the County’s Brief, “[t]he Legislature, through Utah Code § 59-2-201(1)(a)(ii), has provided that the Commission shall assess all operating property of airlines.” (Br. p. 46). Notwithstanding the language in Article XIII, § 6(3)(b) that the Commission’s assessment power is “as the Legislature may provide by statute,” the County seems to contend that, once the Legislature vested with the Commission the authority to assess property, it cannot then prescribe methods for valuing that property,

¹⁴ The County tries to couch this argument as an “as-applied” challenge, but to do so the County assumes the Aircraft Valuation Law violates UTAH CONST. art. XIII, § 2(1) on its face.

including a method for part of the property. The County's arguments are untenable and without legal support.

The County cannot credibly argue that, by the enactment of the Aircraft Valuation Law, the Commission effectively has no power to assess the operating property of airlines and that it has been left with only clerical duties. The Commission is still responsible for assessing **all** of the tangible operating property of airlines, of which aircraft is only a part. UTAH CODE § 59-2-201(1)(a)(ii). This includes aircraft and all other tangible operating property.

The Aircraft Valuation Law only prescribes how aircraft shall be valued by the Commission, which is only one type of airline property required to be assessed. Even with respect to aircraft, the Legislature has not reduced the Commission's role to clerical duties. By enactment of the Aircraft Valuation Law, the Legislature requires the use of one or more nationally recognized pricing guides, the choice of which involves determinations by the Commission. The Commission is not bound to use the APG if it determines another guide more reasonably reflects fair market value. UTAH CODE 59-2-201(4)(b)(ii). If the Commission has sufficient evidence that the APG or any other selected guide does not reflect fair market value and it cannot identify an alternative guide, it may use an alternative method for its valuation and assessment of aircraft. UTAH CODE 59-2-201(4)(d). These are just a few of the non-clerical responsibilities in the assessment process of aircraft, not to mention all other assessment responsibilities.

Notwithstanding how the County characterizes what the Legislature has effectively done, the two cases cited by the County in support of its position are

inapposite. (Br., pp. 46-47). *Pub. Serv. Comm'n v. S. Pac. Co.*, 79 P.2d 25 (Utah 1938), was a case challenging a legislative enactment requiring operators of public utilities to list all their property and declare their “true value” to the Public Service Commission. *Id.* at 27. The Court concluded that Utah Const. art. XIII, § 6(3)(b) conferred “the power of assessment” on the Commission—not the Public Service Commission. *Id.* at 39-40. At issue in that case was the Legislature’s power to vest in another state agency assessment powers that the Constitution vested in the Commission. Not at issue was the Legislature’s power to prescribe methods to guide the Commission in valuing property. *See id.* To this point, the facts of *U.S. Smelting*, wherein this Court recognized the authority of the Legislature to prescribe methods by which property is to be value, involved the Commission’s authority to assess *mines* by the Commission. *U.S. Smelting*, 176 P.2d at 623.

Also inapposite is the second case cited by the County: *Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n*, 953 P.2d 435 (Utah 1997). (Br. p. 46). In that case, the Court held that a prior version of UTAH CODE § 59-1-601, a statute that provided for *de novo* review in the district court of formal adjudicative proceedings of the Commission, violated Article XIII, § [2] and § 11 (since repealed) because it impermissibly transferred to the judicial branch power over tax assessment that was reserved to the Commission (part of the executive branch) under those Constitutional provisions. *Id.* at 442.

Accordingly, the County’s facial challenge to the constitutionality of the Aircraft Valuation Law fails.

B. The Legislature’s Enactment Of The Aircraft Valuation Law Did Not Facially Violate UTAH CONST. art. XIII, § 2(1).

The next question to resolve is whether the Aircraft Valuation Law, on its face, violates UTAH CONST. art. XIII, § 2(1), which provides, in part:

[A]ll 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.

(Emphasis added).

Here, the County argues the Aircraft Valuation Law prevents the Commission from reaching fair market value and violates the uniformity provision of Article XIII, § 2(1). (Br., pp. 19-45). The crux of the County’s argument is that a purported lack of discretion in the Aircraft Valuation Law for the Commission to choose other valuation methods is what violates the Constitution. Indeed, the County states in its Brief that if the Legislature had provided an “opt-out” from the APG and “allowed the Commission to choose other methodologies where the APG method did not reasonably reflect fair market value, the County would not have challenged the statute.” (Br., p. 34). As set forth below, the Aircraft Valuation Law is constitutional because (i) the Legislature has the constitutional authority to prescribe valuation methods, (ii) the prescribed valuation method does allow the Commission to use other methodologies to reach fair market value, and (iii) the prescribed fleet adjustment results in assessing aircraft at fair market value (it is not a discount *from* fair market value) and does not violate uniformity provisions.

1. *The Legislature has the constitutional authority to prescribe valuation methods to the Commission.*

The Aircraft Valuation Law was lawfully enacted by the Legislature pursuant to its constitutional authority under Article XIII, § 2(1). As previously explained, and contrary to the County's arguments that the law violates the uniformity requirements of this article, this actually achieves uniformity by requiring a uniform method for valuing all aircraft subject to Utah's property tax.

Prior to 2017, Utah statutes did not prescribe a specific method for valuing any of the property of an airline under UTAH CODE § 59-2-201(1)(a)(iii). However, as previously discussed, the Commission has long-considered and utilized aircraft pricing guides, including the APG, to value an airline's aircraft. (R. 514; R. 2615). As shown above, its utilization has not been consistent from year to year, nor has it been consistent among airlines from year to year. In 2011, Rule 62 was amended, to expressly recognize the use of an aircraft price guide as an acceptable method in the valuation and assessment of airline property, although it is not identified as a preferred method under the Rule. *See* Rule 62. Rule 62 has not yet been amended by the Commission to comport with the Aircraft Valuation Law.

