

Code No \$3645
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HOWARD W. CONYERS

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DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Charles Otto, Trustee of the Otto Family)
Trust; Todd Lowe, Trustee of the Lowe)
Family Trust; V Park LLC, a Nevada limited)
liability company, for themselves and on behalf)
of similarly situated residential property owners)
and taxpayers at Incline Village/Crystal Bay,)
Washoe County, Nevada,)
Petitioners,)
v.)
Bill Berrum, Washoe County)
Treasurer,)
Respondent.)

CV09 02534
Case No. _____

Dept. No. 6

VERIFIED PETITION FOR WRIT OF MANDAMUS

Charles Otto, Trustee of the Otto Family Trust; Todd Lowe, Trustee of the Lowe Family Trust; and V Park LLC, a Nevada limited liability company, for themselves and on behalf of similarly situated residential property owners/taxpayers at Incline Village/Crystal Bay, in Washoe County, Nevada, bring this petition for writ of mandamus to require respondent Bill Berrum, Washoe County Treasurer, to perform his duty to refund excess property taxes paid by individual petitioners and by the members of the petitioner class of Incline Village/Crystal Bay residential property taxpayers based on the assessment roll for 2006-2007 as adjusted by law for subsequent

1 tax years. In support of their petition, petitioners state as follows:

2 **PARTIES**

3 1. Petitioner Charles Otto, as Trustee of the Otto Family Trust, owns and, at all
4 relevant times, owned residential real property at Incline Village/Crystal Bay, Washoe County,
5 Nevada, more particularly identified as APN 123-190-39, and pays and, at all relevant times, has
6 paid property taxes on that property as assessed by the Washoe County Assessor and collected by
7 the Washoe County Treasurer.
8

9 2. Petitioner Todd Lowe, as Trustee of the Lowe Family Trust, owns and, at all
10 relevant times, owned residential real property at Incline Village/Crystal Bay, Washoe County,
11 Nevada, more particularly identified as APN 122-162-09, and pays and, at all relevant times, has
12 paid property taxes on that property as assessed by the Washoe County Assessor and collected by
13 the Washoe County Treasurer.
14

15 3. Petitioner V Park LLC is a Nevada limited liability company created in accordance
16 with Nevada law. V Park LLC owns and, at all relevant times, has owned residential real property
17 at Incline Village/Crystal Bay, Washoe County, Nevada, more particularly identified as APN 130-
18 241-23, and pays and, at all relevant times, has paid property taxes on that property as assessed by
19 the Washoe County Assessor and collected by the Washoe County Treasurer.
20

21 4. Attached as Exhibit 1 is a list of the names, addresses and parcel numbers of the
22 members of the class of petitioners, all residential real property owners of record in the Incline
23 Village/Crystal Bay area in the 2006-2007 tax year who paid an excess amount of real property
24 taxes in that year and subsequent years.
25

26 5. The claims of petitioners and members of the petitioner class involve common
27 questions of law and fact including the failure of the respondent Washoe County Treasurer to
28 perform his duty with respect to the refunding of overpaid taxes. The claims of petitioners Otto,

1 Lowe and V Park LLC are representative and typical of the claims of all members of the petitioner
2 class. The claims of petitioners and all members of the petitioner class arise from the same duties,
3 acts and omissions of the respondent Washoe County Treasurer. Petitioners Otto, Lowe and V
4 Park LLC are able to, and will, fairly and adequately protect the interests of all members of the
5 class petitioner taxpayers.
6

7 6. The respondent, Bill Berrum, is the elected treasurer of Washoe County. He
8 collects the property taxes for Washoe County and it is his duty under the law to refund any
9 overpayments of property taxes.
10

11 GENERAL ALLEGATIONS

12 7. In March of 2006, the Washoe County Board of Equalization, exercising its
13 authority and mandate for the geographic equalization of property values, set aside the valuations
14 of the Washoe County Assessor and rolled back and set the 2006-2007 taxable value for all
15 residential real property at Incline Village and Crystal Bay in Washoe County, Nevada, to 2002-
16 2003 levels. A copy of the minutes of March 8, 2006 meeting of the Washoe County Board of
17 Equalization is attached as Exhibit 2.
18

