



WASHOE COUNTY

Integrity Communication Service

www.washoecounty.us

STAFF REPORT

BOARD MEETING DATE: December 15, 2020

DATE: Friday, December 11, 2020

TO: Board of County Commissioners

FROM: Christopher J. Hicks, District Attorney
chicks@da.washoecounty.us

David L. Watts-Vial, Assistant District Attorney
dwatts@da.washoecounty.us

Herbert Kaplan, Deputy District Attorney
Hkaplan@da.washoecounty.us

SUBJECT: Discussion and action directing the payment of interest on certain property tax overpayments for residential properties at Incline Village/Crystal Bay in compliance with the October 21, 2019 Order issued by the District Court in *Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al.*, Case No. CV03-06922, as modified and clarified by the settlement agreement regarding the processing of refunds, and the withholding of the proportionate interest share from the taxing entities in Washoe County. (All Commission Districts.) FOR POSSIBLE ACTION.

SUMMARY

Discussion and action directing the payment of interest on certain property tax overpayments for residential properties at Incline Village/Crystal Bay in compliance with the October 21, 2019 Order issued by the District Court in *Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al.*, Case No. CV03-06922, as modified and clarified by the settlement agreement regarding the processing of refunds, and the withholding of the proportionate interest share from the taxing entities in Washoe County.

WASHOE COUNTY STRATEGIC OBJECTIVE SUPPORTED BY THIS ITEM:

Government Efficiency and Financial Stability
Community confidence in public/government institutions

PREVIOUS ACTION

A series of legal challenges to property tax assessments for properties in the Incline Village/Crystal Bay area of Washoe County began in 2003. The litigations were initiated

AGENDA ITEM # _____

by various groups of taxpayers and involved the decisions of the Washoe County Board of Equalization, the Nevada State Board of Equalization. Some are described below.

On November 12, 2019, the Board of County Commissioners authorized the filing of an appeal of the District Court order, which was duly filed, and the Parties were referred to Supreme Court's Settlement Program.

Most recently, the Board approved a settlement of the case, including dismissal of the appeal to the Nevada Supreme Court, to require the payment of refunds for all residential parcels in Incline Village/Crystal Bay for the 2003-04, 2004-05, and 2005-06 tax years in the total estimated amount of \$56 million.

BACKGROUND

Various legal challenges to property tax assessments of residential properties in the Incline Village/Crystal Bay area of Washoe County have been filed by individuals and groups of taxpayers dating back to 2003.

The case entitled *Village League to Save Incline Village Assets vs. State Board of Equalization* (Case No. CV03-06922) began in November 2003 as a challenge to the constitutionality of property tax assessments in the Incline Village/Crystal Bay area of Washoe County by virtue of the use of methodologies, such as the view of Lake Tahoe. The case was dismissed by the District Court and appealed by the taxpayers in 2004. The Nevada Supreme Court's first substantive decision on the issues in the appeal came nearly five years later. In its March 19, 2009 order, the Supreme Court upheld the dismissal of the taxpayers claims except for the county-by-county "equalization claim." (Case No. 43441). That portion of the 2003 case was returned to the District Court.

After a series of procedural arguments involving the power of the District Court to order the State Board of Equalization to act, the District Court again dismissed the taxpayer's complaint/petition. (Order, April 13, 2010). The taxpayers appealed. The Nevada Supreme Court agreed with the District Court that the proper forum for a taxpayer to request or discuss the need for the adjustment of property valuations is before the State Board of Equalization, but also found that the State Board had not demonstrated that it held a proper public hearing with regard to statewide equalization for the tax years at issue, to wit: 2003-04, 04-05, and 05-06. The case was remanded to the District Court. (Order, February 24, 2012, Case No. 56030). In obedience to the Supreme Court's order, the District Court issued a writ of mandamus to the State Board of Equalization "regarding the failure, or lack, of equalization of real property valuations throughout the State of Nevada ... and to raise, lower or leave unchanged the taxable value of any property for the purpose of equalization." (Order, August 21, 2012, Case No. CV03-06922).

Pursuant to the District Court's writ, the State Board of Equalization held several meetings in 2012. Without making a final decision on statewide equalization, the Board expressed its concern with the assessments of Tahoe properties and ordered the Washoe County Assessor to "reappraise all residential properties located in Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable value." (SBOE decision, February 8, 2013). The taxpayers filed a legal challenge effectively seeking to block the State Board from obtaining information to determine whether the taxes that were assessed were ever in excess of the taxable value. (Petition for Judicial Review, Case No. CV13-00522). The District Court consolidated that new challenge with the existing Village League case and

dismissed the taxpayers' challenge of the reappraisal order. The taxpayers appealed. (July 3, 2013, Sup Ct Case No. 63581).

