



**Proposed and Submitted by:**

LARON J. LIND #8334  
MICHELLE A. LOMBARDI #14085  
Assistant Attorneys General  
SEAN D. REYES #7969  
Utah Attorney General  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140874  
Salt Lake City, Utah 84114-0874  
Telephone: (801) 366-0375  
llind@agutah.gov  
mlombardi@agutah.gov

*Attorneys for Defendant Utah State Tax Commission*

---

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

---

WB GAMES, INC., DIRECTV, LLC, and  
AT&T INC.

Plaintiffs,

vs.

UTAH STATE TAX COMMISSION,

Defendant,

BEAVER COUNTY, et al.,

Intervenors/Defendants.

**MEMORANDUM DECISION AND  
ORDER ON UTAH STATE TAX  
COMMISSION’S CROSS MOTION  
FOR SUMMARY JUDGMENT**

Case No. 200901040

Judge: Noel S. Hyde

---

This matter came before the Court on March 29, 2021 for a hearing on WB Games, Inc. and DirecTV, LLC’s Motion for Summary Judgment Granting Declaratory Relief and Utah State Tax Commission’s Cross Motion for Summary Judgment. Because the Tax Commission’s motion addresses the threshold issue of jurisdiction, the Court heard that motion first. The

Intervening County Defendants joined the Tax Commission’s motion and Plaintiffs, WB Games, DirecTV, and AT&T Inc., opposed it.<sup>1</sup> The Court, having reviewed the briefing, legal materials, and evidence submitted, and having considered the oral arguments presented, grants the Tax Commission’s motion. Because the Court finds it lacks jurisdiction, the case is dismissed and Plaintiffs’ motion is denied as moot. *See Blaine Hudson Printing v. Utah State Tax Comm’n*, 870 P.2d 291, 292 (Utah Ct. App. 1994) (“Without subject matter jurisdiction, the court or agency lacks the power to do anything beyond dismissing the proceeding.”).

### **Background & Undisputed Facts**

Utah imposes an annual tax on all tangible, operating property in the state. Utah Const., Art. XIII, § 2; Utah Code, Title 59, Chapter 2. While county assessors determine the value for most property, the Property Tax Division of the Utah State Tax Commission assesses the value of certain properties, including public utilities and property that operates as a unit across county lines. Utah Code §§ 59-2-201, -301.

The facts are undisputed. Plaintiffs’ Opp. at 4-6. The Property Tax Division began assessing AT&T Inc. in 2018.<sup>2</sup> Cross Motion at 3, ¶ 1; Motion at 5, ¶¶ 21-22. AT&T Inc. objected to its 2018 assessment under Utah Code § 59-2-1007 arguing, among other things, the Property Tax Division lacked authority to assess the taxable property of DirecTV and therefore it should not have included such property in AT&T Inc.’s assessment. Cross Motion at 5, ¶ 7. That

---

<sup>1</sup> WB Games, Inc. and DirecTV, LLC filed the current action against the Tax Commission. Soon after the Court granted Beaver County, Box Elder County, Cache County, Carbon County, Emery County, Grand County, Iron County, Millard County, Morgan County, Salt Lake County, San Juan County, Sevier County, Summit County, and Toole County’s stipulated request to intervene. Salt Lake County later moved to join AT&T Inc. as an indispensable party and the Court granted that motion.

<sup>2</sup> Before 2018, the Tax Commission separately assessed AT&T Mobility and AT&T Communications. Cross Motion at 3, ¶ 1; Motion at 3, ¶¶ 21-22.

appeal, in a settlement involving the 2018 and 2019 assessments, settled leaving the issue unresolved. Cross Motion at 5, ¶ 7; Motion at 7, ¶ 34. Before the Property Tax Division issued the 2020 assessment, AT&T Inc., WB Games, and DirecTV petitioned for declaratory relief at the Tax Commission seeking an order stating that the Commission lacks the authority to assess WB Games and DirecTV's property. Cross Motion at 5, ¶ 8; Motion at 7, ¶ 33. The Tax Commission denied the petition citing Utah Administrative Code R861-1A-31 and referring Plaintiffs to Utah Code § 59-2-1007. Cross Motion at 5-6, ¶ 8; Motion at 7, ¶ 34. Plaintiffs had the option of appealing that decision to this Court under Utah Code § 59-1-601. They did not. Cross Motion at 6, ¶ 9; Motion at 8, ¶ 36.

Instead, WB Games and DirecTV filed the current independent declaratory relief action in which they seek under Utah Code § 59-2-201 “an order declaring that Utah law does not authorize the Commission to assess the property owned by Plaintiffs in Utah and that only the counties, wherein the Plaintiffs’ respective properties are located, are authorized under Utah law to assess the properties of the Plaintiffs.” Complaint at 2, ¶ 4, 6, ¶ 42 and 7, ¶ 1. Plaintiffs moved for summary judgment seeking the requested declaratory relief. Salt Lake County later moved to join AT&T Inc. as an indispensable party and the Tax Commission cross moved for summary judgment arguing that the Court lacks jurisdiction. The Court joined AT&T Inc. and gave it time to participate in the summary judgment briefing and argument. Jan. 28, 2021 Memorandum and Order at 6.

