attempt to renew its tax disputes with the Bakst Appellant Interveners is precluded by the application of the judicial doctrine of res judicata.

In the property tax context, a very similar if not exact question arose in Kentucky as is present before the court in this case. Specifically, the question arose as to whether the State Board of Equalization exceeded its equalization power when the State Board of Equalization attempted to raise the value of specific parcels of property even though the property owner had obtained a judgment from a court fixing their taxable value.

In *McCracken Fiscal Court v. McFadden* and *Reynolds v. Miller*, 122 S.W.2d 761 (1938), the Kentucky court of appeals addressed the question posed before the Nevada Supreme Court which is whether the State Board can reappraise and reassess specific parcels of property during its equalization process even though the property owners had received a favorable judgment from a court determining their taxable value.

In *McCracken*, the appellate court articulated the issue before the court as follows:

> "Is what effect should be given a judgment of a quarterly court fixing the valuation for taxation of a citizens property when there was a subsequent increase in the valuation of all property in a county by an order of the Department of Revenue sitting as the State Board of Equalization and Assessment."
>
> *McCracken* @ 762.

Just like the Bakst Appellant Interveners, the property owner in *McCracken* went to the court and obtained a favorable judgment setting his tax value. Specifically, the property owners in *McCracken*, just like the Bakst Appellant Interveners received a favorable judgment which determined their property tax liability. In *McCracken*, the court described the favorable judgments as follows: "...after hearing that Court-rendered judgments fixing the face cash value of their property and ordered and directed that the county authorities use that valuation in calculating their taxes." *McCracken* @ 762.

In *McCracken*, the Attorney General argued to the appellate court "that the State Board, as the supreme tax assessing board, may raise the valuations fixed by the quarterly

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court; or rather in a particular case, that under the authority of its action [State Board] in ordering a blanket raise in the total valuation of the county, the taxing agents of the county may raise the individual taxpayer proportionately and the [property owner]... may not enjoin them from doing so." *McCracken* @ 762.

In *McCracken*, the Attorney General took the position that, "[h]ence, when the State Board ordered an increase of 15% in that plane, the judgment was no bar to raising appellant's valuation the same as all others were raised who had not appealed to court." *McCracken* @ 764.

The positions and arguments of the Attorney General in *McCracken* are almost identical to the arguments of the Attorney General in this case on behalf of the State Board.

The appellate court in Kentucky rejected all of the arguments of the Attorney General in that case and held that the State Board of Equalization was prohibited from increasing the taxable value of the specific properties which previously had their taxable value established by a court of competent jurisdiction. The appellate Court in *McCracken* reasoned that when the court action was proceeding that all parties were represented and were aware of the nature of the court action that resulted in the judgment. Moreover, because the property owner had obtained a judgement from a court of competent jurisdiction, the State Board could not disregard the Court judgments as to allow the State Board to do so would in effect be treating the Court as part of the executive branch, or more specifically, an inferior tribunal to the Kentucky State Board of Equalization. While the reasoning in *McCracken* is different than the reasoning in *Sunnen,* the result is the same in that once a taxpayer obtains a final judgement from a court of competent jurisdiction. that judgement is final and cannot be disturbed either by an equalization process or otherwise. To conclude otherwise would exalt the State Board above the judicial branch of government with regard to a specific case in controversy and candidly, there is simply no legal or constitutional justification to support that result.

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Therefore, contrary to the assertions of the State Board, the final judgments in *Bakst I* and *Bakst II* prohibit the State Board from reappraising and initiating a contested case process all over again for the 2003/04, 2004/05 and 2005/06 tax years.

2. The Doctrine of Collateral Estoppel Bars the State Board from Relitigating the Issues and Facts Addressed and Determined in *Bakst I* and *Bakst II.*

The State Board in its Responsive Brief claims that due to the fact that the assessment process is different from the equalization process, collateral estoppel is not appropriate. *See* Responsive Brief @ 19. The Bakst Appellant Interveners previously addressed in this brief the fact that whether the local assessor is assessing property or the State Board is performing its equalization function, the value to be determined is the parcel's respective taxable value. Accordingly, while the processes are separate and distinct, the goal is the same: to derive a property's taxable value.