After 3 1/2 years, the Nevada Supreme Court issued its decision to the challenge of the reappraisal order. The Court found the State Board had no statutory authority to order reappraisals while performing its equalization function. The Court ordered the 2013 State Board equalization order to be vacated and directed the District Court to conduct further proceedings to satisfy the requirements of NRS 361.395. (Opinion, January 26, 2017, Case No. 63581).

Back in the District Court and after some skirmishes about what the Supreme Court's order meant, the Court once again remanded the case to the State Board to "conduct further proceedings pursuant to its statutory authority under NRS 361.395" (Order, July 17, 2017). The taxpayers appealed. (Sup Ct Case No. 73835). The Supreme Court's response to the taxpayer's 4th appeal to the Nevada Supreme Court was that the District Court had properly ordered the State Board to determine the petitioners' equalization grievances. The appeal was dismissed. (November 19, 2018).

In the meantime, the State Board was finally able to meet to make an equalization decision. The meeting, held on August 29, 2017, came more than 8 years after the Nevada Supreme Court decided that such a hearing was due and almost 14 years after the Village League filed its initial lawsuit challenging property tax assessments. The State Board found that no action in equalization was necessary.

The taxpayers filed a petition for judicial review of the State Board's decision in the First Judicial District Court (Carson City.) Ultimately, the case was transferred to Washoe County District Court and assigned to Judge Kathleen Drakulich. Judge Drakulich decided the Village League's challenge of the State Board's equalization order on October 21, 2019. The Court's decision vacated the State Board's equalization decision, ordered the replacement of the 2003-04, 2004-05 and 2005-06 taxable land values for residential parcels in Incline Village and Crystal Bay with 2002-03 taxable land values, and ordered the payment of property tax refunds to all residential property owners in Incline Village/Crystal Bay, with mandated statutory interest, within one year.

On November 12, 2019 the Board of County Commissioners authorized the filing of an appeal of the District Court order. The appeal was filed and the parties were referred to Supreme Court's Settlement Program. In February 2020 the negotiating teams for the parties met in Carson City with Settlement Judge David Wasick and agreed to the outline of a settlement agreement that was to be further fleshed-out and presented to the BCC at the appropriate time for possible approval.

The parties negotiated new timelines for the key components of the settlement by agreeing the County could make the first refunds to taxpayers in July 2021, and allowing the County an interest holiday from July 1, 2021 extending to July 1, 2023, during which time interest will not accrue and the refunds will be made, and after which time interest would again accrue.

The parties' agreement was approved by the Board at its August 4, 2020 meeting. That agreement was subsequently tentatively approved by the District Court.

NRS 354.240 authorizes the county to withhold amounts refunded pursuant to that statute from the subsequent apportionments of revenues from property tax to the other tax entities in the county which levied a tax represented in the combined tax rate. Those tax entities include the Washoe County School District, Incline Village General Improvement District, North Lake Tahoe Fire Protection District, and the State of Nevada. The Washoe County School District has objected to the potential withholding of revenues from future tax revenue distributions.

While NRS 354.220 does not explicitly provide for accrued interest to be included in the refunds being authorized, the District Court has ordered that the refunds include interest at the legal rate. The settlement agreement subsequently approved by the court clarifies the rate of interest. Moreover, NRS 361.486 expressly provides that “interest must be paid on an overpayment of the taxes imposed by this chapter . . .” NRS 361.486(1).

This is not the first refund of property taxes with regard to Incline Village/Crystal Bay properties. In August 2011, the Board considered and approved the withholding of future tax distributions from the other taxing entities which had received funds deriving from and collected in connection with the property taxes ordered to be refunded. In 2011, when addressing that similar refund of real property taxes for the residential property owners in Incline Village/Crystal Bay for the 2006-07 tax year, as a result of an equalization action taken by the County board of Equalization, the Board unanimously voted to withhold future tax distributions to the other affected taxing entities.

Over the course of time, Washoe County and the other tax entities benefitted from the use of the property tax funds provided to them, which the courts have determined to be overpayments. The Board could direct county officials to withhold a proportionate share of the court-ordered interest from the future allocations of property tax revenues from the other affected tax entities.