In 2017, the Legislature enacted the Aircraft Valuation Law making a nationally recognized pricing guide the Legislature's preferred method for valuing aircraft. As previously discussed, the Law requires the Commission to use one or more aircraft pricing guides for valuing and assessing aircraft, but not if the Commission has sufficient evidence that the pricing guide's values do not reasonably reflect fair market value. UTAH

CODE § 59-2-201(4). The Aircraft Valuation Law identifies the APG, a guide long used by the Division, and in the airline industry (R. 2917), as the preferred aircraft pricing guide, but the Commission has discretion to use one or more other guides that it determines more reasonably reflect fair market value. *Id.* If the Commission has clear and convincing evidence that the aircraft values published in the APG do not reasonably reflect the fair market value of the aircraft, and the Commission cannot identify an alternative aircraft pricing guide from which the Commission may determine aircraft values, it may resort to other valuation methods. UTAH CODE § 59-2-201(4)(d).

Here, the County contends that the statutorily prescribed method for valuing the aircraft of airline companies violates the uniformity requirements of the Utah Constitution because different methods are used to value the tangible property of other centrally assessed properties. (Br., pp. 41-45). Such a contention is not in accord with established Utah law:

The plain fact is, however, that different types of property cannot be assessed under one formula. Because of the necessity to use different methods for assessing different types of property, a certain degree of de facto classification is unavoidable. Therefore, notwithstanding the basic constitutional objective of uniformity, there are many de facto classifications that result from the various valuation formulae utilized for estimating market value.

Rio Algom, 681 P.2d at 191. When dealing with assessments of classes of property, or different types of property, the Constitution permits the Legislature a necessary latitude in defining “market value.” *Id.*

Further, the County mischaracterizes the Aircraft Valuation Law to support its argument that it violates uniformity provisions. Indeed, the County repeatedly asserts the

Aircraft Valuation Law somehow strips the Commission of its discretion to value tangible airline property.¹⁵ In other words, the County contends that the Aircraft Valuation Law was unconstitutionally enacted because it prevents the Commission from considering other methodologies in arriving at fair market value. The problem with the County’s argument is that it ignores the plain language of the Utah Constitution, the Aircraft Valuation Law, and established precedent from this Court.

As stated above, Utah Const. art. XIII, § 2 expressly provides that fair market value is “to be ascertained as provided by law.” In *U.S. Smelting*, this Court addressed the power of the Legislature to prescribe a method for valuing particular types of property. Although that case involved mining property—another class of property assessed by the Commission—the Court’s interpretation of the Utah Constitution applies here as well. The Court explained the Legislature’s power, including its limits, as follows:

The method or yardstick by which [fair market value] is to be determined shall be prescribed by the legislature. It is not required that the same yardstick or method of determining value shall be used with respect to all kinds of property. But the different formulae which may be applied to different kinds of property must be such that they aim

¹⁵ *See, e.g.*, Br., p. 1 (“Any [sic] by impinging on the Commission’s otherwise discretionary assessment authority, the statute also violated Article XIII, § 6(3)(b).”); p. 13 (“[S]ection 201(4) took away the Commission’s discretion to choose the methodologies that would reach fair market value for Delta’s property violating Article XIII, § 6(3)(b).”); p. 20 (“[The Aircraft Valuation Law] violated uniformity because the Commission had discretion to choose appropriate methodologies that would reach fair market value for all other state-assessed properties.”); p. 26 (“[The Aircraft Valuation Law] unconstitutionally removed the Commission’s discretion to choose the most appropriate methodologies, including unitary methodologies, to reach fair market value of Delta’s property.”); p. 30 (“[I]t is precisely that lack of discretion to the Commission that is the reason for the County’s challenge.”); p. 34 (“However, the Legislature chose not to provide that discretion”); p. 42 (“The Commission had no discretion under the statute to consider other unitary approaches”).

and tend to secure for assessment purposes a valuation fair and equitable in comparison with and commensurate with the valuation of other kinds of property. When the valuation thus secured is such that if the uniform and equal rate of taxation is applied to the valuation the property is taxed in the same proportion to its value as is all other tangible property, the method of arriving at the assessed valuation is not subject to constitutional objections as violative of Article XIII.

U.S. Smelting, 176 P.2d at 627. Further, in *Rio Algom*, which favorably cites the above quote from *U.S. Smelting*, the Court explained the Legislature’s power as follows:

Because of the lack of a more precise common denominator than “market value” for use in achieving uniformity and in deference to the inherent difficulties in assessing value, [§ 2] confers on the Legislature the power to provide by law for just valuations. Accordingly, when dealing with assessments of classes of property, [§ 2] must be read to permit a necessary latitude in defining “market value.”

Rio Algom, 681 P.2d at 191.

While the Legislature has the constitutional authority to provide by law for the valuation of different kinds of property, like aircraft, “the formulae which may be applied to different kinds of property ***must aim and tend to secure for assessment purposes a valuation fair and equitable in comparison with and commensurate with the valuation of other kinds of property.***” *U.S. Smelting*, 176 P.2d at 627 (emphasis added). The Aircraft Valuation Law was intentionally enacted with this aim in mind. It requires the Commission to value an airline’s aircraft using nationally recognized aircraft pricing guides, specifically identifying the APG—a guide that even the County agrees “certainly has information that the [Commission] . . . may consider and may use when it deems appropriate.” (R. 8712, p. 32:8-12).