19 8. The March 2006 geographic equalization decision of the Washoe County Board of
20 Equalization was not reflected in the official tax roll of Washoe County in the ordinary course
21 because of an order that had been issued by the Nevada Supreme Court in February of 2006
22 staying the implementation of the 2006 decisions of the Washoe County Board of Equalization
23 pending the resolution by the Court of a particular case then on appeal. A copy of the Supreme
24 Court order of February 14, 2006 is attached as Exhibit 3.
25

26 9. The matter before the Supreme Court which was the basis for the Court's issuance
27 of the stay order was the appeal by Washoe County along with the State Board of Equalization
28 and the Nevada Tax Commission of the decision entered by the First Judicial District Court,

1 Carson City, Nevada, in Case No. 03-01501A entitled "Bakst, et al v. State of Nevada ex rel State
2 Board of Equalization, et al." In "Bakst" the Carson City District Court upheld the residential
3 property owner/taxpayers at Incline Village and Crystal Bay in their challenge to the
4 constitutionality of the property valuations established by the Washoe County Assessor. A copy
5 of the decision of the Carson City District Court is attached as Exhibit 4.
6

7 10. Because implementation of the Washoe County Board of Equalization March 2006
8 decision returning property values at Incline Village and Crystal Bay for the 2006-2007 tax year to
9 their constitutional 2002-2003 levels had been stayed by the Supreme Court, the official
10 assessment roll continued to reflect the Assessor's 2006-2007 values and the respondent Washoe
11 County Treasurer sent property tax bills to and collected taxes from the owners of residential real
12 property in Incline Village and Crystal Bay for 2006-2007 based on those unconstitutional values.
13

14 11. On December 28, 2006, in State ex rel State Board of Equalization v. Bakst, 122
15 Nev. 1403, 148 P.3d 717 (2006), the Nevada Supreme Court affirmed the decision of the Carson
16 City District Court, finding that the methodologies used by the Washoe County Assessor were
17 unauthorized and invalid, that the Assessor's valuations of property at Incline Village and Crystal
18 Bay were unconstitutional, and that the District court had properly ordered that property
19 valuations be reset to their 2002-2003 level.
20

21 12. In or about January of 2007, when the Supreme Court decision in State ex rel State
22 Board of Equalization v. Bakst, supra, became final and the stay entered by the Supreme Court
23 had been dissolved, the Washoe County Assessor corrected the County's 2006-2007 assessment
24 roll, reducing the taxable valuations of residential real property at Incline Village and Crystal Bay
25 for ad valorem tax purposes to their 2002-2003 values as ordered by the Washoe County Board of
26 Equalization on March 8, 2006.
27

28 13. Although the stay entered by the Supreme Court was dissolved in January of 2007

1 and the Washoe County Assessor corrected the assessment rolls, the respondent Washoe County
2 Treasurer did not send out corrected tax bills and, contrary to law, not only failed to refund
3 excessive taxes paid but also continued to collect taxes for the 2006-2007 tax year based on the
4 Assessor's unconstitutional valuations.

5
6 14. The Washoe County Assessor appealed the Washoe County Board of
7 Equalization's March 2006 geographic equalization order to the State Board of Equalization.

8 15. The Assessor's appeal was heard on April 13, 2007, at which time the State Board
9 of Equalization ordered the remand of the geographic equalization decision to the Washoe County
10 Board of Equalization pursuant to NRS 361.360(6) on the basis that the record was inadequate
11 because of an act or omission of the county assessor, the district attorney or the county board of
12 equalization. At the time of that decision, at the request of the County Assessor, the State Board
13 of Equalization stayed the further implementation of the geographic equalization decision. A
14 copy of the Notice of Remand is attached as Exhibit 5.

15
16 16. Taxpayers sought relief by extraordinary writ in the Supreme Court from the
17 Notice of Remand.

18
19 17. On November 3, 2008, the Nevada Supreme Court entered a writ of mandate to the
20 State Board of Equalization, directing the Board to vacate its Notice of Remand and proceed to
21 with consideration of the Assessor's appeal of the Washoe County Board of Equalization's
22 geographic equalization decision on the merits. A copy of the Writ of Mandamus is attached as
23 Exhibit 6.

24
25 18. On July 20, 2009, the State Board of Equalization met pursuant to the Writ of
26 Mandamus. As directed by the Nevada Supreme Court, the State Board voted unanimously to
27 vacate its Notice of Remand. A copy of that portion of the transcript of the July 20, 2009 hearing
28 is attached as Exhibit 7.

