



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: February 23, 2021

DATE: Thursday, February 18, 2021

TO: Board of County Commissioners

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SUBJECT: Discussion and action directing the payment of interest in the estimated amount of \$27,100,000 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 from subsequent apportionments of property tax revenues of the proportionate interest share from the taxing entities in Washoe County including the Incline Village General Improvement District, North Lake Tahoe Fire Protection District, the State of Nevada and the Washoe County School District. (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

AGENDA ITEM # _____

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, and the Nevada State Board of Equalization.

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, on August 4, 2020, 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, of that \$23.7 million is attributable to Washoe County, and the remaining \$32.3 million represents the amount attributable to the other taxing entities. The following table provides a 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 the refunded years:

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 estimated \$56 million in refunds and interest. If the Board votes to withhold future tax distributions, as addressed in a separate item on today’s agenda, 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 total amount for which Washoe County would be liable to pay would be approximately \$40 million. The fiscal impact resulting from the required tax refunds and interest payments is significant and requires a combination of funding sources, as outlined below.

- **Reduction of General Fund Balance:** is a potential source for payment of the liability. As a result of the County's audited financial results for the fiscal year ended June 30, 2020, and the Board of County Commissioners approval of the legal settlement agreement, the County has restricted \$23.7 million of General Fund balance. This amount represents the portion of the refunds and interest attributable to Washoe County. The remaining unassigned General Fund balance at the end of fiscal year 2020, was \$68,318,785.

A certain amount of fund balance is needed through-out the year for cash flow purposes so that the County can pay its bills, which average more than \$28 million per month. In the current fiscal year 2021, General Fund unassigned fund balance is budgeted at 13.6% of operating expenses. If an additional use of fund balance were appropriated for payment of the full \$56 million in refunds and interest, the County's General Fund balance would likely be reduced to below 10% of budgeted operating expenses. The BCC's policy is to maintain the unrestricted fund balance of between 10% and 17%, the Government Finance Officers Association recommends 15% (60 days of working capital), and NRS requires a minimum fund balance of 4%. If the County goes below the minimum it would be put on fiscal watch by the State, and the County's bond rating would likely be lowered. Given those reasons, as well as the continuing economic uncertainties and response costs related to the COVID-19 pandemic, reducing the fund balance by such magnitude is not recommended.

- **Budget Reductions:** If this option were implemented, as the only option, it would require an estimated reduction of 10% of General Fund budgeted expenditures over 2 years, which would be the equivalent of over 200 County staff positions and/or significant wage and benefit concessions, and/or reductions in other operating costs and General Fund support to County programs.
- **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. The Board discussed this option in its strategic planning workshop in January 2021 and was not in favor of exercising this option at this time.
- **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.

The estimated cash flow impact of the refunds for parcels in the Incline Refund project still held by original owners, required to be paid within the first six months per the settlement agreement, is \$18,620,648 to be paid between July 1, 2021 and December 31, 2021, by Washoe County upfront, pending possible reimbursement from withholdings of future tax distributions. This amount represents about 33% of the total estimated refund impact. The table below shows each agency's estimated liability to be paid in the first six months if the determination is made to withhold from the agencies, including the tax amount and interest.

ESTIMATED REFUNDS DUE BY DECEMBER 31, 2021 ALLOCATED BY TAXING ENTITY	
WASHOE COUNTY	\$ 7,893,400
WASHOE CTY SCHOOL DST	6,472,259
NORTH LAKE TAHOE F.D.	2,875,152
STATE OF NEVADA	966,433
INCLINE VILLAGE G.I.D.	413,404
TOTAL	\$ 18,620,648

RECOMMENDATION

It is recommended that the Board direct the payment of interest in the estimated amount of \$27,100,000 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 from subsequent apportionments of property tax revenues of the proportionate interest share from the taxing entities in Washoe County including the Incline Village General Improvement District, North Lake Tahoe Fire Protection District, the State of Nevada and the Washoe County School District.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "I move to direct the payment of interest in the estimated amount of \$27,100,000 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 from subsequent apportionments of property tax revenues of the proportionate interest share from the taxing entities in Washoe County including the Incline Village General Improvement District, North Lake Tahoe Fire Protection District, the State of Nevada and the Washoe County School District."