

SUBMISSION  
OF INCLINE VILLAGE/CRYSTAL BAY  
RESIDENTIAL PROPERTY OWNER/TAXPAYERS

EQUALIZATION HEARING

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RESIDENTIAL PROPERTY OWNER TAXPAYERS

## I. INTRODUCTION

Incline Village/Crystal Bay taxpayer equalization grievances arise out of the Washoe County Assessor's 2002 mass reappraisal of Incline Village/Crystal Bay residential properties. The 2002 mass reappraisal provided the base valuation for all Incline Village/Crystal Bay residential properties for the 2003/2004 tax year and for the subsequent four tax years: 2004/2005, 2005/2006, 2006/2007 and 2007/2008. No actual physical reappraisal was done for the 2004/2005, 2005/2006, 2006/2007 and 2007/2008 tax years.

The property valuations established by the 2002 mass reappraisal of Incline Village/Crystal Bay residential properties were null, void, unjust, inequitable and unconstitutional. The Nevada Supreme Court made that determination in *State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006), after determining that those valuations had been made using methodologies which were not approved by the Nevada Tax Commission, were not used elsewhere in Washoe County, and were not used elsewhere in the State of Nevada. The use of such unauthorized and non-uniform methodologies violated the constitutional requirement of equal and uniform taxation.

In *Bakst*, the Supreme Court held that the valuations established by the 2002 reappraisal were null and void. For the taxpayer parties in that case, the Supreme Court itself set the valuations of Incline Village and Crystal Bay residential property for the 2003/2004 tax year at their 2002/2003 (pre-2002 appraisal) constitutional levels. In *State Board of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092 (2008), the Supreme Court looked at those same 2002 reappraisal valuations, this time as reflected in the 2004/2005 tax year valuations of Incline Village/Crystal Bay residential properties. In *Barta* as in *Bakst*, the Court held those valuations null and void. Again, for the taxpayer parties in the *Barta* case, the Court set their 2004/2005 valuations at 2002/2003 constitutional levels.

Following the *Bakst* and *Barta* decisions, the Carson City District Court set aside the 2005/2006 valuations of Incline Village/Crystal Bay residential property because they likewise were based on the unconstitutional 2002 reappraisal. Consistent with the Supreme Court decisions, the Carson Court set valuation levels to their 2002/2003 constitutional levels and then applied the "factor" developed by Washoe County for the 2005/2006 tax year. In the following two years, this State Board of Equalization itself set aside the Washoe County Assessor's 2006-2007 and 2007-2008 valuations of Incline Village/Crystal Bay residential property because those valuations were still based on the unconstitutional 2002 reappraisal.<sup>1</sup> The Board set the values at their 2002/2003 constitutional levels and again applied the Assessor's "factors" to reach the Board's final valuation.

Those 2003/2004, 2004/2005, 2005/2006, 2006-2007, and 2007-2008 decisions affected individual taxpayer property owners who brought constitutional challenges to their property valuations. The unconstitutional 2002 reappraisal, however, included all residential properties at Incline Village/Crystal Bay, rendering all such base valuations unconstitutional.<sup>2</sup> Addressing equalization claims for all residential property owners in Incline Village/Crystal Bay for the 2006/2007 tax year, this Board vacated the Assessor's valuations (which were based on the 2002 unconstitutional reappraisal) and established the 2006/2007 values for all residential properties at Incline Village/Crystal Bay to their 2002/2003 levels. Incline Village/Crystal Bay taxpayers ask for similar equalization of all residential properties at Incline Village/Crystal Bay for the 2003/2004, 2004/2005, 2005/2006 and 2007-2008 tax years.

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<sup>1</sup> See, e.g., *Village League v. State Bd. of Equalization* ("Village League"), 194 P.3d 1254, 124 Nev. 1079 (Nev., 2008); *Berrum v. Otto* ("Otto I"), 255 P.3d 1269, 127 Nev. Adv. Op. 30 (Nev., 2011); *Washoe County v. Otto* ("Otto II"), 128 Nev. Adv. Op. No. 40 (Nev., 2012).

<sup>2</sup> There are approximately 9000 residential properties in the Incline Village/Crystal Bay area. That number will be used as a benchmark in this submission.

The Constitutional requirement of uniformity as well as this Board's equalization obligation and its equalization precedent requires that the unconstitutional base valuations of all Incline Village/Crystal Bay residential properties for the tax years 2003/2004, 2004/2005, 2005/2006 and 2007/2008 be set aside and those base valuations reset to 2002-2003 constitutional levels. All Incline Village/Crystal Bay residential property owned are justly entitled to the same valuations as the constitutionally mandated individual valuations set by the courts for those tax years. Completion of the equalization process pursuant to the Writ of Mandamus issued on August 21, 2012, will provide justice to Incline Village/Crystal Bay residential property owner-taxpayers and will finally put a close to this long pending dispute.

