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### Summary of Village League v. State, Bd. Of Equalization, 124 Nev. Adv. Op. No. 90

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*Nevada Law Journal*

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**Village League v. State, Bd. Of Equalization, 124 Nev. Adv. Op. No. 90  
(October 30, 2008)<sup>1</sup>**

**Property Tax- Petition for Writ of Certiorari or Writ of Mandamus**

**Summary**

This is an original petition for a writ of certiorari or mandamus challenging the Nevada State Board of Equalization's review and remand of the Washoe County Board of Equalization's determination to equalize certain taxable valuations.

**Disposition/Outcome**

The Nevada Supreme Court held the State Board of Equalization ("State Board") retained jurisdiction to hear an appeal from the Washoe County Assessor ("Assessor") in April 2007, even though the statutory deadline had expired, because the deadline is directory, meaning that it is advisory rather than compulsory. However, the State Board has discretion to remand a matter to a county board only when the record before the State Board is inadequate because of "an act or omission of the county assessor, the district attorney or the county board of equalization."<sup>2</sup> Thus, the Court held that the State Board arbitrarily remanded the matter to the County Board because there was sufficient evidence in the record for the State Board to review. Accordingly, the Court granted Village League's (the "Taxpayer's") petition for a writ of mandamus.

**Factual and Procedural History**

In 2002, the Assessor physically reappraised properties in Incline Village and Crystal Bay to determine their taxable values for the 2003-2004 tax year. The reappraisals dramatically increased tax assessments for many taxpayers, and they began to question the methods used by the Assessor in developing the tax values. For the 2006-2007 year, the year at issue in this case, the number of taxpayer challenges increased exponentially due, in part, to a district court decision originating from taxpayer challenges to the 2003-2004 assessments.<sup>3</sup>

In *Bakst*, 17 taxpayers challenged the methods used by the Assessor to appraise property for the 2003-2004 year.<sup>4</sup> The County and State Boards upheld the valuations of the taxpayers' properties; however, in January 2006, the district court issued a decision declaring the Assessor's methods for creating the taxable values were unconstitutional, and therefore, void.<sup>5</sup> The district court ordered the taxable values of the 17 properties be rolled back to the values of 2002-2003, which the taxpayers conceded were constitutional. The Assessor and County appealed the decision.

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<sup>1</sup> By Kristopher Zeppenfeld

<sup>2</sup> NEV. REV. STAT. § 361.360 (6) (2007).

<sup>3</sup> State, Board of Equalization v. Bakst, 148 P.3d 717 (2006).

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

<sup>5</sup> *Id.*

While the *Bakst*, appeal was pending; hundreds of taxpayers in the Incline Village and Crystal Bay areas challenged their property tax assessments for the 2006-2007 year, seeking rollbacks similar to the taxpayers in *Bakst*. The County Board found that in approximately 300 cases in 2006-2007, the Assessor had used the methodologies that the district court in *Bakst* had deemed unconstitutional. The County Board therefore ordered the 300 properties' taxable values be rolled back to the values for 2002-2003.

After the County Board decided those challenges, it had created an unequal rate of taxation for the 2006-2007 year. Accordingly, the County Board made a general equalization decision, which is at issue in this petition. Under its regulatory duty to "seek to equalize taxable valuation within...the whole county,"<sup>6</sup> the County Board rolled back the taxable values for the approximately 8,700 other properties in the Incline Village and Crystal Bay areas.

The Assessor appealed the equalization decision to the State Board. The State Board began its annual session for the 2006-2007 tax year on March 27, 2006. The State Board must decide all cases that will have a "substantial effect on tax revenues" on or before April 15 of each year,<sup>7</sup> held a hearing to determine if any of the cases before it would have a substantial effect on tax revenues. While the 300 individual cases and the generalization decision for the 8,700 cases would substantially effect revenue, the State Board did not hold its first hearing on the merits of the Assessor's appeal until April 2007. The State Board was advised to wait because the Court had yet to make its ruling on the *Bakst* appeal. The Court made its ruling on *Bakst* in December 2006, and in January 2007, the County Board issued its written equalization decision rolling back 8,700 properties' taxable values.

At the hearing, the State Board decided that, as appellant, the Assessor was a party and that all of the 8,700 taxpayers affected by the equalization decision were the respondents. The State Board permitted Village League to argue on the 8,700 taxpayers' behalf. Village League asserted that the County Board had rolled back the 8,700 properties' taxable values because the Assessor had used unconstitutional methods to develop the values.

The State Board concluded that the record contained insufficient evidence to enable it to consider the propriety of the County Board's decision to roll back the taxable values. The State Board remanded the case to the County Board so that it could further develop the record. The Taxpayers, argue that the State Board has no jurisdiction to act on the Assessor's appeal after October 1, 2006, and no authority to remand the matter back to the County Board.

## **Discussion**

Here, the Court sat en banc and decided that because there is no adequate legal remedy available to the Taxpayers if the State Board's remand was in error, it will consider a petition for extraordinary relief. Moreover, the Court determined that the general equalization is an appealable action, the State Board did have jurisdiction to hear the appeal, and the State Board arbitrarily remanded the case to the County Board.

