

1 CASE NO. 09 OC 00494 1B

2 DEPT. 2

REC'D & FILED

2010 MAY 24 PM 5:08

M. KAYE  
ALAN SCALE

BY \_\_\_\_\_ CLERK  
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY

9 WASHOE COUNTY, NEVADA, a  
10 political subdivision of the State of  
11 Nevada,

11 Petitioner,

12 vs.

13 STATE OF NEVADA, STATE BOARD  
14 OF EQUALIZATION; CERTAIN  
15 TAXPAYERS (UNIDENTIFIED);  
16 CHARLES E. OTTO and V PARK, LLC,  
17 individual taxpayers identified as  
18 among the group of CERTAIN  
19 TAXPAYERS;

17 Respondents.  
18 \_\_\_\_\_ /

ORDER GRANTING MOTION TO  
DISMISS AMENDED PETITION FOR  
JUDICIAL REVIEW

ORDER GRANTING MOTION FOR  
ORDER DISPENSING WITH SERVICE  
OF PLEADINGS AMONG TAXPAYER  
RESPONDENTS

19 Charles E. Otto and V Park LLC move to dismiss Washoe County's amended  
20 petition for judicial review on grounds of lack of subject matter jurisdiction and  
21 insufficiency of service of process. Otto and V Park argue Washoe County has not  
22 complied with NRS 233B.130 or this court's January 15, 2010 order that it name all  
23 affected taxpayers.

24 Washoe County filed an amended petition for judicial review in which it named  
25 "certain taxpayers" as respondents. NRS 233B.130(2)(a) requires petitions for judicial  
26 review "name as respondents ... all parties of record to the administrative hearing." This  
27 court's January 15, 2010 order stated "Washoe County failed to comply with NRS  
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1 233B.130(2) by failing to name in the petition all the affected taxpayers.”<sup>1</sup> The court  
2 ordered Washoe County to “amend its petition to name all affected taxpayers....”

3 The court afforded Washoe County an opportunity to correct its failure to name  
4 all parties of record in its petition. Washoe County failed to take advantage of the  
5 opportunity as its amended petition does not name any taxpayers. The failure to name  
6 all parties of record to the administrative proceeding violates NRS 233B.130(2)(a). The  
7 failure to name all affected taxpayers violates this court’s January 15, 2010.

8 Dismissal is not mandatory when a party substantially complies with the  
9 technical requirements of NRS 233B.130. Washoe County has not substantially  
10 complied with the requirement that its petition name all parties of record to the  
11 administrative proceeding.<sup>2</sup> Therefore, the motion to dismiss is granted.

12 NRS 233B.130(5) requires service of the petition for judicial review upon every  
13 party within 45 days of the filing of the petition. Chapter 233B does not provide  
14 requirements for the method of service. The rules of civil procedure govern all civil  
15 suits.<sup>3</sup> NRCP 4 requires personal service. Washoe County did not personally serve the  
16 parties of record.

17 Mailing a condensed copy of the amended petition to the taxpayers’ address of  
18 record for the tax year in question, i.e., 2006, is inadequate to put the taxpayer parties of  
19 record on notice because: 1) The amended petition does not name any taxpayers so a  
20 taxpayer who had not actively participated in the matter may not know if he or she could  
21 be affected by the matter; 2) the condensed version of the amended complaint is difficult  
22 to read; 3) a taxpayer that could read the body of the amended petition but had not  
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24 <sup>1</sup>P. 4, l. 2 – 3.

25 <sup>2</sup>*Civil Serv. Comm’n for Reno v. Second Judicial Dist. Court of Nev.*, 118 Nev. 186, 190  
26 (2002).

27 <sup>3</sup>NRCP 1.

1 actively participated in the matter may not know if he or she could be affected by the  
2 matter; 4) Washoe County did not provide any information to the taxpayers regarding  
3 the necessity of filing a notice of intention to participate, or an opposition, the deadline,  
4 or where such documents would need to be filed; and 5) mailing the notice to the  
5 taxpayer's 2006 address may deprive some taxpayers of any notice. The petition was  
6 filed November 16, 2009 – 199 days ago – well past the 45 day requirement.

7 Washoe County has not substantially complied with the service requirement of  
8 NRS 233B.130(5). Therefore, the petition to dismiss is granted.

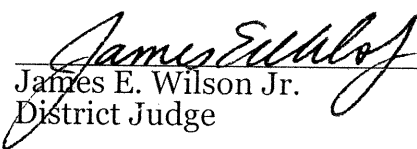
9 IT IS ORDERED Washoe County's Amended Petition for Judicial Review is  
10 dismissed.

11 Mr. Otto and V Park, LLC move to dispense with service of pleadings among  
12 taxpayer respondents under NRCP 5(c) because of the unusually large number of  
13 defendants. Good cause appearing,

14 IT IS ORDERED the motion is granted. Mr. Otto and V Park, LLC need not serve  
15 other taxpayer respondents in this action.

16 The other pending motions appear to be moot. If a party disagrees that party is  
17 ordered to file a request to submit.<sup>4</sup>

18 May 24, 2010.

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21 James E. Wilson Jr.  
22 District Judge  
23  
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27 <sup>4</sup>FJDCR 15(6).

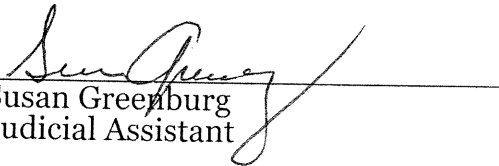
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of The Honorable James  
3 E. Wilson, and I certify that on this 25 day of May, 2010, I deposited for mailing at  
4 Carson City, Nevada, or caused to be delivered by messenger service, a true and correct  
5 copy of the foregoing order and addressed to the following:

6 Dawn Kemp  
7 Office of the Nevada Attorney General  
8 100 N. Carson St.  
9 Carson City, NV 89701-4717

10 David Creekman  
11 Washoe County Deputy District Attorney  
12 P.O. Box 30083  
13 Reno, NV 89520

14 Suellen Fulston  
15 6100 Neil Road, Suite 555  
16 Reno, NV 89511

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Susan Greenburg  
Judicial Assistant