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### Summary of Village League v. State, Bd. of Equalization, 127 Nev. Adv. Op. No. 30

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ADMINISTRATIVE LAW – TAX ASSESSMENT

**Summary**

Appeal from a district court order granting a writ of mandamus for the overpayment of property taxes.

**Disposition/Outcome**

Property owners in the Incline Village and Crystal Bay neighborhoods in Washoe County (“Taxpayers”) won a decision to receive repayment for property taxes that were collected based on unconstitutional assessment techniques by the county treasurer (“Treasurer”). NRS § 360.2935 entitles property owners to repayment of prior taxes once a court has deemed the collection methods unconstitutional.<sup>2</sup>

**Factual and Procedural History**

The Taxpayers own real property near Lake Tahoe, Nevada and won a 2006 district court decision in *Bakst* which concluded that the Washoe County Assessor used unconstitutional assessment techniques.<sup>3</sup> The district court ordered the county to roll back the tax valuations to the 2002-2003 levels, and further ordered the County to repay the Taxpayers the over-payment amounts. The Assessor appealed the decision<sup>4</sup> which suspended the payments of refunds to the Taxpayers. The decision in *Bakst* held that the property assessor used inconsistent methods for valuing properties in the Incline Village and Crystal Bay areas than he used in other parts of Washoe County which was unconstitutional. Therefore, the court held that the taxpayers were entitled to a refund plus interest according to NRS § 360.2935.<sup>5</sup>

After *Bakst*, the Assessor changed the assessments to reflect the 2002-2003 property tax levels. The State Board reviewed the Assessor’s appeal and stayed the County Board’s decision for further factual inquiries. The State Board upheld the County Board’s decision and entered the equalization order in October 2009. However, the Treasurer rejected a demand by the Taxpayers to refund the overage amounts because he did not receive instruction from the State Board to do so.

The district court then granted the writ of mandamus compelling the Treasurer to revalue the affected properties according to the 2002-2003 tax assessment levels. The court outlined the procedures for issuing the refunds, and held that the Treasurer had a duty to issue refunds according to this methodology. A refund was appropriate under the “formula contained in NRS § 361.486”<sup>6</sup> because the Treasurer was collecting taxes over the Assessor’s recalculated rates. The Treasurer appeals the order granting a petition for a writ of mandamus.

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<sup>1</sup> By Christopher Scott Connell.

<sup>2</sup> NEV. REV. STAT. § 360.2935.

<sup>3</sup> See *State, Bd. of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006).

<sup>4</sup> *Id.*

<sup>5</sup> See *supra*, note 3, at 726.

<sup>6</sup> NEV. REV. STAT. § 361.486.

## **Discussion**

The Court reviews a district court's decision to grant writs of mandamus under the abuse of discretion standard, but the underlying statutory and legal issues are reviewed *de novo*. A writ of mandamus compels officers or trustees with to perform an act required by law.<sup>7</sup> In order to get a writ for mandamus, the petitioner must have no other legal remedies, and the duty to act must be within the scope of the officer or trustee's position.<sup>8</sup> Here, the Treasurer argues that the writ was not appropriate because the Taxpayers had an appropriate remedy within the tax collection statute.

### *No legal remedies were available*

The court holds that the Taxpayers did not have additional legal remedies, and judicial relief was appropriate. NRS § 361.420(1) requires a taxpayer to notify the treasurer when they believe that they are "being taxed in excess of the amount... justly to be due."<sup>9</sup> The taxpayer must then file a "complaint before the County Board and, if necessary, appeal to the State Board."<sup>10</sup>

The Treasurer argues that they did not meet the statutory requirements of NRS § 361.420(1) because the taxpayers did not pay under protest in subsequent years.<sup>11</sup> However, the Taxpayers prevailed under the County Board and argue that there was no need to pay under protest. Since the Court stayed the County Board decision to roll back 2006-2007 taxes to the 2002-2003 by the appeal in *Bakst*, the Taxpayers were not over-paying, and had no grounds to pay under protest. Therefore, there were no grounds from which to protest, and the Taxpayers were not actually denied relief by the County Board. Therefore, the Treasurer's argument that the Taxpayers did not meet their statutory duties under NRS § 361.420 was without merit.<sup>12</sup>

### *The treasurer had a duty to refund excess taxes*

The Treasurer further argues that he had no affirmative duty to refund the excess tax amounts because the State Board did not direct him to do so under NRS § 361.405(4).<sup>13</sup> The State Board voted to uphold the decision to roll back taxes, but it did not order the Treasurer to refund the overages to the Taxpayers. However, even if the State Board failed to order the Treasurer to refund the amounts, that failure did not diminish the District Court's power to do so. NRS § 361.405(4) states that the State Board must direct the Treasurer's performance after changes are made to tax collection measures, however, the State Board merely upheld the County Board's decision, and did not themselves make changes.<sup>14</sup> Therefore, NRS § 360.2953, which states that taxpayers are entitled to receive a refund for overpayment, controls and creates

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<sup>7</sup> State v. Dist. Ct., 116 Nev. 374, 379, 997 P.2d 126, 130 (2000).

<sup>8</sup> State of Nev., v. Watterman, 5 Nev. 323, 326 (1869).

<sup>9</sup> NEV. REV. STAT. § 360.420(1).

<sup>10</sup> Village League v. State, Bd. of Equalization, 127 Nev. Adv. Op. No. 30, at 7 (July 7, 2011).

<sup>11</sup> NEV. REV. STAT. § 360.420(1).

<sup>12</sup> *Id.*

<sup>13</sup> NEV. REV. STAT. § 360.405(4).

<sup>14</sup> *Id.*

a duty for the Treasurer to act accordingly.<sup>15</sup> Therefore, the district court did not abuse their discretion in finding for the Taxpayers, and the writ is an appropriate form of relief for the citizens of Crystal Bay and Incline Village. The district court's decision was affirmed.

### **Conclusion**

A writ of mandamus compelling the Treasurer to repay the Taxpayers their overpayment amounts is appropriate when the taxpayers have no additional legal remedies in law and the duty to repay the overages falls within the statutory requirements of NRS § 361.420.<sup>16</sup>

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<sup>15</sup> NEV. REV. STAT. § 360.2935.

<sup>16</sup> NEV. REV. STAT. § 360.420.