### **Grounds for Decision**

In its motion, the Tax Commission argues the Court lacks jurisdiction for four reasons. First, there is no private right of action for Plaintiffs’ claim under § 59-2-201. Second, Plaintiffs

failed to exhaust their administrative remedies. Third, Plaintiffs' claims are not ripe since they did not tie their complaint to a particular assessment. And fourth, Plaintiffs claims are not ripe because they failed to allege a distinct and palpable injury. See Cross Motion and Reply. The Intervening County Defendants joined in the Tax Commission's motion.

Plaintiffs argue that Defendants mischaracterize their position. They contend that the Tax Commission is trying to force them to use the statutory framework for objecting to assessments, Utah Code § 59-2-1007. They assert that in the current action they are not objecting to a particular assessment—they are not contesting either the Property Tax Division's choice of assessment unit or the Property Tax Division's determination of value. Instead, Plaintiffs claim that by their declaratory judgment action they are challenging the Tax Commission's authority to assess their properties, and that such a claim for declaratory relief is not subject to the same constraints as an objection to a particular assessment. Plaintiffs also assert that they were injured in 2018 when DirecTV's assessment value substantially increased, and will continue to be injured as long as the Property Tax Division includes WB Games and DirecTV in its assessment of AT&T Inc.

The Court finds that the Tax Commission's position, as discussed in its briefing and by the Tax Commission and the Intervening County Defendants at oral argument, is correct and justifies dismissal of the current action.

**1. *This Court lacks jurisdiction to hear Plaintiffs' claim under Utah Code § 59-2-201 because that statute does not create a private right of action.***

First, Plaintiffs bring a claim under § 59-2-201. But that statute includes no language that either expressly or impliedly grants a private right of action. See *Conner v. Dept. of Com.*, 2019 UT App 91, ¶ 27, 443 P.3d 1250 ("A statute's mere prohibition of a certain act does not imply

creation of a private right of action for its violation ... Instead, ‘the creation of such a right must be either express or clearly implied from the text of the statute.’”). Instead, § 59-2-201 simply defines when the Tax Commission, rather than the county or counties, should assess the value of property.

Also, although not determinative of the Court’s ruling, the Court notes that § 59-2-201(7) provides direction for when property included in a unitary assessment should be turned over for local assessment—when the property is not necessary to the conduct of the business and does not contribute to the income of the business. But even that provision does not expressly or impliedly provide for a private right of action.

When plaintiffs sue under a statute that does not provide for a private right of action, they do not have a legally protectable interest in the controversy and their claim must be dismissed. *Miller v. Weaver*, 2003 UT 12, ¶ 25, 66 P.3d 592. Filing an action as a request for declaratory relief does not create a cause of action where one would not otherwise exist. *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983). Since § 59-2-201 does not provide for a private right of action, that claim must be dismissed.

**2. *This Court lacks jurisdiction because Plaintiffs failed to exhaust their administrative remedies under Utah Code § 59-2-1007.***

Second, and more importantly, Plaintiffs have an avenue to pursue and exhaust their administrative remedies. Utah Code § 59-2-1007 provides a right of action and the procedure for a taxpayer to object to a property tax assessment. While many of its provisions are tailored to appeals related to a property’s value, the language of the statute does not restrict appeals under § 59-2-1007 to valuation questions. Rather, it is written in fairly broad terms. Thus, the Court holds that, under its plain language, a taxpayer can raise any objection to a property tax

assessment by the Property Tax Division under Utah Code § 59-2-1007. In fact, the Court notes that AT&T Inc. in 2018 raised the same issue—whether the Property Tax Division was authorized under § 59-2-201 to include DirecTV in its assessment—in an appeal under § 59-2-1007.

Further, even though Plaintiffs argue that they are not challenging either the Property Tax Division’s choice of unit or its determination of value in the current action, in reality an objection to the authority of the Tax Commission to assess WB Games and DirecTV is of necessity an objection to the unit that is the subject of the assessment. The Court therefore finds the current action is a challenge to the unit and that whatever disposition of that issue exists, it is first an administrative question that requires exhaustion. Because there were administrative remedies available to address their claims and Plaintiffs failed to pursue those remedies, this Court lacks jurisdiction. Lack of jurisdiction for failure to exhaust independently requires dismissal of the case. *See Christensen v. Utah State Tax Comm’n*, 2020 UT 45, ¶ 16, 469 P.3d 962 (providing that a party may seek review in district court only after exhausting all administrative remedies); *A-Fab Engineering v. Property Tax Div. of the Utah State Tax Comm’n*, 2019 UT App 87, ¶¶ 14-16, 19-20, 444 P.3d 547 (finding exhaustion is required and would not be useless where a taxpayer claims the Tax Commission lacked authority to assess its property); *Nebeker v. Utah State Tax Comm’n*, 2001 UT 74, ¶¶ 14-16, 34 P.3d 180 (“parties must exhaust applicable administrative remedies as a prerequisite to seeking judicial review.”); Utah Code § 63G-4-401(2) (stating that generally “[a] party may seek judicial review only after exhausting all administrative remedies available...”).

