

FEB 16 2023

**In the Supreme Court of the State of Utah**

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Salt Lake County,

*Petitioner,*

v.

**No. 20210938-SC**

Utah State Tax Commission and  
Delta Air Lines, Inc.,

*Respondents.*

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**Respondent Utah State Tax Commission's Statement that  
it Takes No Position on the Issues in this Appeal**

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On Petition for Review from the  
Utah State Tax Commission, No. 17-979

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## Current and Former Parties

### Appellate Court Parties and Counsel:

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*Respondents:*

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### Parties to the Tax Commission proceedings:

There were no parties in the Tax Commission proceedings that are not parties to this appeal.

## Statement

This case involves the Utah State Tax Commission's assessment of respondent Delta Air Lines, Inc.'s property for the 2017 tax year. Petitioner Salt Lake County contends that the Commission's assessment of Delta's aircraft doesn't comply with the constitution's requirements that property be "assessed at a uniform and equal rate in proportion to its fair market value." Utah Const. art. XIII, § 2(1). But the County makes it clear that it isn't faulting the Commission for this shortcoming. Rather, it says that the Commission was hamstrung by an unconstitutional valuation statute that the Commission had no choice but to apply.

In 2017, the legislature enacted a statute requiring the Commission to, with few exceptions, (1) use the "Airliner Price Guide" to determine the fair market value of an airline's aircraft and, (2) when valuing an airline's fleet, adjust the value of the aircraft by applying a "fleet adjustment." Utah Code § 59-2-201(4).<sup>1</sup> The Property Tax Division of the Commission prepared its 2017 assessment of Delta's property according to section 59-2-201(4)'s mandates for valuing aircraft.<sup>2</sup> R. 1233-41. Although it considered other

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<sup>1</sup> All statutory references are to the versions in effect in 2017.

<sup>2</sup> Airlines, such as Delta, are centrally assessed by the Commission rather than by individual counties. Utah Code § 59-2-201(1)(A)(iii). The Property Tax Division of the Commission performs these assessments. Utah Admin. Code R861-1A-16(4)(c). If a taxpayer or county objects to the

valuation methods in its written assessment, the Division gave no weight to those other methods and instead, as section 59-2-201(4) required, based its assessment of Delta's aircraft entirely on the values in the Airliner Price Guide and applied a 20% fleet reduction. R. 1233-41.

The County objected to the Division's assessment. R. 274-78; 281-85. For preservation purposes, in addition to its challenge to the assessment, the County also raised constitutional challenges to section 59-2-201(4). R. 928-33. After holding a hearing, the Commission adopted the Division's assessment (with a few non-material adjustments), explaining that, based on section 59-2-201(4), the assessment reflected the fair market value of Delta's aircraft fleet. R. 1232, 1255-59. Because the Commission may not decide whether a statute is constitutional, *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 15, 34 P.3d 180, it did not rule on the County's constitutional challenges. R. 1278.

The County is now appealing the Commission's decision. But although the appeal is technically a challenge to the Commission's decision, the County only argues that section 59-2-201(4) is unconstitutional, an issue that the

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Division's assessment, it may apply to the Commission to hold a hearing on the objection. Utah Code § 59-2-1007.

Commission did not and could not reach. The County acknowledges that the Commission was required to apply the statute and doesn't assert that the Commission applied it improperly or otherwise erred. Pet. Br. at 47 (“[T]he Commission was reduced to determining whether the Division had complied with the statute.”); *id.* at 23 (“[S]ection 201(4) . . . placed the Commission in a straightjacket.”); *see also id.* at 30, n.24 (“given the mandatory nature of the statute, the Commission understandably chose not to” provide an alternative valuation using methods not contemplated by section 59-2-201(4)). Indeed, rather than pointing out any errors in the Commission’s decision, the County instead repeatedly explains that it was “the statute” or “section 201(4)” that “undervalued Delta’s property,” *id.* at 21, “removed the Commission’s discretion,” *id.* at 26, and “prevented the Commission from valuing Delta’s property at its highest and best use,” *id.* at 24.

The Commission is constitutionally and statutorily mandated to apply the state’s tax laws, *see* Utah Const. Art. XIII, § 6(3)(a); Utah Code § 59-1-210(5), which is what it did in this case. Because the County acknowledges this mandate and does not challenge the way the Commission applied section 59-2-201(4) or anything else that the Commission did, the Commission takes no position on the issues the County raises in this appeal.

Respectfully submitted,

s/ Sarah Goldberg  
Sarah Goldberg (13222)  
Assistant Solicitor General

## **Certificate of Compliance**

1. This brief complies with the total type-volume limitations of Utah Rule of Appellate Procedure 24(g)(1) because:

- this brief contains 649 words, excluding the parts of the brief exempted by Rule 24(g)(2).

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3. This brief complies with the non-public information requirements of Utah Rule of Appellate Procedure 21(h) because:

- this brief contains no non-public information.

s/ Sarah Goldberg  
Sarah Goldberg

## Certificate of Service

I hereby certify that on February 16, 2023, a true, correct, and complete copy of the foregoing Appellee's Response Brief was filed with the court and served on the following via electronic mail:

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