SUPREME COURT OF NEVADA

Berrum v. Otto, 127 Nev. 372

255 P.3d 1269 (2011) · No. No. 54947 · Decided July 7, 2011

SUMMARY

The Supreme Court of Nevada affirmed a district court writ of mandamus requiring the Washoe County Treasurer to refund excess property taxes paid by Incline Village and Crystal Bay taxpayers for the 2006–2007 tax year. The court held that the taxpayers were not required to pursue statutory protest remedies because they had prevailed before the County Board and State Board of Equalization, and that NRS 360.2935 imposed a duty to refund the overpayments.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, J.; Cherry, J.; Douglas, J.; Gibbons, J.; Parraguirre, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	July 7, 2011
DOCKET	No. 54947
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Washoe County Treasurer appealed a district court order granting the taxpayers' petition for a writ of mandamus and requiring refunds of excess property taxes paid for the 2006-2007 tax year.
STANDARD OF REVIEW	The grant of a writ of mandamus is reviewed for abuse of discretion; related statutory and legal issues are reviewed de novo.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential
PARTIES	Bill Berrum, Washoe County Treasurer v. Charles Otto, Trustee of the Otto Family Trust, Todd Lowe, Trustee of the Lowe Family Trust, V Park, LLC, Similarly situated residential property owners and taxpayers at Incline Village/Crystal Bay, Washoe County, Nevada

TOPICS

property tax · tax refunds · tax collection · administrative law · appellate procedure

PRACTICE AREAS

Property tax · Tax refunds · Administrative law · Appellate procedure

QUESTIONS PRESENTED

1. Whether the taxpayers were required to exhaust the protest and administrative remedies in NRS 361.420 before seeking a writ of mandamus to obtain refunds of excess property taxes.
2. Whether the Washoe County Treasurer had a legal duty to refund excess taxes paid during the stay of the County Board's valuation rollback.
3. Whether the district court properly granted mandamus relief compelling the Treasurer to calculate and refund the overpayments with interest.

HOLDINGS

1. The taxpayers were not required to comply with the protest procedures in NRS 361.420 because, under the unusual procedural circumstances, they had prevailed before the County Board and ultimately the State Board and had no available statutory or legal remedy to obtain a refund.
2. The Treasurer had an affirmative statutory duty under NRS 360.2935 to refund the excess taxes paid during the stay of the County Board's equalization decision.
3. Mandamus was appropriate because the taxpayers lacked another adequate legal remedy and the Treasurer had a duty to issue the refunds.

KEY QUOTATIONS

> *"A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station ... or to control an arbitrary or capricious exercise of discretion."* (at 1272)

> *"Pursuant to NRS 360.2935, "a taxpayer is entitled to receive on any overpayment of taxes ... a refund.""* (at 1275)

FACTUAL BACKGROUND

The taxpayers owned residential property in the Incline Village and Crystal Bay areas of Washoe County. The County Board ordered the 2006-2007 taxable values rolled back to 2002-2003 levels, but a stay prevented implementation while an earlier assessment appeal was pending. After the Supreme Court affirmed the taxpayers' challenge in Bakst and the assessment rolls were corrected, the taxpayers had paid taxes at the unreduced rates and sought refunds. The Treasurer refused to issue refunds, prompting the mandamus proceeding.

PROCEDURAL HISTORY

The County Board of Equalization ordered residential property valuations in Incline Village and Crystal Bay rolled back to 2002-2003 levels, but enforcement was stayed during an appeal concerning earlier tax years. After the stay was effectively lifted by the Supreme Court's decision in State, Board of Equalization v. Bakst, the

Assessor corrected the 2006-2007 assessment rolls. The Treasurer declined to issue refunds, and the district court ordered him to calculate and refund overpayments with interest. The Supreme Court of Nevada affirmed.

DISPOSITION

affirmed

CASES CITED

- State, Board of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006)
- Village League v. State, Board of Equalization, 124 Nev. 1079, 194 P.3d 1254 (2008)
- State, Board of Equalization v. Barta, 124 Nev. 612, 188 P.3d 1092 (2008)
- Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (2006)
- Las Vegas Taxpayer Committee v. City Council, 125 Nev. 165, 208 P.3d 429 (2009)
- Marquis & Aurbach v. District Court, 122 Nev. 1147, 146 P.3d 1130 (2006)
- State v. District Court, 116 Nev. 374, 997 P.2d 126 (2000)
- State of Nevada v. Waterman, 5 Nev. 323 (1869)
- Washoe County v. Golden Road Motor Inn, 105 Nev. 402, 777 P.2d 358 (1989)
- Video Aid Corp. v. Town of Wallkill, 85 N.Y.2d 663, 628 N.Y.S.2d 18, 651 N.E.2d 886 (1995)
- City of Laredo v. South Texas National Bank, 775 S.W.2d 729 (Tex. App. 1989)
- Budget Rent-A-Car of Tulsa v. Tax Commission, 773 P.2d 736 (Okla. 1989)
- Mack v. Estate of Mack, 125 Nev. 80, 206 P.3d 98 (2009)
- Carson Ready Mix v. First National Bank, 97 Nev. 474, 635 P.2d 276 (1981)