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### Summary of State, Tax Comm'n v. American Home Shield, 127 Nev. Adv. Op. No. 31

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## **Summary**

An appeal from a taxpayer refund action where the district court determined that the taxpayer was entitled to refunds from prior years and interest.

## **Disposition/Outcome**

District court's order granting AHS's petition for judicial review reversed because Nevada Revised Statutes ("NRS") § 680B.120 is applicable to any tax overpayments and does not provide for interest on tax overpayments.

## **Factual and Procedural History**

American Home Shield ("AHS") mistakenly paid insurance taxes on service contracts, which were tax exempt, between 2003 and 2006. In 2006, AHS sought a refund of the erroneous tax payments. The Nevada Department of Taxation, refunded the taxes in question for 2005 and 2006 but denied a refund for 2003 and 2004 based on NRS § 680B.120's one-year limitation on refunds.

The district court granted AHS's petition for judicial review. The district court reversed the Nevada Department of Taxation's decision, finding that NRS § 680B.120, which specifically governs insurance premium tax refunds, did not apply in this case because the amounts paid were not imposed under Chapter 680B. The district court further concluded that applying NRS § 680B.120 in this instance violated the Taxpayer's Bill of Rights and that the Nevada Department of Taxation had an affirmative duty to reimburse AHS under *Humbolt County v. Lander County*. Finally, the district court determined the AHS was entitled to interest on its refund under NRS § 360.2935.

## **Discussion**

Justice Gibbons, writing for the Court sitting *en banc* held that NRS § 680.120(1) governs all refund requests, regardless of the reason for overpayment. Although AHS contends that NRS § 680.120 is inapplicable because it only applies to taxes that were originally required to be paid, the Court determined that the statute was intended to be interpreted broadly. Therefore, NRS § 680B.120 applies to AHS' claim and under the statute, AHS was barred from seeking a refund for the overpayments in 2003 and 2004.

Further, the Court found that *Humbolt County v. Lander County* was inapplicable in this case because *Humbolt County* involved an equitable claim of restitution. The Court determined that the case is inapplicable because NRS § 680B.120 applies in this case, therefore the statute's procedure must be followed before AHS has any equitable claim of restitution.

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Finally the Court held that NRS § 360.2935 does not permit interest for overpayments under NRS § 680B.027. Where a specific statute controls over a general statute, the Court determined that AHS was not entitled to interest because the applicable statute, NRS § 680B.027, is the specific statute, while NRS § 360.2935 is a general statute applying to revenue and taxation.

### **Conclusion**

NRS § 680B.120 applies to all tax overpayments, even if they were made in error or on tax-exempt services. Thus, the one year limitation period for seeking a tax overpayment refund is subject to the one-year limitation period stated in NRS § 680B.120 and is not entitled to interest.