WASHOE COUNTY

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STAFF REPORT
BOARD MEETING DATE: February 28, 2023

DATE: Saturday, February 25, 2023

TO: Board of County Commissioners

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

Nathan Edwards, Assistant District Attorney
nedwards@da.washoecounty.gov

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

SUBJECT: Presentation, discussion, and possible action to approve a proposed settlement agreement between Washoe County and the Washoe County School District, the terms of which will result in dismissal by Washoe County School District of the appeal of the District Court's decision in *Washoe County School District v. Washoe County*, in Case No. CV21-00683 in the Second Judicial District Court in Washoe County, Nevada, Supreme Court case no 83592.If approved, this settlement will additionally result in a compromise of Washoe County's withholdings of only the portion of property tax distributions to the Washoe County School District's Debt Service Fund, the approximate amount of $2,500,000, but not to exceed $2,992,000. Also if approved, direct the Washoe County Treasurer to cease, as of the effective date of the agreement, the withholdings from the Washoe County School District's Debt Service Fund and authorize the Chair to execute the proposed settlement agreement. (All Commission Districts.) FOR POSSIBLE ACTION.

SUMMARY

Before the Board is a proposed settlement the appeal of the District Court's decision in *Washoe County School District v. Washoe County*, in Case No. CV21-00683 in the Second Judicial District Court in Washoe County, Nevada, Supreme Court case no 83592.

The attached proposed settlement agreement resolves all issues involved between Washoe County and the Washoe County School District and provides both entities with finality and certainty in connection with the property tax distribution withholdings related

AGENDA ITEM # _____

to the property tax refunds ordered in *Village League to Save Incline Assets et al. v. Nevada*, Case No. CV03-06922.

It is recommended that the Board approve the settlement and authorize the Chair to execute the settlement agreement.

WASHOE COUNTY STRATEGIC OBJECTIVE SUPPORTED BY THIS ITEM:

Government Efficiency and Financial Stability

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 by various groups of taxpayers and involved the decisions of the Washoe County Board of Equalization, the Nevada State Board of Equalizations. After years of litigation, On August 4, 2020, the Board approved a settlement of the case 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.

On February 23, 2021, the Board approved resolution R20-086 directing the Treasurer to make the refunds to the residential parcels in Incline Village/Crystal Bay for the 2003-04, 2004-05, and 2005-06 tax, directing that subsequent apportionments of revenues from property tax to the other taxing entities in the county including the Incline Village General Improvement District, North Lake Tahoe Fire Protection District, the State of Nevada and the Washoe County School District which levied a tax represented in the combined tax rate be withheld.

In a related and very similar action, in August 2011, the Board considered and approved the withholding of future tax distributions from the other Washoe County tax units which had received funds deriving from and collected in connection with the property taxes ordered to be refunded to the taxpayers in Incline Village/Crystal Bay for the 2006/2007 tax year as a result of an equalization action taken by the County board of Equalization.

BACKGROUND

HISTORY OF LITIGATION

After years of litigation surrounding the property taxes in Incline Village/Crystal Bay for tax years beginning in 2003-2004, *Village League to Save Incline Village Assets vs. State Board of Equalization*, Second Judicial District Court Case No. CV03-06922, culminated in an equalization order entered on October 21, 2019, by Judge Kathleen Drakulich. That order vacated the State Board of Equalization's equalization decision in which the State Board had found that no action was required to equalize the values in the Incline Village/Crystal Bay area. The Court ordered the replacement of the 2003-04, 2004-05 and 2005-06 taxable land values for all residential parcels in Incline Village/Crystal Bay with 2002-03 taxable land values, and ordered the payment of property tax refunds to the taxpayers within a 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. After several months of negotiations in the midst of

the COVID-19 pandemic, 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 total potential refunds, along with statutorily mandated interest, was approximately $56 million. The parties' agreement was approved by the Board at its August 4, 2020 meeting.

THE WITHHOLDING ACTION

On February 23, 2021, the Board approved a resolution directing the Treasurer to make such refunds, directing that subsequent apportionments of revenues from property tax to the other taxing entities in the county including the Incline Village General Improvement District, North Lake Tahoe Fire Protection District, the State of Nevada, and the Washoe County School District which levied a tax represented in the combined tax rate be withheld.

The Washoe County School District's potential portion of the refunds totaled approximately $19.5 million, consisting of approximately $10 million in refunded taxes and $9.4 million in accrued interest. The exact amount at issue is uncertain as the refunds are based on taxpayers making a claim for the refund.

The Washoe County School District filed a legal action, *Washoe County School District v. Washoe County*, in Case No. CV21-00683 in the Second Judicial District Court in Washoe County, Nevada, in which the School District challenged Washoe County's ability to withhold from it the future tax distributions due to the unique position it is in regarding receiving funding from taxes. The School District receives property tax distributions in two different ways. First, approximately 2/3 of the total amount is distributed by Washoe County through the State Education Fund. The other 1/3 is distributed directly to the School District to its Debt Service Fund.

The District Court dismissed the School District's case and the School District appealed to the Nevada Supreme Court. That appeal remains pending.

PRIOR CHALLENGE TO WITHHOLDING TO FUND REFUND

In 2006, the Washoe County Board of Equalization took an action to equalize all residential parcels located in Incline Village/Crystal Bay for the 2006-2007 tax year replacing the values assigned to the parcels by the Washoe County Assessor with the values assigned to those properties in 2002-2003. That equalization was eventually upheld by the Nevada State Board of Equalization. Once the Court issued an order requiring the substantial refunds of real property taxes, the Board of County Commissioners in August 2011 authorized the withholding from the tax units of future tax distributions to fund the refunds. That action was then challenged in a lawsuit by the North Lake Tahoe Fire Protection District and the Incline Village General Improvement District. In *N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs*, 129 Nev. 682, 310 P.3d 583 (2013), the Nevada Supreme Court definitively decided that the Board did have the authority to authorize the withholdings. All the withholdings were effectuated to fund the refunds that had been ordered in that case.

