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### Summary of State, Bd. of Equalization v. Bakst, 122 Nev. Adv. Op. No. 116

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## **PROPERTY – PROPERTY TAX ASSESSMENTS**

### **Summary**

Appeal of a district court order granting a petition for judicial review and reversing a decision of the Nevada State Board of Equalization that affirmed property tax assessments in Washoe County.

### **Disposition/Outcome**

Affirmed. Because NRS 361.260(7) does not allow county assessors to adopt individual standards for property valuations and the Nevada Constitution requires tax assessment rates to be uniform and equal, the Nevada Supreme Court affirmed the district court’s order reversing the tax assessments approved by the Nevada State Board of Equalization. Further, because these tax assessments were unconstitutional, the court also affirmed the district court’s order of a tax refund to the relevant taxpayers.

### **Factual and Procedural History**

After a dramatic increase in real property taxes in 2003-2004, seventeen property owners (Taxpayers) in Incline Village and Crystal Bay near Lake Tahoe questioned methods used by the Washoe County Assessor (Assessor) to reappraise their property values.

Nevada county assessors are required to reappraise real property at least every five years<sup>2</sup> by using the “sales comparison approach,” in which the assessor examines comparable sales in the same area.<sup>3</sup> For the five years prior to 2003-2004, the Assessor utilized the statutorily approved “factor method,” which adjusted land values according to a Nevada Tax Commission regulation.

However, because the Assessor was concerned that determining comparable sales would be difficult in Incline Village and Crystal Bay for the 2003-2004 taxes, the Assessor adjusted comparable sales for (1) a property’s view of Lake Tahoe; (2) a “rock” classification, or a property’s relationship to the lakefront; (3) a “paired sales analysis,” or an estimation of previous sales adjusted as if the sale was just completed; and (4) a “teardown” method, or, for those properties slated for demolition, the entire value of the property was assigned to the land. Claiming that these four methodologies were unauthorized, the Taxpayers disputed them first with the Assessor and then with the Washoe County Board of Equalization.

After a public meeting regarding the disputed methodologies, the County Board of Equalization reduced the valuation of all lakefront properties by ten percent in order to “equalize” tax valuations. The taxpayers, not satisfied by this equalization, appealed to the Nevada State Board of Equalization (State Board).

At a State Board special hearing, Washoe County argued that the Assessor was using the comparative sales approach, and that the Taxpayers were only disputing the methods to apply

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<sup>1</sup> By Jenny Routheaux.

<sup>2</sup> NEV. REV. STAT. § 361.260(6) (2005).

<sup>3</sup> NEV. ADMIN. CODE § 361.118 (2006).

that approach. In a written decision, the State Board found that the methodologies were appropriate and correctly used by the Assessor. The Taxpayers then submitted individual appeals to the State Board, which issued individual decisions as to whether the Assessor correctly applied the methodologies to each property.

Subsequently, the Taxpayers filed suit in district court, arguing that the methodologies were inappropriate and that they were unaware that the Assessor had been using these methodologies prior to 2003. The district court found that the methodologies did not satisfy the Administrative Procedure Act requirements and were invalid. Further, the court found that because the Assessor applied these methodologies inconsistently within Washoe County, it was likely that they violated the Nevada Constitution's requirement of equal and uniform tax assessments. Thus, the court reversed the State Board's decision, ordered a roll back of tax valuations to the 2002-2003 levels, and ordered refunds plus interest to all Taxpayers who had paid greater than the 2002-2003 taxes.

## **Discussion**

In this appeal, the Nevada Supreme Court considered whether the Assessor's methodologies were valid and whether those methods resulted in unequal and unjust property valuations. The court concluded that these disputed methodologies were invalid as they violated the Nevada Constitution's requirement of uniform and equal tax rate assessments.