If the Commission has clear and convincing evidence that the values reflected in the available aircraft pricing guides do not reasonably reflect fair market value, an alternative valuation method may be used. *See* UTAH CODE § 59-2-201(4). This is precisely what the County ignores when it repeatedly argues the Commission has no discretion. The Valuation Law therefore satisfies the constitutional requirement explained in *U.S. Smelting*—it is a formula which “aim[s] and tend[s] to secure for assessment purposes a valuation fair and equitable in comparison with and commensurate with the valuation of other kinds of property.” *U.S. Smelting*, 176 P.2d at 627. Accordingly, contrary to the County’s arguments, the Commission’s application of the Aircraft Valuation Law does not prevent fair market valuation, and the County has presented no evidence to the contrary.

2. *The Aircraft Valuation Law does not strip the Commission of its discretion to reach fair market value.*

The County’s argument that the Aircraft Valuation Law “violated uniformity” because the Commission has discretion to choose appropriate methodologies to reach fair market value for all other state assessed taxpayers, has no merit. (Br., p. 35). The County states that the preferred methodologies in Rule 62, which also covers other state assessed properties, are simply rebuttable presumptions, but, it argues, the Aircraft Valuation Law does not treat the APG methodology as a rebuttable presumption or provide an “opt-out” for reaching fair market value. (Br., p. 35). This argument regarding the inability to rebut the APG or any other guide is without merit under the plain language of the Aircraft

Valuation Law itself, as explained above. The Legislature provided a means by which the Commission could deviate from using the APG.

Further, the County’s argument that the clear and convincing evidence provision in the Aircraft Valuation Law somehow renders the statute unconstitutional also fails. (Br., pp. 41-45). As an initial matter, the County’s argument that the Rule 62 preferred methodologies are “simply rebuttable presumptions for mass appraisal purposes . . . [that] any party can rebut by a preponderance of the evidence” (Br., p.35), is not accurate. In the deposition of a representative of the Division pursuant to Utah R. Civ. P. 30(b)(6) (R. 3607), the Division was asked a line of questioning about how the Division determined the weighting of different valuation approaches in years *prior* to enactment of the Aircraft Valuation Law. (R. 3721-25). With respect to the application of Rule 62, the Division testified as follows:

Well, the commission did develop rules and they stated very strongly that they preferred the cost and income indicator. That was conveyed to us not only through the rule *but through conversations*. So *that* strongly guides our weighting in this particular case. *[The Commission] didn't want us using the APG if we could avoid it*. They wanted one of the preferred indicators.

(R. 3724-25) (emphasis added).

The County argues the clear and convincing standard violates uniformity because it is a different “valuation standard for airlines than used for any other property owners.” (Br., p. 41). The evidentiary standard to overcome the legislative presumption in the Aircraft Valuation Law—the presumption that the APG (or other nationally recognized price) reasonably reflect fair market value—does not implicate the uniformity

requirements of Article XIII, § 2(1), let alone violate it. *See Nelson*, 943 P.2d at 1357 (Utah's property tax system satisfies this requirement by valuing and assessing property according to fair market value). In fact, the Aircraft Valuation Law helps achieve uniformity in valuing like properties—namely aircraft.

The authority of the Legislature to prescribe methods for the assessment of property has already been addressed and is clearly established. The evidentiary standard at issue was part of the Aircraft Valuation Law enacted pursuant to that authority. Not only was the Legislature's choice of the evidentiary standard required to depart from the preferred method within its authority, but it was also warranted. The Legislature was aware of the long-running disputes between airlines, the Division, and the counties regarding airline property valuations. Indeed, as the County points out, the Legislature required the Commission to use the APG in assessing aircraft in 2010 and 2011 tax years. (Br., p. 6; S. B. 210 (Utah 2009)). The Commission then amended Rule 62 to expressly provide for the use of APG, but provided that other methods of valuation were “preferred.” After 2010 and until enactment of the Aircraft Valuation Law, the Division resorted to the non-uniform methods of valuing airline property already discussed above.

What the County now seems to argue is that if the evidentiary standard were lower, the Division would be freed from the very method that the Legislature prefers. First, this argument is not supportable for the simple fact that, even by a preponderance of the evidence standard, the Division testified that not only did it not have “clear and convincing” evidence, it had *no evidence* that the values in the APG did not reasonably reflect the fair market value of Delta's aircraft—none. (Jt. Ex. 53, R. 3659:21-3660:5).

More importantly, if a lower standard would allow the Division to avoid the use of the APG, which it has made clear it would do if it could, this would fly in the face of the Legislature's deliberate choice of a different preferred method. Pursuant to the Legislature's constitutional authority to prescribe valuation methods with the aim of achieving uniformity and fair market valuations, the Legislature appropriately required a standard that could not be so easily circumvented.

Finally, the clear and convincing evidence standard in the Aircraft Valuation Law is consistent with the standard previously adopted by this Court for the Commission to depart from a statutory formula for apportioning income to Utah under Utah's corporation franchise tax. *See W. Contracting Corp. v. State Tax Comm'n*, 414 P.2d 579 (Utah 1966) ("*Western*"). The statute at issue in *Western* required that the net income of a corporation attributable to Utah be determined by a three-factor formula consisting of the corporation's tangible property, payroll, and gross receipts in Utah over its property, payroll, and gross receipts everywhere. *Western*, 414 P.2d at 582. The statute also provided that, if in the judgment of the Commission, the formula does not allocate to Utah the proportion of net income fairly and equitably attributable to the State, "it may . . . make such allocation as is fairly calculated to assign to this state the portion of net income reasonably attributable to the business done within this state . . ." *Id.* The Court explained the formula as follows:

Our legislature has created a presumption that the statutory formula . . . will allocate the proportion of net income fairly and equitably attributable to this state. However, by reason of the federal constitutional prohibition of taxation . . . of extra-territorial income . . ., the legislature *wisely enacted* subdivision (8) which

grants authority to the Tax Commission to modify or disregard the statutory formula if it ‘does not’ allocate to the state the proportion of net income fairly and equitably attributable to this state.