SETTLEMENT EFFORTS

The parties in this case have utilized extensive resources in attempting to resolve this matter. In July 2021 the parties entered mediation with the Honorable Elliot Sattler in an attempt to arrive at a mutually agreeable settlement. Unfortunately, those efforts were unsuccessful, and the case proceeded to the Supreme Court. However, after months of continued discussions, the proposed agreement was reached.

PROPOSED SETTLEMENT

The proposed settlement provides as follows:

Washoe County would continue to withhold property tax distributions at 100% of the proportionate share from all tax units involved, with the exception of the withholding from the Washoe County School District Debt Service Fund.

Regarding the Debt Service Fund, the School District would ultimately be responsible for 56% of the total withholdings, with Washoe County being responsible for the remaining 44%. The total possible amount of withholdings from the Debt Service Fund is approximately $6.8 million, of which the county could be responsible for up to $2,992,000 (44% of the total).

By June 21, 2024, after the conclusion of the withholding period, Washoe County and the School district will perform a financial reconciliation to determine the final balance owed based on the total dollar amount of claims paid by Washoe County.

If the amount already withheld from the School District's Debt Service Fund is less than 56% of the total actual refunds apportioned to the School District's Debt Service Fund, then the School District will remit funds to Washoe County so that the total withholdings from the Debt Service Fund will be divided with 56% of the responsibility for Washoe County and 44% of the responsibility for the School District.

If the amount already withheld from the School District's Debt Service Fund is more than 56% of the total actual refunds apportioned to the Debt Service Fund, then the County will remit funds to the School District so that the total withholdings from the Debt Service Fund will be divided with 56% of the responsibility for Washoe County and 44% of the responsibility for the School District.

All pending litigation will be dismissed.

FISCAL IMPACT

It is unknown at this time what the fiscal impact will be as the refunds are based on a claim process pursuant to the Settlement Agreement and Dismissal of Appeal that was adopted by the District Court. The deadline for claims to be submitted is May 1, 2023. The deadline for the claims process and all refunds being paid is June 21, 2024.

The estimated total cost of the refunds to be issued by Washoe County is approximately $56 Million if 100% of the claims are submitted. Of that, Washoe County is directly responsible for $23.8 million, while the School District is responsible for approximately $19.5 million, with that amount being divided between the State Education Fund in the

amount of $12.7 million and the Debt Service Fund in the amount of $6.8 million. In the event all possible claims are submitted and paid, the County would be able to withhold 100% of the $12.7 million and the withholdings from the Debt Service Fund would be divided with the School District responsible for $3,808,000 and the County responsible for $2,992,000.

However, based on the claims that have been submitted to date, it is anticipated that the total dollar amount of refunds will be between 80-90% of the total amount, meaning that the total amount of refunds will be between $44.8 million and $50.4 million. Washoe County's share of the refunds would be between $19 million and $21.4 million. The School District's share for the State Education Fund would be reduced to between $10-11.4 million, while the Debt Service Fund portion would be $5.4-6.1 million. Assuming 80% payout, Washoe County would be responsible for approximately $2,376,000 of that amount, with the School District paying $3,024,000. Assuming 90% payout, Washoe County would be responsible for approximately $2,684,000 of that amount, with the School District paying $3,416,000.

At the conclusion of the refund and withholding process, the total responsibilities of Washoe County and the Washoe County School District will be determined. The Washoe County Treasurer has most likely already withheld from the School District's Debt Service Fund amounts more than the amount for which the School District would ultimately be responsible. The excess amount will be refunded to the School District at that time. In the event the amount withheld by the Treasurer is less than the total amount for which the School District is ultimately responsible, the School District will be responsible to pay to Washoe County that additional amount.

If approved, funding-in an amount not to exceed the maximum agreement amount of $2,992,000, will be included in the associated fiscal year budget. The funding source will be one-time appropriations from the General Fund fund balance.

RECOMMENDATION

It is recommended the Board approve the proposed settlement agreement between Washoe County and the Washoe County School District, the terms of which will result in dismissal by Washoe County School District of the appeal of the District Court's decision in *Washoe County School District v. Washoe County,* in Case No. CV21-00683 in the Second Judicial District Court in Washoe County, Nevada, Supreme Court case no 83592; a compromise of Washoe County's withholdings of only the portion of property tax distributions to the Washoe County School District's Debt Service Fund, the approximate amount of $2,500,000, but not to exceed $2,992,000. Also if approved, direct the Washoe County Treasurer to cease, as of the effective date of the agreement, the withholdings from the Washoe County School District's Debt Service Fund and authorize the Chair to execute the proposed settlement agreement.

POSSIBLE MOTION

If the Board wishes to approve the proposed settlement agreement, a possible motion would be:

> *I move to approve the proposed settlement agreement between Washoe County and the Washoe County School District, the terms of which will result in dismissal by Washoe County School District of the appeal of the District Court's decision in*

Washoe County School District v. Washoe County, in Case No. CV21-00683 in the Second Judicial District Court in Washoe County, Nevada, Supreme Court case no 83592; a compromise of Washoe County's withholdings of only the portion of property tax distributions to the Washoe County School District's Debt Service Fund the approximate amount of $2,500,000, but not to exceed $2,992,000. Also if approved, direct the Washoe County Treasurer to cease, as of the effective date of the agreement, the withholdings from the Washoe County School District's Debt Service Fund and authorize the Chair to execute the proposed settlement agreement.