Because of the State Board's expertise in property valuation, the State Board's findings are presumed valid in the district court,<sup>4</sup> and the burden is on the taxpayer to show that a property tax equalization is unjust and inequitable.<sup>5</sup> However, if an agency bases a decision on statutory construction, it is a question of law and reviewed de novo on appeal.<sup>6</sup> Further, the Nevada Supreme Court will declare an action invalid if it is unconstitutional.<sup>7</sup>

## **The Nevada Statutory Scheme for Property Tax Assessments**

The Nevada Constitution states that the "Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory."<sup>8</sup> The Department of Taxation, created by the Legislature, administers the states taxation laws via the Nevada Tax Commission.<sup>9</sup>

Although the Nevada Legislature significantly amended many of the property tax assessment statutes in 2005, the court examined the statutes as of 2002 because this appeal relates to 2003-2004 taxes. The first relevant 2002 statute is NRS 360.250(1), which states that the Nevada Tax Commission may confer and advise county assessors with tax assessments and may establish regulations governing these assessments.<sup>10</sup> Next, NRS 360.280(1)(a) requires

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<sup>4</sup> Imperial Palace v. State, Dep't of Taxation, 108 Nev. 1060, 1066, 1069-70, 843 P.2d 813, 817, 820 (1992).

<sup>5</sup> NEV. REV. STAT. § 361.430 (2005).

<sup>6</sup> Seino v. Employers Ins. Co. of Nevada, 121 Nev. 146, 149, 111 P.3d 1107, 1110 (2005).

<sup>7</sup> See Meridian Gold v. State, Dep't of Taxation, 119 Nev. 630, 635, 81 P.3d 516, 519 (2003).

<sup>8</sup> NEV. CONST. art. 10, § 1.

<sup>9</sup> NEV. REV. STAT. §§ 360.010, .120(2), .245 (2005).

<sup>10</sup> § 360.250(1) (2001). The 2005 amendment to this statute states that the "Nevada Tax Commission shall adopt general and uniform regulations governing the assessment of property . . . [and the] regulations must include . . . standards for the appraisal and reappraisal of land to determine its taxable value." § 360.250(1) (2005).

(and still does require) assessors to adopt those tax assessment regulations established by the Nevada Tax Commission.<sup>11</sup> Further, under NRS 361.260(6), assessors must reappraise property values at a minimum of once every five years.<sup>12</sup> Additionally, the 2002 version of NRS 361.260(7) allowed assessors to establish standards for tax valuation appraisals.<sup>13</sup>

Under NRS 361.227, the county assessors determine the amount of tax due on a specific property based on a percentage of that property's taxable value.<sup>14</sup> The assessors compute this taxable value based on the value of the land, which is either vacant or improved, and any improvements on the land, taking into consideration attributes (such as view or location) that may affect the property's value.<sup>15</sup> Further, to determine this value of the property, the assessors, both today and in 2002, must use the "sales comparison approach."<sup>16</sup> In 2002, this approach used either the market data or comparative approach to appraise a property. Although the Nevada Administrative Code did also provide three procedures to follow if market data were insufficient,<sup>17</sup> none of the Assessor's four disputed methodologies fell into these categories.

In determining taxable value, the assessors must also ensure that the taxable value is not greater than the full cash value of the property.<sup>18</sup> In determining this, the appropriate methods include a comparative sales analysis, summing the values of the land and improvements, and capitalizing income from the property's use.<sup>19</sup> If the taxable value does exceed the full cash value, the assessor must first reduce the value of the taxable values of the improvements and then, if necessary, the value of the land.<sup>20</sup>

Subsequently, if a taxpayer disagrees with an assessor's property valuation, the taxpayer may first petition the County Board of Equalization for a review.<sup>21</sup> However, because of the probability for differences in expert opinions and the lack of a set mathematical formula to determine property valuations,<sup>22</sup> the taxpayer has a significant burden in showing that the assessor's valuations were incorrect. The next level of appeals is to the State Board of Equalization and then to the state district court.<sup>23</sup>

### **Validity of the Property Tax Assessments for the Taxpayers in this Case**

First, the court concluded that the Nevada Tax Commission has a statutory duty to create uniform regulations for real property assessment, which each county assessor must adopt. In fact, the Nevada Constitution requires uniform and equal tax assessments<sup>24</sup> and, in order to comply with the Nevada Constitution, the Legislature enacted NRS 360.250(1), which states that

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<sup>11</sup> § 360.280(1)(a) (2005).

<sup>12</sup> § 360.260(6).

