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Court upholds Incline Village tax appeal

Supreme court rules in favor of tax revolt

In brief: After a Friday ruling by the Nevada Supreme Court, 38 Incline Village property owners will receive a possible windfall of \$350,000. The court ruled various state and county taxation departments were unconstitutional in how they assessed property values for those owners during the 2004-2005 fiscal year.

“This is a huge decision for us and the Village League ... I think it’s just a tremendous decision.” **Suellen Fulstone**, Reno-based attorney

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The Nevada Supreme Court ruled Friday that various taxation departments from the state and Washoe County were unconstitutional in the way they assessed Incline Village properties during the 2004-2005 fiscal year, demanding a roll back to the 2002-2003 assessed levels for 38 parcel owners in the case.

“I think it’s over, but I suppose there is some argument out there that some creative lawyer could devise. He’d be a more creative lawyer than me,” said Reno-based attorney Suellen Fulstone, who represented some of the case’s respondents, and has represented the Village League to Save Incline Assets since the group started its tax revolt in 2003.

“This is a huge decision for us and the Village League,” he said. “This goes to show that the taxpayers (who) make up the Village League never deflected from their confidence that the Supreme Court would right the wrongs. I think it’s just a tremendous decision.”

While monetary figures are unknown, Incline resident Maryanne Ingemanson, president of the Village League, estimates as much as a total \$350,000 windfall for the 38 parcel owners named in Friday’s Supreme Court opinion.

In its conclusion the Supreme Court wrote: “We conclude that nothing significant distinguishes these cases, factually or legally, from Bakst, and we therefore affirm the district court’s orders granting judicial review, declaring the taxpayers’ 2004-2005 assessments void, and setting their assessed values for 2004-2005 to the 2002-2003 levels. The Taxpayers are entitled to refunds of all excess taxes paid and 6 percent annual interest.”

The High Court’s ruling can be viewed in its entirety at <http://nvsupremecourt.us>.

The Bakst case involved 17 Incline parcel owners arguing their assessed property values from 2003-2004. Their appeals eventually went to the Supreme Court, which ruled in early 2007 to roll back their rates to the 2002-2003 values.

As for Friday’s decision, in all, the Nevada Department of Taxation, the Nevada Tax Commission, the State Board of Equalization, Washoe County and the Washoe County Assessor’s Office were listed as appellants in the case, dubbed State Board of Equalization v. Barta, Lowe, Frederic, Bakst, Anderson. Those five Incline Village parcel holders, among 33 others, were listed as respondents.

Friday’s opinion brings closure to one tier of what has become a lengthy and cluttered legal fight among Incline Village/Crystal Bay residents, Washoe County and the state of Nevada, in determining whether assessed property value

methodologies are being used differently at Lake Tahoe, rather than in the rest of the county and state. There are numerous appeals funneling through the county and state equalization system, as well as the state legal system, regarding appeals filed by growing numbers of Incline/Crystal Bay citizens from the 2005-2006, 2006-2007, 2007-2008 and 2008-2009 fiscal years. The Village League also filed a federal injunction in April with the U.S. District Court of Nevada, naming Washoe County, Washoe County Assessor Josh Wilson and Washoe County Treasurer Bill Berrum as defendants.

In a Friday phone interview, Gina Session, chief deputy attorney general of Nevada, spoke on behalf of the state regarding Friday's High Court ruling.

"It's something that we're obviously going to have to take a look at and talk to our clients about," Session said. "This decision is consistent with that of the Bakst case. I think the court is giving us some good guidance, and we'll come up with a decision to move forward."

The Supreme Court first heard discussion about the Barta case from both sides on Jan. 7, 2008, in Carson City. About 300 Incline citizens showed up to the hearings in the capital, which featured commentary from Fulstone and Carson City attorney Norman J. Azevedo, who also has represented Incline Village/Crystal Bay defendants in the tax revolt. Commentary also was given on Jan. 7 from Karen R. Dickerson and Dennis L. Belcourt, deputy attorney generals for the state; and E. Terrance Shea, deputy district attorney for Washoe County.

Besides the above attorneys, State Attorney General Catherine Cortez Masto and Washoe County District Attorney Dick Gammick also represented their respective clients in the case.

In a Friday phone interview, Gammick said there is no next step or appeal to come from the county.

"We will go with this. We will follow the court order. We're doing what we're supposed to do — follow the rules set forth by the state tax commission," Gammick said. "I don't know if it (the decision) is fair; I think it gives us all further guidance in assessing property values. In all fairness, we gave (Washoe County Assessor) Josh Wilson the best advice, which is what we receive from the state.

He said the assessor's role is to follow the State Tax Commission's rules.

"This entire process has been a quest to determine what is appropriate and what is proper and what is constitutional — our assessor has to follow whatever the state tax commission tells us to do. Now, if the court comes back three, four, five years later and rules on tax assessments, to litigate upon them, then we have to follow the order. It just all seems to be a big game."

Gammick went on to say he feels the county has taken much of the heat for the tax revolt, since it began in 2003, saying there is a larger problem than what Incline Village residents have presented the past few years.

"I think some people at the lake see us as the enemy, when it really isn't that kind of situation at all," Gammick said. "We're trying to get the best results we can; we have a client, and we have to give them the best advice we can. The state should be taking a lot of the blame for this, not Washoe County. This is a lot bigger problem than Incline Village."

Ingemanson lauded the Supreme Court for its Friday decision.

"This is just a powerful decision; it's as much as we had hoped for," Ingemanson said. "The decision covered every single area of our concern, and it paves the way for decisions on the other cases we have pending."

Incline resident Wayne Fischer, also a Village League member, shared a similar view.

"It is mind-boggling what the opinion said, in that (the appellants) tremendously failed to do their constitutional job," Fischer said. "It really stands to what we've been fighting the past five and a half years. We firmly believe that this decision shouldn't go to just the 38 (parcel owners) in 2004-2005, but for all the years after that."

As for what's next, Fulstone and Ingemanson said the fight continues, as there are many cases still pending from past fiscal year assessments. Fulstone said Friday's decision should serve as a reminder when more cases are heard in the court system.

"Well, like any other Supreme Court case, they decide the case in front of them, and this (decision) goes to the 38 taxpayers in the suit," Fulstone said. "But the principles of law were reiterated from Bakst, and they really expand to all the other cases. I think we will formally advise

the courts of this case and tell the courts what we think this case means to the cases in front of them.”

For information on the ruling, visit www.nevadapropertytaxrevolt.org.

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Below is the verbatim conclusion offered in Friday’s Nevada Supreme Court decision. For the full document, download the PDF at <http://nvsupremecourt.us>, or visit www.nevadapropertytaxrevolt.org.

“In these cases, the State Board erred by disregarding the Taxpayers’ arguments that the Assessor used unconstitutional methods to determine the taxable values of their properties and by failing to recognize that taxable value may

be unjust and inequitable despite being less than the full cash value of the property. Thus, the Taxpayers met their burden by proving that the taxable values of their properties were unjust and inequitable by showing that, in assessing their properties, either by reappraising or factoring, the Assessor used methods or adjusted values that we declared unconstitutional in Bakst. We conclude that nothing significant distinguishes these cases, factually or legally, from Bakst, and we therefore affirm the district court’s orders granting judicial review, declaring the Taxpayers’ 2004-2005 assessments void, and setting their assessed values for 2004-2005 to the 2002-2003 levels. The Taxpayers are entitled to refunds of all excess taxes paid and six percent annual interest.”

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