The United States Supreme Court in *Sunnen* made it clear that the application of collateral estoppel in tax cases act as an estoppel on "only those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." *Sunnen* @ 598-599. The Bakst Appellant Interveners in their Opening Brief outlined for the Court all the issues regarding equalization and remand/reappraisal which were before the Nevada Supreme Court in *Bakst I* and *Bakst II. See* Opening Brief @ 14-16. As provided in *Sunnen*, collateral estoppel is appropriate when:

> The second suit is identical in all respects with that decided in the first proceeding, and when the controlling facts and applicable legal rules remain unchanged.
>
> *Sunnen* @ 598.

As stated in the Bakst Appellant Interveners' Opening Brief, the exact same issues regarding equalization pursuant to NRS 361.395 as well as whether a reappraisal upon remand was an appropriate remedy to address the Assessor's utilization of unconstitutional appraisal methodologies. The Supreme Court after hearing such arguments entered a

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judgment in favor of the Bakst Appellant Interveners ordering a refund of over-paid property taxes. The issues, legal and factual, raised in *Bakst I* and *Bakst II,* related to equalization are identical in all respects to the issues pertinent to the February 8, 2013 equalization order of the State Board. Therefore, since the identical issues and similar points were in issue in *Bakst I* and *Bakst II,* the State Board is collaterally estopped from raising the same issues again in this litigation as well as estoppel pursuant to res judicata.

E. The Bakst Appellant Interveners Do Not Have a Remedy Adequate or Otherwise to Address the February 8, 2013 Order of the State Board.

The State Board argues that in fact the Bakst Appellant Interveners do have an adequate remedy at law because NRS 361.395 requires property owners be afforded a hearing before any increase in taxable value becomes final. While that point addressed by the State Board is true, that was not the point raised by the Bakst Appellant Interveners' Opening Brief. As provided in the Bakst Appellant Interveners' Opening Brief, the State Board is a board of special and limited jurisdiction. *See First Am. Title Co. v. Nevada Tax Commission*, 91 Nev 804, 543 P.2d 1344 (1975). The State Board simply does not have the statutory authority to address questions outside of determinations of taxable value and whether that taxable value exceeds the property's respective full cash value. The Bakst Appellant Interveners Opening Brief argued that while the State Board does have express authority to address valuation questions, the State Board has no authority to address points of law that have been raised as a result of the State Board issuing its February 8, 2013 Order. Specifically, there is no statutory or constitutional authority that would permit the State Board the legal authority in performing its quasi-judicial function to address questions such as retro-active billings, modifications of abatement calculations or the application of res judicata or collateral estoppel within the context of the February 8, 2013 Order. The State Board simply cannot address these issues and other similarly-related issues. Accordingly, there is no remedy which the Bakst Appellant Interveners have to address their grievances with regard to the February 8, 2013 Order. The State Board's

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only response to this point is that if the Bakst Appellant Interveners' values are raised by the State Board then all parties whose taxable value is raised will have a hearing. *See* NRS 361.395. The State Board's process set forth in NRS 361.395 is to address valuation issues and not the factual and legal issues raised by the February 8, 2013 Order.

F. The State Board is Legally Prohibited from Retroactively Applying its Equalization Regulations to Support its February 8, 2013 Order Which Requires the Assessor to Reappraise the Bakst Appellant Interveners' Residential Properties.

The Bakst Appellant Interveners in their opening brief provided authorities for the Nevada Supreme Court's consideration that the State Board's regulation does not have the force of law until such regulation had proceeded through the statutory process in Chapter 233B. (*See* NRS 233B.0395-NRS 233B.115 and is then filed with the Secretary of State.) The State Board in its responsive brief does not refute that the State Board is prohibited from retroactively applying its regulations but instead changes its position and alleges that because there is no process for equalization set forth in NRS 361.395, that the State Board should be allowed to adopt any reasonable methodologies to perform its equalization function. *See* Respondents' Opening Brief @ 25-29.

First, NRS 361.395 does instruct the State Board on the process to be followed to equalize values pursuant to NRS 361.395. As set forth in NRS 361.395(1)(b), the State Board is to review the tax rolls as adjusted by the County Board of Equalization and based upon such review raising or lowering the respective taxable values. That is the statutory process which was not followed by the State Board in this case. Nonetheless, it is well established that if a statutory process exists for equalization, that process must be followed. *See Loup City Public Schools v. Nebraska Dept. Of Revenue,* 252 Neb. 387, 562 N.W.2d 551 (1997). Failure to follow the statutory process of equalization voids the State Board's actions in that regard. *Id.* @ 389.