**3. This Court lacks jurisdiction because Plaintiffs' claims are not ripe as a result of their failure to tie their complaint to a particular assessment.**

Third, Plaintiffs do not factually connect their claims to an assessment. Instead, this action is a request for a general determination on a purely legal question not tied to any particular fact or circumstance on which the Court can make its determination. *See California v. San Pablo & T.R. Co.*, 149 U.S. 308, 314 (1893) (stating that courts are “not empowered to decide moot questions or abstract propositions, or to declare for the government of future cases, principles of law which cannot affect the result as to the thing in issue in the case before it.”); *Salt Lake County v. State of Utah*, 2020 UT 27, ¶ 20, 466 P.3d 158 (“[A] challenge to a statute is unripe unless the court’s legal determination regarding the statute can be applied to specific facts in the case. This is true even where we have ‘no[] doubt’ that the factual circumstances in which the legal determination would be applied will ‘arise at some future time.’”).

Plaintiffs assert that DirecTV’s value increased between 2017, when it was locally assessed, and 2018, when the Property Tax Division assessed it as part of the AT&T Inc. unit. The 2018 assessment, however, does not provide a factual premise for the case to go forward because it was already challenged and resolved. Further, as noted in the prior section, an objection to the authority of the Tax Commission to assess WB Games and DirecTV is of necessity an objection to the unit that is the subject of the assessment. And Plaintiffs have not made the factual underpinnings of either the 2019 or 2020 assessment the focal point for determining either the unit or the value of the assessed property.

Instead, Plaintiffs rely on a general pattern of facts—that WB Games and DirecTV have been included in the unitary assessment of AT&T Inc. and the Tax Commission lacks authority to assess them as a general proposition. But this is not specific enough to permit intervention by

the Court. *Salt Lake County v. Bangerter*, 928 P.2d 384, 385-86 (Utah 1996) (finding that for the county’s constitutional challenge to be ripe, it had to produce a tax assessment that had been challenged and resulted in injury); *Salt Lake County v. State of Utah*, 2020 UT 27, ¶¶ 2-3, 44 (“Under our ripeness doctrine, courts should resolve legal issues only where the resulting legal rule can be applied to a specific set of facts, thereby resolving a specific controversy.”). As a result, Plaintiffs’ failure to tie their claims to a particular assessment provides an independent basis for dismissing this action.

**4. *This Court lacks jurisdiction because Plaintiffs’ claims are not ripe as a result of their failure to define their injury.***

Fourth, and finally, in failing to tie their claims to a particular assessment, Plaintiffs fail to identify an injury since the injury would necessarily flow from a particular assessment. In the context of this case, whether an assessment appropriately includes or excludes particular property or whether the assessment reaches the correct value for the property, could support an injury. Plaintiffs do not define either. Again, the suggestion that whether the Tax Commission can assess WB Games and DirecTV as a general legal proposition does not rise to the level of sufficiently definite injury for the case to be ripe. *Jenkins*, 675 P.2d at 1148 (“Plaintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute.”). Although the reasoning supporting dismissal for Plaintiffs’ failure to identify a distinct and palpable injury overlaps with the prior section, this failure provides an independent basis for dismissing the case.

**Order**

Because the Court finds it lacks jurisdiction, it hereby orders that the case be dismissed, with prejudice.



**END OF ORDER**

**\*\*EXECUTED AND ENTERED BY THE COURT AS INDICATED BY THE DATE AND SEAL AT THE TOP OF THE FIRST PAGE\*\***

Approved as to Form:

*Tim Bodily \*with permission (by email)*

William G. Garbina  
Timothy A. Bodily  
Salt Lake County District Attorney's Office  
*Attorneys for Defendant Salt Lake County*

*Thomas W. Peters \*with permission (by email)*

Thomas W. Peters  
PETERS SCOFIELD  
*Attorney for Defendants Beaver County, Box Elder County, Carbon County, Emery County, Grand County, Iron County, Millard County, Morgan County, San Juan County, Sevier County, Summit County, and Tooele County*

*John D. Luthy \*with permission (by email)*

John D. Luthy  
Cache County Attorney's Office  
*Attorney for Defendant Cache County*

*David J. Crapo \*with permission (by email)*

David J. Crapo  
John T. Deeds  
CRAPO | DEEDS PLLC  
*Attorneys for WB Games, Inc., DirecTV, LLC, and AT&T Inc.*