## II. STATEMENT OF FACTS

### A. The 2003/2004 tax year

These equalization grievances begin with the 2003/2004 tax year. The salient facts have been determined by the Nevada Supreme Court. In *Bakst*, the Court wrote as follows:

In 2002. . .[the] Washoe County Assessor . . . performed a mass reappraisal of the properties in [the Incline Village-Crystal Bay] area to determine their taxable values for the 2003-2004 tax year. \* \* \* In completing appraisals, county assessors must use the 'sales comparison approach,' which is a standard method to determine the full cash value of land on which its taxable value is based; under this approach, comparable sales of land in the same area are examined. \*\*\* Concerned that it would be difficult to determine comparable sales for land in the Incline Village/Crystal Bay area for the 2003-2004 tax year, the Assessor decided to use four methodologies to adjust comparable sales for the reappraisal period.

The Court

conclude[d] that the methodologies used are invalid. Specifically, their inconsistent application violated the uniform and equal rate of assessment required by Article 10 of the Nevada Constitution. **The 2003-2004 valuations, which were based on those methodologies, are therefore unjust and inequitable. Any taxes collected that can be attributed to those invalid methodologies**

**are unconstitutional, as determined by the district court, and the Taxpayers who paid such taxes are entitled to a refund.** (Emphasis added.)

In this case, the Assessor used what he characterized as generally recognized appraisal standards and guidelines and created a set of methodologies that were unique to the Incline Village and Crystal Bay areas. We do not address whether those methodologies were standard or generally recognized in the appraisal industry. Instead, we conclude that the methodologies the Assessor used are invalid and violated the Nevada Constitution because they were not consistent with the methods used throughout Washoe County. \*\*\* We conclude on that basis that none of the four methodologies used by the Assessor in 2002 to assess property values in Incline Village and Crystal Bay were constitutional.

. . . Taxpayers are entitled to a refund of the difference between any taxes they paid based on their 2003-2004 valuations and the taxes they should have paid based on their 2002-2003 valuations. That formula allows the Taxpayers to receive a refund for the taxes that are directly attributable to the use of the disputed methodologies.

The *Bakst* Court affirmed the trial court in vacating the Assessor's valuations and establishing property valuations at their 2002-2003 constitutional levels and the payment of refunds to the seventeen taxpayer parties to that case. As described by the Supreme Court, the unconstitutional methods were used in a mass reappraisal of all residential properties in Incline Village and Crystal Bay. "Mass reappraisal" means that the remaining approximately 9000 residential properties in Incline Village/Crystal Bay were also valued for the 2003-2004 tax year using the same unconstitutional methods. This Board's equalization mandate requires that it follow the Supreme Court in vacating those valuations as null and void and establishing valuations for those properties at their 2002-2003 constitutional levels.

**B. The 2004/2005 tax year**

Under NRS §361.260(6), the County Assessor must reappraise real property at least once every five years. The Washoe County Assessor divided the County into five areas,

and did one area each year. Since the Incline Village/Crystal Bay area was reappraised in 2002 for the 2003/2004 tax year, it was not scheduled to be reappraised again until 2007 for the 2008/2009 tax year. Accordingly, the Washoe County Assessor used the unjust, inequitable and unconstitutional valuations of the 2002 reappraisal for the Incline Village/Crystal Bay area again for the 2004/2005 tax year. The Assessor argued that a factor had been applied to validate the 2002 reappraisal valuations. In *Barta*, the Nevada Supreme Court rejected that argument and again rejected the valuations based on the 2002 reappraisal as unjust, inequitable and unconstitutional.

The Court wrote as follows:

We determined in *Bakst* that the methods used by the Assessor to determine the 2003-2004 property valuations were unconstitutional, and therefore, the assessments based on those valuations were null and void. \* \* \* Because null and void values could not be validly adjusted, and because the adjustment of those unconstitutional values by applying the same factors to each property in 2004-2005 did not address or remedy the 2003-2004 values' unjustness and inequity, the use of factoring does not materially distinguish this case from *Bakst*. \* \* \* [T]he resulting 2004-2005 values were affected by the same unconstitutional infirmities as the 2003-2004 values and, like those values, are unjust and inequitable.

The Court then affirmed the trial court's decision to vacate the unconstitutional 2004/2005 valuations and to establish valuations at their constitutionally mandated 2002/2003 levels for all thirty-five parties in the case. Again, the remaining approximately 8000 residential properties in Incline Village/Crystal Bay were valued in the same way rendering those valuations unjust, inequitable and unconstitutional for the same reasons and on the same grounds. Again this Board's equalization mandate requires that it follow the Supreme Court in setting aside those 2004/2005 valuations and establishing valuations for those properties at their 2002-2003 constitutional levels.