The Bakst Appellant Interveners adamantly dispute the characterization of the State Board that a second reappraisal of their homes for the 2003/04, 2004/05 and 2005/06 tax

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years is reasonable. The State Board during pendency of *Bakst I*, *Bakst II* and the balance of the proceedings in the Incline Village/Crystal Bay matters had every possible opportunity to put the homeowners or courts on notice that the adjudication of the specific tax cases filed pursuant to NRS 361.410 and NRS 361.420 were not in fact final due to future equalization actions of the State Board. The State Board never told the homeowners, their counsel or the courts for that matter that the equalization process in NRS 361.395 could "change" the property owner's taxable values that were being administratively and judicially litigated. To subject the Bakst Appellant Interveners to a second reappraisal could in no way ever be construed as "reasonable."

CONCLUSION

The Bakst Appellant Interveners have previously obtained favorable judgments from the Nevada Supreme Court and there is no authority permitting the State Board the ability to disturb those judgments in any regard. Accordingly, the District Court's decision dismissing the petition for judicial review should be reversed with directions to exclude the Bakst Appellant Interveners from the scope and application of the February 8, 2013 Order on equalization.

Respectfully submitted this 26th day of March, 2014.

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ATTORNEY CERTIFICATION

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman size 13 font.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7), it is either: Proportionally spaced, has a typeface of 13 points or more and contains 5,865 words and 686 lines of text.

3. Finally, I hereby certify that I have read this Respondents' Reply Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 26th day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 26th day of March, 2014, I caused to be served a true and correct copy of the foregoing APPELLANTS' REPLY BRIEF in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC.; MARYANNE INGEMANSON, Trustee of the LARRY D. & MARYANNE B. INGEMANSON TRUST; DEAN R. INGEMANSON, individually and as Trustee of the DEAN R. INGEMANSON TRUST; J. ROBERT ANDERSON; LES BARTA; KATHY NELSON, individually and Trustee of the KATHY NELSON TRUST; ANDREW WHYMAN; ELLEN BAKST; JANE BARNHART; CAROL BUCK; DANIEL SCHWARTZ; LARRY WATKINS; DON & PATRICIA WILSON; and AGNIESZKA WINKLER, Appellants, vs. THE STATE OF NEVADA, BOARD OF EQUALIZATION; WASHOE COUNTY; WASHOE COUNTY TREASURER; WASHOE COUNTY ASSESSOR; NORMA GREEN, CHURCHILL COUNTY ASSESSOR; and CELESTE HAMILTON, PERSHING COUNTY ASSESSOR, Respondents.	No.: 63581

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APPELLANTS' REPLY BRIEF

Appeal from Dismissal of a Petition for Judicial Review
Second Judicial District Court

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STATE STATUTES (cont'd)

COME NOW Appellants, Ellen Bakst, Jane Barnhart, Carol Buck, Daniel Schwartz, Larry Watkins, Don & Patricia Wilson and Agnieszka Winkler, hereinafter referred to as the Bakst Appellant Interveners, by and through its counsel of record, Norman J. Azevedo, Esq., and hereby submit Appellants' Reply Brief pursuant to NRAP 28.

INTRODUCTION

The State Board of Equalization (State Board) raises various arguments why it was appropriate for the District Court to dismiss the Petition for Judicial Review which in turn authorizes the State Board to continue with its order to reappraise the Bakst Appellant Interveners' homes in Incline Village and Crystal Bay. The main thrust of the State Board's argument is that the equalization process set forth in NRS 361.395 is neither a contested case nor a quasi judicial matter because the Washoe County Assessor's (Assessor) determination of taxable value pursuant to NRS 361.260(7) is different both in process as well as result than the State Board's equalization of property values pursuant to NRS 361.395. *See* Respondents Brief @ 11.

Therefore, even though the State Board is required to establish and equalize the property's "taxable" value which is the same value that the Assessor is required to calculate, the State Board argues to the contrary. Specifically, the State Board argues that the District Court's dismissal of the petition and objections was appropriate based upon the following points:

1) The State Board's process that resulted in the February 8, 2013 Order was a legislative action and not an adjudicatory function of the State Board and therefore no judicial review is appropriate.
2) The State Board's process that resulted in the February 8, 2013 Order was not a "contested case" and therefore the remedy set forth in NRS 233B.130 is inappropriate to address the February 8, 2013 Order.
3) The State Board is not collaterally estopped from determining a "new" equalization value for the Bakst Appellant Interveners even though the

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Bakst Appellant Interveners all have a final judgment for each tax year because the "legal principles and rules applying to assessment and equalization are different and derive a different value for ad valorem tax purposes." Respondents' Brief @ 19.

