

Incline tax issue prompts concerns about state impacts

By Susan Voyles
svoyles@rgj.com

After a succession of rulings in favor of Incline Village property taxpayers, Washoe County Treasurer Bill Berrum says the Nevada Supreme Court has gone down a path that he fears could undermine taxable property values across Nevada, devastating local governments from Washoe County to Boulder Dam.

In ruling on issues Berrum describes as technicalities, Berrum said the Supreme Court has ignored the high property values at the lake. Court orders rolling back taxable property values at the lake to 2003, he said, have resulted in Incline Village and Crystal Bay homeowners being taxed on 40 percent of their property values while the rest of the county is being taxed at 70 percent.

And in other counties, Berrum said the ratio might be even higher.

"I have people grabbing me by the shirt and saying 'are you kidding me?'" Berrum said of the inequity between the lake and "valley" taxpayers. "The Supreme Court is supposed to be of superior intellect and judgment. For them to make these decisions blows me away."

Berrum expects other taxpayers eventually to revolt and file their lawsuits.

And if they succeed in rolling back property values across the state in line with those at Incline, he said this scenario "could kill governments here in Nevada." Property taxes provide a large percentage of revenues for local schools, cities and counties as well as a smaller proportion for the state.

With a number of Incline cases pending, Nevada Supreme Court Chief Justice James Hardesty, who has written the Incline opinions for the court, said he is restricted in commenting in any detail.

"The Supreme Court's responsibility is to interpret the state Constitution and rule on cases as they are presented to us," Hardesty said. "We did that. I can't comment on pending proceedings."

Given the millions of tax dollars at stake, "one has to have more than a small degree of sympathy for those caught in the middle," said Steve Johnson, a law professor at the Boyd School of Law in Las Vegas, speaking of the county treasurer and County Assessor Josh Wilson.

First domino

In December 2006, the Supreme Court knocked over the first domino in deciding the Bakst case and ordering property tax refunds for 17 Incline property owners who had appealed their property values through county and state boards of equalization and then to the courts.

The taxpayers had protested methods used by the assessor to judge Lake Tahoe views, beaches and torn-down homes. The court ruled those methods were unconstitutional because they were not approved by the state. The court ordered land values be rolled back to 2003, reflecting values before a mass appraisal, using the nonsanction methods, was used for tax year 2003-04 and the next four tax years.

In Bakst and in cases for the next two tax years, the courts have upheld the initial reasoning and granted refunds, plus interest, for those who took their appeals to court.

Johnson said the Bakst case was really aimed at the Nevada Tax Commission for failing to create regulations for setting lake, beach and other values.

Speaking for the Village League to Save Incline Assets, Reno lawyer Suellen Fulstone said the villagers were entitled to have their taxes calculated the same way "as others across the state."

Berrum, however, said the court overlooked extremely valuable property at Lake Tahoe. In the 1990s, billionaires such as casino mogul Steve Wynn and former junk bond king Michael Milken tore down multi-million dollar homes to build even bigger ones. That set in motion higher prices paid for real estate across the community, he said.

Berrum said the assessor's methods in judging lake views and sandy beaches were only techniques or tools used to capture the big prices being paid.

In isolation, Johnson said the assessor's office, then held by Bob McGowan, was making reasonable decisions but so was the court. "The situation is difficult," he said.

While the treasurer talks of the court going off on a technicality, "that technicality is the Nevada Constitution," Johnson said. "Bakst was a unanimous decision, correctly reasoned and decided."

Berrum made his comments just after writing checks for \$4.3 million, including interest, to 830 Incline taxpayers for their 2005-06 property tax refunds. In all, he said taxpayers who have appealed and won their cases in court have been paid \$6 million in refunds and 6 percent interest.

But that could be just the beginning.

Equalization disputes

For tax year 06-07, the county board of equalization, in following the intent of the Bakst decision, equalized values and ordered property value reductions for all 9,000 homeowners at Incline and Crystal Bay. After the county assessor appealed to the state board, the state board tried to send the case back to the county board.

But at the Village League's request, the Supreme Court intervened and ordered the state board to hear the appeal. A date has not yet been set. When initially heard two years ago, county finance officials estimate the cost of those refunds to the county and school district at \$12-\$13 million.

And on March 19, the Supreme Court sent back to Washoe District Court a case on how to handle equalization disputes between counties that dated back to the Bakst year of 2003-04.

That could open the door for tax refunds all Incline residents for possibly anywhere from one to five years. And that would be devastating, Berrum said.

In that five-year old case, the Supreme Court ruled no administrative process existed for Incline residents to protest much higher property values for their lake-front homes than the values set for similar lake-front homes in Douglas County.

The Village League calls it a "sledgehammer" of a decision.

County officials, however, say they expect the district court to turn the Washoe/Douglas issue over to the state board of equalization to decide. And county officials cheered other parts of the case that upheld a long established procedure for taxpayers to exhaust their administrative processes first.

Cases won

In exhausting those remedies, however, the Village League has won tax cases for three tax years in a row.

In the most recent case, county lawyers urged the court to hurry up a decision to lesson the interest costs, knowing they'd lose. "It has been an issue that has been decided and put to rest," said David Creekman, assistant deputy district attorney.

The county also cheered the U.S. District Court in Reno which dismissed a lawsuit this week from the Incline tax rebels, saying federal court is the wrong venue for tax disputes with the state. Judge Kent Dawson said the way states enforce tax levies "should be interfered with as little as possible."

If the judge is right, villagers will get justice in the state agencies and courts, said Maryanne Ingemanson, village league president. But just in case, she said the league is preparing to appeal to the 9th Circuit Court of Appeals. "This is the first step in a march by the Village League to the U.S. Supreme Court, if need be," she said.

#