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<sup>6</sup> NEV. REV. STAT. § 361.624 (2007).

<sup>7</sup> NEV. REV. STAT. § 361.380(1) (2007).

## **I. General Equalization is an appealable action of the County Board**

Here, the Court must determine whether the Assessor could appeal the County Board's decision in the first instance. Any taxpayer aggrieved at the action of the county board of equalization in equalizing, or failing to equalize, the value of his property, or property of others, or a county assessor, may file an appeal with the State Board of Equalization.<sup>8</sup> Therefore, a taxpayer or an assessor may appeal a county board's decision regarding a property's taxable valuation to the State Board.<sup>9</sup> Here, although the County Board's decision was one of general equalization, it was an action of the County Board and therefore appealable to the State Board by the Assessor.

## **II. The State Board had jurisdiction to hear the appeal because the statutory deadlines for action by boards of equalization are directory**

Two statutory deadlines establish dates by which the State Board is directed to complete its business. Specifically, the State Board is to make decisions on matters substantially affecting tax revenues by April 15 of each year,<sup>10</sup> and all other State Board business is to be completed by October 1 of each year.<sup>11</sup>

The Court's analysis of the statutory deadlines centered on a determination of whether the deadlines are meant to be mandatory or directory. This court has long held that when a statutory time limit is material, it should be construed as mandatory unless the Legislature intended otherwise.<sup>12</sup> Furthermore, statutes creating time or manner restrictions are generally construed as mandatory.<sup>13</sup> Moreover, the Taxpayers note that over 100 years ago, this court held, in *State v. Central Pacific Railroad Co.*, that the then-existing statutory deadline for the State Board was mandatory.<sup>14</sup> In contrast, statutes are typically considered directory, or advisory only, when they require performance within a reasonable time or provide specifically that substantial compliance is sufficient.<sup>15</sup>

Here, the court assessed the intent of the Legislature by looking to the language of the statute. The court determined that the language of NRS 361.380(1) suggests that deadlines are mandatory. However, the court looked to another statute that indicates that the Legislature intended NRS Chapter 361 deadlines to be permissive.<sup>16</sup>

Additionally, the court considered the implications of construing deadlines as mandatory or directory. The court opined that construing the deadlines as mandatory would result in denying taxpayers the opportunity to challenge assessments, whereas construing deadlines as directory would allow the boards to hear all of the taxpayer appeals. Furthermore, the court determined that it may construe a statute as directory to prevent "harsh, unfair or absurd

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<sup>8</sup> NEV. REV. STAT. § 361.360(1) (2007).

<sup>9</sup> *Mineral County v. State, Board Equalization*, 119 P.3d 706, 709 (Nev. 2005).

<sup>10</sup> NEV. REV. STAT. § 361.380(1) (2007).

<sup>11</sup> *Id.*

<sup>12</sup> *Corbett v. Bradley*, 7 Nev. 106,108 (1871).

<sup>13</sup> *Leven v. Frey*, 168 P.3d 712,718 (Nev. 2007).

<sup>14</sup> 30 P. 693,694 (Nev. 1892).

<sup>15</sup> *Leven*, 168 P.3d at 718.

<sup>16</sup> NEV. REV. STAT. § 361.330 (2007).

consequences.”<sup>17</sup> As a result, the court held that the Legislature intended the statutory deadlines for the State Board to be directory, and therefore, it overruled the prior holding in *Central Pacific*. Accordingly, the court opined that the State Board retained jurisdiction to hear the Assessor’s appeal of the County Board’s decision to equalize property values in the taxpayers’ areas.

### **III. The State Board arbitrarily remanded the County Board’s equalization decision**

The State Board may remand a matter to a county board of equalization if the record is inadequate because of “an act or omission of the county assessor, the district attorney or the county board of equalization.”<sup>18</sup> Thus, the State Board may remand a case to develop the record if one of the county actors caused the record to be insufficient for its review.

The County Board’s record contained detailed minutes of the meetings that the board had in determining whether or not to rollback the taxable values to the 8,700 properties. Furthermore, the record explicitly states that the County Board considered whether the Assessor’s calculations were unconstitutional in light of the *Bakst* holding.

The court concluded that the State Board’s remand order disregarded the record and reasoning of the County Board. Furthermore, the court opined that the State Board had pointed to no act or omission rendering the record before it inadequate to consider the merits of the County Board’s equalization decision. Therefore, the State Board arbitrarily exercised its discretion when it remanded this matter to the County Board, and the court determined that writ relief was substantively warranted.

### **Conclusion**

The court denied the Taxpayer’s request for writ of certiorari, as the State Board did retain jurisdiction over the Assessor’s appeal; however, the court did grant the petition for a writ of mandamus, because the Taxpayers demonstrated that they are without adequate legal remedy and that the State Board arbitrarily exercised its discretion. Thus, the court issued the writ instructing the State Board to vacate its remand order and proceed with its consideration of the Assessor’s appeal of the County Board’s equalization decision on the merits.

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<sup>17</sup> *Leven*, 168 P.3d at 717.

<sup>18</sup> NEV. REV. STAT. § 361.360 (6) (2007).