Id. (emphasis added).

Because the statute at issue in *Western* did not provide a standard for the Commission or a taxpayer to depart from the statutorily prescribed formula, the Court provided one. The Court held that “the proportion of net income to be allocated to this state must be determined by the statutory formula . . . unless the party opposing the application of such formula shall prove by *clear and convincing evidence* that the taxes so imposed are grossly disproportionate to the business conducted in this state or subjects the taxpayer to double taxation.” *Id.* at 585 (emphasis added).

While *Western* involved the corporate income tax, the issue at hand was determining the appropriate standard for a party, including the Commission, to depart from a statutory formula that the Legislature presumed would create a fair and equitable result. The same is true here. The Legislature provided a statutory method for valuing aircraft—by using a nationally recognized and relied upon publication of aircraft values—that it presumed would result in a fair and equitable valuation of aircraft commensurate with the valuation of other kinds of property. The Legislature then “wisely enacted” Subsection (4)(d), granting the Commission the authority to use an alternative method to value aircraft if the Commission determines by clear and convincing evidence

that the aircraft pricing guides do not reasonably reflect fair market value. UTAH CODE § 59-2-201(4)(d).¹⁶

3. *A fleet adjustment does not render the Aircraft Valuation Law unconstitutional.*

The Aircraft Valuation Law provides that “[t]o *reflect the value of an aircraft fleet* . . . the fair market value of the **aircraft** shall include a fleet adjustment.” UTAH CODE § 59-2-201(4)(c)(i) (emphasis added). If an aircraft pricing guide provides a method for making a fleet adjustment, which the APG does, the Commission shall use the method described in the aircraft pricing guide. *See id.* It is only if an aircraft pricing guide does not provide a method for making a fleet adjustment does the statute specify an adjustment. UTAH CODE § 59-2-201(4)(c)(iii).¹⁷

The County claims that the fleet adjustment is unconstitutional. (Br., p. 36). Specifically, the County argues the fleet adjustment violates the fair market value provision of the Constitution because, as it alleges, no other property assessed by the

¹⁶ The County cites to *Moon Lake Elec. Ass’n, Inc. v. Tax Comm’n*, 345 P.2d 612 (Utah 1959) to argue the inclusion of the clear and convincing standard in the Aircraft Valuation Law “has the same effect” as placing a cap on the value of property, which was at issue in *Moon Lake*. (Br., pp. 18, 44). The problem with the County’s conclusory statement is that it provided no evidence to suggest the use of a preponderance of the evidence standard would result in a different value of Delta’s property. The Aircraft Valuation Law in no way caps what the value of Delta’s property could be, which is what this Court was concerned with in *Moon Lake*. This case is inapposite.

¹⁷ The fleet adjustment provided in § (4)(c)(iii) generally mirrors the fleet adjustment described in the APG, but not all aircraft assessed by the Commission are found in the APG. By providing the fleet adjustment in § (4)(c)(iii), the Legislature merely intended to fill the gap for any aircraft pricing guide that does not address fleet adjustments, and it did so by replicating the method described in the APG—a nationally recognized and industry-used publication. (R. 2916-32).

Commission receives a discount based upon the number of items of property the taxpayer owns. (Br., p. 41). However, the County’s argument fails and once again ignores evidence presented to the Commission.

First, a fleet adjustment prescribed in the APG is not a discount *from* fair market value of an aircraft, but, based on the publisher’s market knowledge and experience, is an adjustment *to arrive at* the fair market value of a fleet. (Jt. Ex. 27, R. 2917). Subsection 201(4)(c), which addresses the fleet adjustment, begins with the phrase “[t]o reflect the value of an aircraft fleet.” UTAH CODE § 59-2-201(4)(c)(i). That subsection clearly refers to an “adjustment” to arrive at fair market value. The Legislature also did not consider it a discount from fair market value, but referred to it as an adjustment. To better understand this argument, it is important to explain the values set forth in the APG, including the formula for a fleet adjustment.

“The [APG] is published to assist lessors, lenders, and purchasers in arriving at a Fair Market Value . . . for most Commercial . . . aircraft.” (R. 2917). The market values provided in the APG reflect an “average” aircraft and assumes that the aircraft is, overall, in good condition and in a typical configuration for airlines service. (R. 2923).¹⁸ The APG provides average new values and current market values. (*Id.*). Current Market Value (or CMV) means the used retail price for average aircraft and:

¹⁸ Although the APG notes that an “average” aircraft should not be construed to represent any particular aircraft (R. 2923), when valuing aircraft in a mass appraisal context and a fleet of aircraft the size of Delta’s, it is reasonable to use average values in estimating fair market value. (R. 3649-51). Many valuation methodologies are designed for mass appraisal, including the County’s own system to value locally assessed real estate.

assumes that the aircraft is valued for *its highest, best use*, that the parties to the hypothetical sale transaction are willing, able, prudent, and knowledgeable, under no unusual pressure for a prompt sale, and that the transaction would be negotiated in an open and unrestricted market on an arm's length basis, for cash or equivalent consideration, and given an adequate amount of time for effective exposure to prospective buyers.