**C. The 2005/2006 tax year**

For the 2005/2006 tax year, the Washoe County Assessor again used the valuations of the 2002 reappraisal that the Nevada Supreme Court twice determined were null, void, unjust, inequitable and unconstitutional. For the 2005/2006 tax year, the Assessor applied an 8% "factor" to increase those null and void valuations. For approximately 900 parcels whose taxpayer owners were parties to the 2005/2006 case, the Carson City District Court vacated the Assessor's 2002 reappraisal valuations, established new valuations at the 2002-2003 constitutional level, and applied the 8% factor to those 2002-2003 level valuations. Again, for the 2005-2006 tax year, the Court decision was limited to the properties of some 900+ individual taxpayers who challenged their valuations, leaving a little more than 8000 residential properties in Incline Village/Crystal Bay with valuations which were again unjust, inequitable and unconstitutional and out of equalization. This Board's equalization mandate requires that it order the valuations of those approximately 7000 properties vacated, reset to their constitutional 2002/2003 levels and adjusted in the same way as the properties of the individual taxpayers who obtained relief for the 2005/2006 tax year.

**D. The 2006/2007 tax year**

As noted above, equalization of valuations for the 2006/2007 tax year for all residential real properties at Incline Village and Crystal Bay has been implemented. The Washoe County Assessor's 2006-2007 valuations have been set aside and valuations have been established at the constitutional 2002-2003 levels. *See Village League; Otto I; Otto II.*

**E. The 2007/2008 tax year**

By the time that the approximately 900 individual valuation cases for the 2007/2008 tax year came before this State Board of Equalization, both the *Bakst* and *Barta*

decisions had been issued. Understanding that the Assessor's valuations were unconstitutional, null and void because they were based on the unconstitutional 2002 reappraisal, this Board set aside the Assessor's valuations, reset the base valuations back to constitutional 2002-2003 levels, and then applied to those 2002-2003 levels the factors for the intervening years: 8% (2005/2006), 2% (2006-2007) and 15% (2007-2008).<sup>3</sup> Again this Board's equalization mandate requires that it set aside the Assessor's 2007-2008 valuations of the remaining approximately 8000 residential properties at Incline Village/Crystal Bay, establish base valuations for all those properties at constitutional 2002-2003 levels and adjust those valuations in the same way as the properties of the individual taxpayers who obtained relief for the 2007/2008 tax year.

### III. EVIDENCE

The evidence supporting Incline Village/Crystal Bay taxpayer grievances is already in the records of this State Board of Equalization and consists of the following:

(1) The administrative record in the individual valuation cases brought for the 2003/2004, 2004/2005, 2005/2006, 2006/2007, and 2007/2008 tax years by Incline Village/Crystal Bay taxpayers,

(2) The administrative records prepared by the Department on behalf of the Board for the judicial review cases in the courts for all five tax years,

(3) The eleven volumes of record on appeal in the *Bakst* case

(4) The thirty-eight volumes of record on appeal in the *Barta* case.

(5) The Tahoe Study

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<sup>3</sup> The 15% factor for 2007/2008 applied only to some properties at Incline Village/Crystal Bay. Other properties had a factor of 1, which meant no change from the previous year. Taxpayers have challenged the constitutionality of the methods used to determine the factors as well as the constitutionality of applying the factor to adjust a different base year. Those challenges remain in the court system pending determination.



(6) The findings and rulings of the Supreme Court in *Bakst, Barta, Village League, Otto I* and *Otto II*.

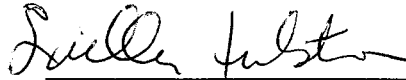
Since this massive record evidence is either a matter of public record or already in the Board's possession, taxpayers have not provided unnecessary duplicated materials. Taxpayers request that the Board make the evidence in its record available at the time of the hearing in this matter.

#### IV. ARGUMENT

Every taxpayer has the right to a uniform and equal rate of assessment and taxation guaranteed by Article 10, Section 1 of the Nevada Constitution. As set forth by the Supreme Court in *Bakst* and *Barta*, a property value determined using unauthorized, unconstitutional, non-uniform methods is necessarily unjust and inequitable. This Board's equalization function serves to effectuate the Constitutional mandate of equal and uniform taxation. In this instance, the Supreme Court has determined more than once that the 2002 mass reappraisal of Incline Village/Crystal Bay residential properties was based on unauthorized methodologies and resulted in inequitable, unjust and unconstitutional valuations. Under the 5-year reappraisal cycle, that unconstitutional mass reappraisal contaminated residential property valuations at Incline Village/Crystal Bay for each of the 2003/2004, 2004/2005, 2005/2006, 2006/2007 and 2007/2008 tax years. The law anticipates that not every taxpayer will seek individual relief from unconstitutional taxation. In such circumstances, the State Board of Equalization is assigned both the power and the ultimate responsibility for equal, uniform and constitutional valuation. This Board met that responsibility for the 2006/2007 tax year. Under the decisions of the Supreme Court, the Writ of Mandamus underlying this proceeding, the statutes, and this Board's own precedent, this Board must complete the equalization process for the 2003/2004, 2004/2005, 2005/2006 and 2006/2007 tax years, set aside the indisputably unconstitutional property valuations for those years for Incline Village/Crystal Bay residential properties and the taxpayer

owners of those properties, establish valuations at constitutional levels and put an end to this long-standing dispute.

Respectfully submitted this 13th day of September, 2012.



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