FISCAL IMPACT

The estimated total cost of the refunds, along with statutorily mandated interest, to be issued by Washoe County is approximately \$56 million, with the breakdown of the tax refund and interest amounts based on the proportion that each taxing agency’s rate represented in the combined tax rate for the affected parcels, in those years as follows:

ESTIMATED ALLOCATION OF TAXPAYER REFUNDS			
Taxing Entity	Refunds	Interest	Total
WASHOE COUNTY	\$ 12,200,000	\$ 11,500,000	\$ 23,700,000
WASHOE CTY SCHOOL DST	10,000,000	9,400,000	19,400,000
NO. LAKE TAHOE F.P.D.	4,500,000	4,200,000	8,700,000
STATE OF NEVADA	1,500,000	1,400,000	2,900,000
INCLINE VILLAGE GID	700,000	600,000	1,300,000
TOTALS	\$ 28,900,000	\$ 27,100,000	\$ 56,000,000

In the event the Board chooses not to withhold any future tax distributions from the other taxing entities, Washoe County would then be responsible for the payment of the entire \$56 million in refunds and interest. If the Board votes to withhold future tax distributions, as addressed in a separate agenda item, but does not withhold a proportionate share of the court-ordered interest from the future allocations of property tax revenues from the other affected tax entities, the amount for which Washoe County would be responsible would be reduced to approximately \$40 million.

The fiscal impact resulting from the required tax refund and interest payments is significant and will require a combination of possible funding measures, including:

- **Budget Reductions:** If this were the only option implemented, it would require an estimated reduction of 10%-20% of the General Fund expenditures over 2-3 years resulting in possible lay-offs of up to 500 County staff positions and/or significant wage and benefit concessions.
- **Reduction of General Fund Balance:** is another potential resource but would fund only a portion of the liability. Budgeted in the current fiscal year at 13.6% of operating expenses, reflects a reduction of \$15.7 million over the prior year. The BCC's policy is to maintain the unrestricted fund balance of 10-17%. The NRS requires a 4% minimum. If the County goes below the minimum it would be put on fiscal watch by the State, and the County's bond rating would be lowered.
- **Reduction of Transfers from the General Fund to Support Other Funds:** This option would only fund a portion of the liability and could include reductions in support to the Indigent Fund, Health District, Capital Improvement Projects, Senior Services, Child Protective Services, and Roads Funds. Transfers to the Debt Service Fund cannot be eliminated due to the County's legal obligations to pay its outstanding debt.
- **Utilize Other Reserves:** The Health Benefits and Risk Management Funds were tapped to pay the refunds in 2011. These funds no longer have large balances that can be accessed. The Risk Management Fund was reduced by \$3 million in FY 2020 for a transfer to the General Fund to pay for COVID-19 impacts. The Health Benefits Fund will be absorbing \$2 million in health insurance increases in calendar year 2021.
- **Increase Revenue by Implementing the 1 Cent Supplemental Government Services Tax:** The Supplemental GST could yield approximately \$13 million annually, however this tax does fluctuate with the economic environment as it is tied to motor vehicle registrations. The BCC can take this action as authorized by NRS 371.043 by adoption of an ordinance.
- **Withhold Future Tax Distributions to the Other Taxing Entities:** State law (NRS 354.220-354.250), authorizes the reduction of future tax distributions when refunds of property taxes that were previously distributed to other taxing entities are ordered. The County Treasurer makes tax distributions five times per year, so reductions would be spread over time based on the claims paid in the prior distribution period.
- **Options evaluated, that are not viable:**
 - Municipal Bankruptcy (not permitted under Nevada State law).
 - Filing insurance claims for this liability.
 - Issuing property tax credits.
 - Borrowing the funding via debt issuance.

RECOMMENDATION

It is recommended that the Board direct the payment of interest on certain property tax overpayments for residential properties at Incline Village/Crystal Bay in compliance with the October 21, 2019 Order issued by the District Court in *Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al.*, Case No. CV03-06922, as modified and clarified by the settlement agreement regarding the processing of refunds, by withholding a proportionate share of the interest paid from the future allocations of property tax revenues to the other affected taxing entities in the county which levied a tax represented in the combined tax rate and directing the treasurer to keep a list of amounts withheld for interest payments.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "I move to approve the payment of interest on certain property tax overpayments for residential properties at Incline Village/Crystal Bay in compliance with the October 21, 2019 Order issued by the District Court in *Village League to Save Incline Assets, Inc., et.al. vs. State of Nevada, et.al.*, Case No. CV03-06922, as modified and clarified by the settlement agreement regarding the processing of refunds, by withholding a proportionate share of the interest paid from the future allocations of property tax revenues to the other affected taxing entities in the county which levied a tax represented in the combined tax rate and directing the treasurer to keep a list of amounts withheld for interest payments."