(*Id.*) (emphasis added). This definition comports with the definition of fair market value in UTAH CODE § 59-2-102, which defines “fair market value” to mean “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.” UTAH CODE § 59-2-102(13)(a).

The APG also provides Wholesale Values (W/S), which is “the average price paid by dealers or airlines for three or more aircraft” and a formula for determining Fleet Values. (R. 2924). Fleet Values should be determined “[w]hen selling or purchasing four or more aircraft.” (R. 2931). Fleet Values are discounted from wholesale value at one half of one percent time the number of aircraft in the fleet not to exceed a 20 percent discount off of Current Market Value. (R. 2925; R. 2931). The APG explains that Wholesale Values are just a starting point in determining values for transactions with three or more aircraft. (R. 2931).¹⁹

Second, the Division often uses different methods and formulae *to arrive at* the fair market value for different kinds of properties subject to central assessment. *See* Rule

¹⁹ The Commission has historically valued aircraft of airlines as a fleet, and its Rule 62 Price Guide Method, promulgated prior to the Aircraft Valuation Law, provides that, “[i]n order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.”

62; (*see also* R. 8713, p. 25; R. 8714, pp. 111-14). This is no different—the Aircraft Valuation Law is such a method used for aircraft in determining fair market value.

The County argues that its position is supported by *Bd. of Equalization of Salt Lake Cty. v. Utah State Tax Comm’n ex rel. Benchmark, Inc.*, 864 P.2d 882, 885 (Utah 1993) (“*Benchmark*”), where the Court held that it would be unconstitutional for an owner of 44 lots in a subdivision to receive a discount due to “absorption valuation.” (Br., p. 37). However, *Benchmark* is inapposite. Although the County states that under *Benchmark*, discounts from fair market value are not unconstitutional per se, the fleet adjustment under the APG is not a discount from fair market value. Rather it is an adjustment to arrive at fair market value of a fleet. (R. 2931). Furthermore, the Division’s own Rule 62 provides for a fleet adjustment. Regarding uniform application of the adjustment to all aircraft subject to property tax, the Division’s appraiser, Mr. Hales, testified that the Division applied the Aircraft Valuation Law in the same fashion to all airlines, including the fleet adjustment. (R. 8713, p. 36:12-23).

III. THE COMMISSION’S 2017 ASSESSMENT OF DELTA’S TAXABLE PROPERTY IN 2017 SATISFIES THE CONSTITUTION’S FAIR MARKET VALUE REQUIREMENT.

As set forth above, the Aircraft Valuation Law is constitutional on its face; thus, to prevail on its appeal, the County must show that the Aircraft Valuation Law, as applied by the Commission, resulted in Delta’s taxable operating property being assessed below

fair market value (and thus contrary to Utah Const. art. XIII, § 2(1)).²⁰ The County failed to do so.

The County failed to carry its burden of marshaling *all* of the evidence presented to the Commission to support its “as-applied” challenge. Further, the County’s argument relies on mischaracterizations and misapplications of the facts and the law. These failures are addressed below.

A. The County Failed To Establish That Delta’s Property Was Not Assessed At Fair Market Value.

“A petitioner who challenges the Commission's findings of fact must marshal all of the evidence supporting the findings of fact and show that despite the supporting facts and in light of the conflicting evidence, the findings are not supported by substantial evidence.” *WilTel*, 2000 UT 29, ¶ 16 (cleaned up). “[P]etitioner is obligated not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a [different] valuation.” *Id.* (cleaned up). “It is not [this Court’s] prerogative on review to reweigh the evidence. Instead, we defer to the Commission’s findings because, when reasonably conflicting views arise, it is the Commission’s province to draw inferences and resolve these conflicts.” *Id.* (cleaned up).

²⁰ See *Gillmor v. Summit Cnty.*, 2010 UT 69, ¶ 27, 246 P.3d 102 (“In an as-applied challenge, a party concedes that the challenged statute may be facially constitutional, but argues that under the particular facts of the party's case, the statute was applied in an unconstitutional manner.”) (cleaned up).

Here, the County did not provide the Commission with a “sound evidentiary basis” to support that the Commission should have adopted a higher valuation of Delta’s tangible property in Salt Lake County. Fatal to the County’s appeal is the fact that it did not prove to the Commission that the Division’s use of the APG to value Delta’s aircraft resulted in the assessment of Delta’s property below fair market value. *WilTel*, 2000 UT 29, ¶ 16. Indeed, the explicit testimony before the Commission was not only that the Division lacked clear and convincing evidence that the APG does not reasonably reflect the fair market value of Delta’s aircraft, but that the Division had *no* evidence at all to that effect, nor was it aware of *any* evidence that would call into question the reliability of the APG values. (Jt. Ex. 53, R. 3659:21-3660:5). The County’s own expert witness offered *no* evidence that the values of aircraft in the APG did not reflect the fair market value of Delta’s aircraft. He didn’t think that considering APG values of aircraft was worth his time. (R. 8713, pp. 159-62).

The only purported evidence that the County has presented to support its argument for a higher value is the Eyre Appraisal. But Mr. Eyre admitted in his report that he did not follow the Aircraft Valuation Law. (R. 601). He explains in his report that “his assignment” from the County was to prepare an appraisal in accordance with Rule 62. (R. 600; R. 6010). Mr. Eyre also testified that he did not consider the APG as part of his appraisal due to his “limited assignment” to value Delta’s property pursuant to Rule 62. (R. 8713, pp. 247-48). Delta contends that the Court’s consideration of the County’s as-applied challenge could end here. However, Delta will further address the County’s arguments.