1 19. In vacating its Notice of Remand, the State Board of Equalization vacated the stay
2 of implementation of the Washoe County Board of Equalization's March 2006 geographic
3 equalization decision which was a part of the Notice of Remand. No continued or further stay of
4 implementation of that decision was made by the State Board of Equalization and no request for
5 such further stay was made by the County Assessor, who was a party to the proceedings before the
6 State Board of Equalization.
7

8 20. Under NRS 361.475, the County Treasurer receives all of the taxes assessed upon
9 real property for his/her respective County. Pursuant to NRS 361.486, the County Treasurer must
10 refund the overpayment of taxes with interest at the rate of 0.5 percent per month, or fraction
11 thereof.
12

13 21. As a result of the assessment and collection of property taxes based on the
14 Assessor's unconstitutional valuations for the 2006-2007 tax year, petitioners and members of the
15 petitioner class were compelled to overpay their taxes for the 2006-2007 tax year. As a result of
16 the overpayment of taxes for the 2006-2007 tax year and the application of the statutory tax caps
17 to those excessive tax levels, petitioners and members of the petitioner class were also compelled
18 to overpay their taxes for subsequent years to date, all to the substantial damage of petitioners and
19 members of the petitioner class.
20

21 22. The respondent Bill Berrum, Washoe County Treasurer, has refused petitioners'
22 demands for the payment of refunds of excessive taxes paid since the 2006-2007 tax year.
23 Notwithstanding the corrected assessment roll, the lifting of both the stay imposed by the Supreme
24 Court and the subsequent stay imposed by the State Board of Equalization and the legal duty to
25 refund any overpayment of taxes, the respondent Washoe County Treasurer refuses to pay refunds
26 due to petitioner taxpayers and the members of the petitioner class of taxpayers for as long as
27 three years.
28

1 23. Pursuant to NRS §34.160, the writ of mandate is available "to compel the
2 performance of an act which the law especially enjoins as a duty resulting from an office, trust or
3 station."

4 24. Petitioners and members of the petitioner class have no plain, speedy or adequate
5 remedy in the ordinary course of law to compel the respondent Washoe County Treasurer to
6 perform his duty with respect to the refunding of overpaid taxes from 2006-2007 to the present
7 and to prevent further injury and harm to petitioners and members of the petitioner class by
8 withholding payments due and owing under the law.
9

10 Wherefore, petitioners request as follows:

11 (1) That the Court issue an alternative writ of mandamus pursuant to NRS §34.190,
12 commanding the respondent Bill Berrum, Washoe County Treasurer, to calculate and pay refunds
13 of excessive taxes paid by petitioners and members of the petitioner class with interest as
14 specified by law, or to show cause before this Court why he has not done so.
15

16 (2) That, upon a show cause hearing, the Court issue a peremptory and permanent writ
17 of mandamus commanding the respondent Bill Berrum, Washoe County Treasurer, to calculate
18 and pay refunds of excessive taxes paid by petitioners and members of the petitioner class with
19 interest as specified by law within 30 days of the Court's order.
20

21 (3) That petitioners recover their costs of suit; and

22 (4) That the Court issue such other and further order as petitioners and the petitioner
23 class may be adjudged entitled to in the premises.
24

25 **AFFIRMATION**
26 **Pursuant to NRS 239B.030**

27 The undersigned does hereby affirm that the preceding document does not contain the
28 social security number of any person.

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DATED this 26th day of August, 2009.

MORRIS PETERSON

By 
Suellen Fulstone

Attorneys for Petitioners

VERIFICATION

Under penalty of perjury, the undersigned declares that he is Todd Lowe, who as Trustee of the Lowe Family Trust is one of the petitioners named in the foregoing Petition for Writ of Mandamus; that the Petition is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true; and that he makes this verification on behalf of all petitioners.


TODD LOWE

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Document Title</u>	<u>Pages</u>
1.	List of names, addresses and parcel numbers of Incline Village/Crystal Bay taxpayers	274
2.	Washoe County Board of Equalization Minutes dated March 8, 2006	11
3.	Supreme Court Order dated February 14, 2006	3
4.	Decision of First Judicial District Court in "Bakst, et al. v. State of Nevada ex rel State Board of Equalization, et al." Case No. 03-01501A	11
5.	State Board of Equalization's Notice of Remand (without exhibits)	3
6.	Writ of Mandamus dated November 3, 2008	1
7.	Portion of Transcript of July 20, 2009 hearing	5