<sup>13</sup> § 361.260(7) (2001). The court noted that the 2005 amendment to this statute requires county assessors to use those standards adopted by the Nevada Tax Commission when appraising and reappraising property for tax valuations. § 360.260(7) (2005).

<sup>14</sup> § 361.227.

<sup>15</sup> §§ 361.227, .228(3).

<sup>16</sup> NEV. ADMIN. CODE § 361.118 (2006).

<sup>17</sup> See § 361.118 (2001).

<sup>18</sup> NEV. REV. STAT. § 361.227(5) (2005).

<sup>19</sup> § 361.227(5).

<sup>20</sup> NEV. ADMIN. CODE § 361.131 (2006).

<sup>21</sup> NEV. REV. STAT. §§ 361.355-57 (2005).

<sup>22</sup> Nevada Tax Comm'n v. Southwest Gas Corp., 88 Nev. 309, 312, 491 P.2d 308, 309-10 (1972).

<sup>23</sup> §§ 361.360, .400(1), .420(2).

<sup>24</sup> NEV. CONST. art. 10, § 1.

the Nevada Tax Commission “may . . . [e]stablish and prescribe general and uniform regulations governing the assessment of property by the county assessors.”<sup>25</sup> Further, NRS 360.280(1) requires assessors to adopt those regulations established by the Nevada Tax Commission.<sup>26</sup> The court concluded that these two statutes, when read together, require the Tax Commission to create uniform property tax assessment regulations that the assessors must adopt. Thus, the assessors’ compliance with NRS 360.280(1) depends on the Tax Commission’s creation of uniform regulations.

Second, the court concluded that, here, the Nevada Tax Commission failed to create such regulations. In fact, in 2002, the only guidance provided by the Nevada Tax Commission was for appraisers to use the market data or comparative approach when appraising properties and that the taxable value could not exceed the property’s full cash value.<sup>27</sup> The court determined these regulations failed to provide the assessors the necessary guidance to assess properties uniformly, and that the Nevada Tax Commission failed to update the regulations since 1983 with regard to new market data methodologies. Thus, the court concluded that the county appraisers had to create their own methodologies for assessing property values.

Third, the court determined that the assessors, under NRS 361.260(7), did not actually have this power to create their own methodologies for property appraisals. In fact, the 2001 amendment to NRS 361.260 provides that assessors must use the standards adopted by the Nevada Tax Commission for appraising and reappraising real property.<sup>28</sup> Further, the court concluded that the Legislature only intended this amendment to allow the county assessors to utilize more current sales comparables methods, not, as the State contended, to give the assessors to broad authority to develop individualized methodologies in each county. Similarly, the court further supports the holding that the Assessor did not have the power to create the four disputed methodologies because the Legislature created the Nevada Tax Commission to avoid such inequitable tax valuations and political pressure on assessors, both of which occurred here.

Fourth, the court held that the four disputed methodologies violated the Nevada Constitution because they were not consistent with methods used in the rest of Washoe County or other counties in Nevada. Finally, because taxpayers are entitled to a refund of taxes when a tax statute is unconstitutional,<sup>29</sup> the court held that the Taxpayers here were entitled to a refund in the amount of the difference between the 2003-2004 taxes and the 2002-2003 taxes.

## **Conclusion**

In affirming the district court, the Nevada Supreme Court held that the Washoe County Assessor’s methodologies used to compute the Taxpayer’s 2003-2004 property taxes were unconstitutional. Although the Nevada Tax Commission failed in its duty to provide regulations governing such property assessments and the Assessor, therefore, had to create his own, these methodologies were inconsistent with the rest of Washoe County and other counties in Nevada. Thus, the Taxpayers were entitled to a refund of overpaid taxes.

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<sup>25</sup> NEV. REV. STAT. § 360.250(1) (2001).

<sup>26</sup> § 360.280(1).

<sup>27</sup> NEV. ADMIN. CODE § 361.118, .131 (2001).

<sup>28</sup> NEV. REV. STAT. § 361.260(7) (2001).

<sup>29</sup> Worldcorp v. State, Dep’t of Taxation, 113 Nev. 1032, 1038, 944 P.2d 824, 828 (1997).