B. The County Mischaracterizes The Facts And Law To Argue Fair Market Value Was Not Reached.

The County argues that the use of the APG resulted in a below market assessment of Delta's property in 2017 is for two reasons. (Br., pp. 20-35). First, the County argues the statute prevented the Commission from valuing the property at its highest and best use. (Br., p. 24). Second, the County argues the statute unconstitutionally removed the Commission's discretion to choose the most appropriate methodologies to reach fair market value. (Br., p. 26). The latter argument has already been addressed by Delta with respect to both Article XIII, § 2(1) and § 6(3)(b).

With respect to valuation of property, Delta agrees that property must be valued at its highest and best use. However, the Aircraft Valuation Law does not prevent the Commission from valuing Delta's property at its highest and best use. The APG expressly provides that market value in its publication "assumes that the aircraft is valued for its highest, best use" (R. 2923). The County offers no evidence to the contrary. The logical extension of its argument is that when the Division used the APG to value and assess aircraft in years prior to the Aircraft Valuation Law, such assessments were necessarily below fair market. The issue is that the County is simply not satisfied with the result, so the County contends that the highest and best use of an aircraft is as part of a going concern airline, and then essentially argues that aircraft can only be valued by valuing the entire business. (Br., pp. 24-25).

Assuming, arguendo, that the highest and best use of an aircraft is as part of a going concern airline, it is an illogical leap to argue that it is necessary to value the entire

airline as a company to determine the value of the airline’s mobile flight equipment. This is analogous to arguing that the highest and best use of a commercial oven is as part of a going concern bakery, and, therefore, you must value the bakery in order to determine the value of the oven. Alternatively, it could be argued that the highest and best use of any business property is as part of a going concern business and, therefore, the business property should be valued by valuing the business.

Notwithstanding an active market for aircraft, the County argues that Delta’s mobile flight equipment should be valued using unitary methodologies valuing all of Delta’s property as a single unit. There is no Utah law that provides for or requires the use of the unitary method of assessment of airline property.²¹ The County acknowledges unitary methodologies are not mandatory. (Br., p. 22 n.16, citing *T-Mobile v. Tax Comm’n*, 2011 UT 28, ¶ 51, 254 P.3d 752).

The Legislature has expressly provided for assessment by the Commission of the “operating property of an airline.” UTAH CODE § 59-2-201(1)(a)(iii). As used in Chapter 2 (of Title 59), which includes § 59-2-201(1)(a), the term “property” means “property

²¹ There is no statutory requirement that the unitary assessment be used to value any property—let alone airline property—and although the Commission adopted Rule 62 that provides that certain property, including airlines, are to be assessed using the unitary method of assessment, the enactment of the Aircraft Valuation Law tacitly repealed parts of Rule 62 that apply to airlines to the extent inconsistent with the statute. *See* UTAH ADMIN CODE r. 861-1A-10.C. (“**Enactment of Inconsistent Legislation.** Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.”). Therefore, the Commission’s own rules provide that newly enacted statutes supersede the portions of rules not in accord with the new statutes. Thus, there is nowhere in Utah law that requires the use of the unitary method of assessment for airlines and the County cannot rely upon Rule 62 for authority that airlines are to be unitarily assessed.

that is subject to assessment *and* taxation according to its value” and “does not include intangible property.” UTAH CODE § 59-2-102(29) (emphasis added). This statutory definition is consistent with the Constitution, which provides that the only property subject to taxation is “the tangible property owned or used by [a] corporation or person *within the boundaries of the State or local authority levying the tax.*” UTAH CONST. art. XIII, § 2(2) (emphasis added).

Read together—and as applied to this case—the foregoing provisions require the Commission to assess only Delta’s tangible property actually located “within the boundaries” of Salt Lake County—i.e., Delta’s aircraft, ground equipment, spare parts, spare engines, leasehold improvements, and construction work-in-progress. (R. 1256). Further, these provisions only describe *what* airline property is subject to assessment and taxation and *which* assessing authority is responsible for assessing that property. They do not mention, require—or support—unit valuation of airline property.

The County would have this Court believe that airlines are typically valued using unitary methods (Br., p. 22) and that airline property is typically valued using the income approach (Br., p. 4). Based on the discussion above, Delta disputes the County’s assertion and contends there was nothing typical about how airline property was valued prior to the Aircraft Valuation Law. However, the Legislature has now spoken with respect to its preferred methodology.

Regarding what methods are typically used to value airline property, the practice of other states is relevant. My. Eyre testified at the Hearing that as many as 37 states use unitary valuation principles for certain properties. (R. 8713, p. 187). However, when

asked how many of those states use the unitary method for valuing airline property, he testified that it was only about 10 to 12 states. (R. 8713, p. 189). Not all states tax aircraft at all. Two states in which Delta has some of its largest operations are Georgia and California. In Georgia, only aircraft are centrally assessed, and ground property is locally assessed by the County where the property is located. GA. CODE ANN. § 48-5-541; GA. CODE ANN. § 48-5-299. However, all of the properties of railroads and public utilities are centrally assessed. *See* GA. CODE ANN. §§ 48-5-510 *et. seq.* In California, although railroads and public utility properties are centrally assessed using unitary methods, including the income approach, the property of airlines, including aircraft, are locally assessed, using a summation method. *See Am. Airlines, Inc. v. Cnty. of San Mateo*, 912 P.2d 1198, 1207-10 (CA 1996) (describing California's tax system and the different methodologies for valuing different properties).

Further, the cases cited by the County to support the use of unitary methods (*SLC Corp.* and *WilTel*) involved railroad and telecommunications property, respectively. (Br., p. 22). Neither of those cases involve or discuss airline property or aircraft. The unitary methods advocated by the County are not required by law, nor are they required, or even appropriate, to value Delta's mobile flight equipment or other property at fair market value.

The County has also failed to show that Delta's property was not assessed at its highest and best use. The County attempted to satisfy its burden primarily through Mr. Eyre's Appraisal. However, Mr. Eyre's method of valuing Delta's aircraft is not supported by law and did not prove substantial error in the Division's assessment.

C. The County's Appraiser Wrongfully Relied On Commission Rule 62.

Mr. Eyre explains that his assignment was to prepare an appraisal of the operating air transport property of Delta pursuant to the provisions of Rule 62. (R. 8713, p. 77:13-16). Rule 62, however, has been superseded to the extent it is contrary to the 2017 Aircraft Valuation Law. Under the Commission's own rules, "[a]ny statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part." UTAH ADMIN CODE r. R861-1A-10.

Further, Mr. Eyre acknowledged that he did not even attempt a valuation of Delta's aircraft in accordance with the Aircraft Valuation Law. (R. 1249; R. 8713, pp. 247:2-250:17). In all events, as discussed below, the County has failed to meet its burden by relying solely on Mr. Eyre's flawed appraisal report.

Mr. Eyre states that his alternative methods of valuing Delta's aircraft "have, in my opinion, provided clear and convincing evidence that the use of the [APG] '[does] not reasonably reflect the fair market value of the aircraft' of the subject company." (R. 7473). Thus, the evidence Mr. Eyre relies upon to demonstrate the need to use an alternative *is* the alternative method that could be used if there were a determination that the APG values do not reflect the fair market value of Delta's aircraft. This *ipse dixit* type argument is untenable and essentially turns the Aircraft Valuation Law on its head. Mr. Eyre's assessment methodology truly creates an apples to oranges comparison. Whereas the Aircraft Valuation Law only provides for the valuation of aircraft—not a method for valuing all of the tangible, taxable property of an airline—the Eyre Appraisal offers a

business valuation of *Delta Air Lines, Inc.* to argue that the aircraft values contained in the APG do not reasonably reflect the fair market value of the *aircraft*—clearly, an apples to oranges comparison that does not comply with how the Legislature intended the Aircraft Valuation Law to operate.

D. The APG Does Value Aircraft Consistent With Highest And Best Use.

The County alleges “every appraisal expert who valued Delta’s property agreed the statutory methodology and statutory discount resulted in a significantly lower assessed value than what any expert would have reached for Delta’s property absent the statute” (Br., p. 2), and “[e]very expert with an opinion of value testified the income approach should have been considered and weighted when valuing Delta’s property” (Br., p. 45). The County ignores that Delta’s expert did not need to conduct a valuation of Delta’s property because it agreed with the Division’s assessment. Rather, as explained herein, Delta’s expert criticized the approach and appraisals performed by the County’s expert. (R. 8714, pp. 192-215). Specifically, the County relies on the Eyre Appraisal to argue that the reason the Aircraft Valuation Law does not allow the Division to meet the constitutionally mandated fair market value standard is because “it does not allow the [Division] to value the property of Delta at its highest and best use.” (R. 24; R. 7478; R. 8713, p. 72:10-23). Mr. Eyre testified that “[t]he highest and best use of aircraft owned by Delta is to be part of a unit of air transportation property functioning as a going concern.” (R. 7478; R. 8713, p. 225-26). Not so.

Assuming, as Mr. Eyre contends, the “highest and best use of aircraft owned by Delta is to be part of a unit of air transportation property functioning as a going concern,”

this in no way supports an assertion that the use of the APG does not reasonably reflect the value of aircraft at their highest and best use. (R. 7478). In fact, the APG publication itself specifically provides in its definition of “Market Value” that the aircraft values contained in the APG are based upon sales of aircraft at their highest and best use. (R. 2923). The highest and best use of commercial aircraft is the use to which they are put by Delta and other airlines—the transportation of persons and freight from one place to another. (R. 8713, p. 231:1-17).

Moreover, the County’s position suggests that the frequent transactions in the market for commercial aircraft, including those between manufacturers, financial institutions, leasing companies, and airlines are transactions in aircraft for other than their highest and best use. Given that the robust active market for commercial aircraft, which is generally recognized,²² it would be unreasonable to conclude that the APG does not reflect aircraft values at their highest and best use. In fact, Delta’s expert witness, Mr. Reilly’s unrebutted testimony was that the market transactions of airlines reflected in the APG are at a business to business level—airline-to-airline. (R. 8714, pp. 222-24). The County ignores the expert testimony of Mr. Reilly in its Brief.²³

E. The County’s Appraiser Wrongly Considers Intangible Property And Delta’s Business As A Whole To Derive Values For Its Aircraft.

Intangible property is not subject to assessment and taxation in Utah. UTAH CODE Ann. § 59-2-201(29). Yet, the unitary valuation on which the County relies includes a

²² (R. 3541; R. 8713, p. 27:18-28:2; R. 8714, p. 232:10-25)

²³ Even Lucas Hendrickson and Mr. Eyre acknowledged the robust sale and lease markets for aircraft. (R. 8713, p. 27-28; R. 8713, p. 242).

valuation of all of Delta's property, tangible and intangible, through a business valuation of the company based on its operating income. (R. 7522; R. 8713, p. 202-07). Mr. Eyre purports to adjust for exempt intangibles, but only by considering the value of intangibles recorded on Delta's financial statements and not the intangible value that is not recorded. (R. 7522; R. 8713, p. 202-07). Indeed, Mr. Reilly testified that the appraisals of Mr. Eyre and Mr. Hales valued Delta's entire business and not simply its "operating property" located in Salt Lake County. (R. 8714, pp. 192-209). He referred to the long list of intangible property identified in the narrative portion of the Eyre Appraisal (R. 8713, 204-05; R. 8714, pp. 192-95), most of which are not booked or recorded on Delta's books, and, in his review of Mr. Eyre's appraisal, he identified numerous other intangibles that should have been deducted from Mr. Eyre's system value, but which Mr. Eyre declined to do because they were not recorded on Delta's books. (R. 8713, p. 202-07).

It is difficult to properly value and remove intangible property in the unitary methods preferred by the County and in Rule 62, including the income approach. This was evident in the Division's reduced weighting of its income indicator of value in 2016, as discussed above. There is no need to resort to such methods for valuing mobile flight (or any other taxable property of airlines) when there is a market for the property required to be valued and assessed. The Legislature recognized this in the enactment of the Aircraft Valuation Law.

Mr. Eyre testified that he believed the stock and debt method to be the best method to assess Delta's property, but he also testified that he was limited in his use of that

method by Rule 62. (R. 8714, pp. 214-15). He also explains in his report that he put relatively little weight on the stock and debt method because of Rule 62. (R. 658). Rule 62 discourages the stock and debt method because it “typically captures the value of intangible property at higher levels than other methods.” UTAH ADMIN. CODE r. 884-24P-62(4)(b)(ii). Consistent with his limited assignment to follow Rule 62, he then placed 90% weight on his income indicator of value that was substantially *higher* than his stock and debt indicator. (R. 657-58).

Mr. Eyre testified that the values contained in the APG may be “based upon the highest and best use of an individual aircraft, but that’s not the value we’re attempting to arrive at *when we’re doing a unit valuation.*” (R. 8713, p. 183:2-8) (emphasis added). Again, there is no evidence that the APG does not reflect values of aircraft at their highest and best use.

Mr. Eyre seems to suggest that the *method* of valuing property defines the unit of property to be valued, and if an appraiser is performing a unit valuation, the appraiser should value the entire business. Delta contends that Mr. Eyre is putting the proverbial cart before the horse because the duty of an appraiser is to, first, define the unit of property that is to be valued, then determine what method best values that unit. The Legislature identified in the Aircraft Valuation Law that the unit to be valued under that statute is an airline’s aircraft—not the entire airline business. Also, notwithstanding the Aircraft Valuation Law, Mr. Eyre opined that Rule 62 is the proper guideline to follow on the basis that Delta is a similar unitary property to other centrally assessed companies.

(R. 7477). The facts and law do not support these similarities for purposes of valuation and taxation.

To be clear, applying Rule 62 methods to property other than aircraft is not, in any way, being challenged here. *See Nw. Airlines v. Minnesota*, 322 U.S. 292, 306 (1944) (Black, J., concurring) (finding that a state has a different relation to rolling stock of railroads than it has to airplanes); *see also SLC Corp.*, 979 P.2d at 357 (finding that the Commission's analogy of aircraft to rolling stock on rails is inapt). While the County may disagree with the method of valuing aircraft required by the Aircraft Valuation Law, the Legislature has reasonably determined it to be an appropriate method of valuing an airline's aircraft, a method which the Division applied. The method advocated by the County simply does not support the claim that the Aircraft Valuation Law precludes the valuation of Delta's aircraft, or any of Delta's other tangible property, at its highest and best use.

The County failed to meet its burden of proof by relying on the misguided Eyre Appraisal. The County has failed to demonstrate that the Division's 2017 assessment contains a substantial error, and did not provide the Commission with a sound evidentiary basis for changing the assessed value of Delta's property. Accordingly, the Commission's Decision should be affirmed.

CONCLUSION

Based on the foregoing, the Court should affirm the Commission's Decision.

DATED THIS 16th day of February 2023.

DENTONS DURHAM JONES PINEGAR

/s/ Gary R. Thorup _____

Gary R. Thorup

James D. Gilson

Cole P. Crowther

Attorneys for Appellee

Delta Air Lines, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2023, I caused a true and correct copy of the foregoing to be served via electronic mail to:

SIM GILL
Salt Lake County District Attorney
Timothy Bodily
Bradley C. Johnson
Timothy J. Bywater
Deputy Salt Lake County District Attorneys
tbodily@slco.org
bcjohnson@slco.org
tbywater@slco.org

Attorneys for Salt Lake County

Sarah Goldberg
Laron J. Lind
Michelle A. Lombardi
Assistant Utah Attorneys General
sgoldberg@agutah.gov
llind@agutah.gov
mlombardi@agutah.gov

Attorneys for the Utah State Tax Commission

/s/ Anne Jansen
Anne Jansen

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Utah R. App. P. 24(g) because this brief contains less than 14,000 words, excluding the parts of the brief that are exempted by Utah R. App. P. 24(g)(2), as calculated by Microsoft Word. I further certify that this brief complies with Utah R. App. P. 21.

DATED THIS 16th day of February 2023.

DENTONS DURHAM JONES PINEGAR

/s/ Gary R. Thorup _____

Gary R. Thorup

James D. Gilson

Cole P. Crowther

Attorneys for Appellee

Delta Air Lines, Inc.