4) The Bakst Appellant Interveners do have a remedy to review a State Board action if the State Board raises the Bakst Appellant Interveners' taxable value.

5) The State Board has a duty to equalize statewide and the State Board should be entitled to wide latitude and deference enabling the State Board to apply its regulations retroactively because to "reappraise" for Bakst Appellant Interveners, all of whom had a final decision, is a reasonable process.

ARGUMENT

A. The State Board's Function Derives the Identical Taxable Value that the Assessor's Determination of a Homeowner's Taxable Value.

The State Board argues that the value determined by the equalization process set forth in NRS 361.395 is different both in the value being determined and the administrative process utilized to determine the supposed "different values." Respondents' Brief @ 19. A review of the relevant statutory authorities will show that the State Board's statements and conclusions in this regard are contrary to the express language of NRS 361.260 as well as the express language of NRS 361.395 and NRS 360.250. While the statutory processes applicable to local assessors and the State Board are both separate and distinct, the objective is the same to determine the "taxable value" for all parcels situate in Nevada.

In *State ex rel. State Board of Equalization v. Bakst*, 122 Nev. 1403, 148 P.3d 717 (2006) "*Bakst I*", the Nevada Supreme Court provided the backdrop by which the ad valorem property tax system must be constitutionally administered. Specifically, the Nevada Supreme Court held as follows:

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> Article 10, Section 1 of the Nevada Constitution declares that "[t]he Legislature shall provide by law for a **uniform and equal rate of assessment and taxation** and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory.
>
> *See Bakst @* 722. *Emphasis added.*

As such, whether the Assessor is determining a homeowner's taxable value or whether the State Board is discharging its equalization function pursuant to NRS 361.395, the purpose of all administrative processes set forth in Chapter 361 of the Nevada Revised Stautes is to derive the exact same value, namely the respective homeowner's "taxable" value as provided for in NRS 361.227.

As part of the uniform tax system, NRS 361.260(1) requires the Assessor to determine all property's "taxable value" as prescribed by NRS 361.227(1). Accordingly, the Assessor, or in this case, the Washoe County Assessor, is charged with the obligation of determining every home's "taxable value" which is not the home's market value or full cash value. *See* NRS 361.227(5).

Once the Assessor determines a home's taxable value, then the State Board is required during its "annual session" of the State Board to review the tax rolls and establish the "taxable value" of all property in the State. NRS 361.395 provides as follows:

> **Equalization of property values and review of tax rolls by State Board of Equalization; notice of proposed increase in valuation.**
>
> 1. During the annual session of the State Board of Equalization beginning on the fourth Monday in March of each year, the State Board of Equalization shall:
>
> (a) Equalize property valuations in the State.
>
> (b) Review the tax rolls of the various counties as corrected by the county boards of equalization thereof and raise or lower, **equalizing and establishing the taxable value of the property**, for the purpose of the valuations therein established by all the county assessors and county boards of equalization and the Nevada Tax Commission, of any class or piece of property in whole or in part in any county, including those classes of property enumerated in NRS 361.320.
>
> 2. If the State Board of Equalization proposes to increase the valuation of any property on the assessment roll:
>
> (a) Pursuant to paragraph (b) of subsection 1, it shall give 30 days' notice to interested persons by first-class mail.
>
> (b) In a proceeding to resolve an appeal or other complaint before the Board pursuant to NRS 361.360, 361.400 or

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> 361.403, it shall give 10 days' notice to interested persons by registered or certified mail or by personal service.
> A notice provided pursuant to this subsection must state the time when and place where the person may appear and submit proof concerning the valuation of the property. A person waives the notice requirement if he or she personally appears before the Board and is notified of the proposed increase in valuation.
>
> *Emphasis added.*

Therefore, contrary to the assertions of the State Board, the equalization process contemplated in NRS 361.395 is intended to establish the exact same value as the process established by the Assessor which is the taxable value of all property situate in Nevada both real or personal/possessory.

The Nevada Legislature as well as this Court has recognized that the State and its political subdivisions are required to follow the same uniform set of rules when determining a property's taxable value. NRS 360.250(1) provides:

> Powers and duties of Nevada Tax Commission concerning assessment of property and collection of taxes; sharing information; certificate of compliance with regulations; penalty for falsifying certificate; undercollections.
> 1. **The Nevada Tax Commission shall adopt general and uniform regulations governing the assessment of property by the county assessors of the various counties, county boards of equalization, the State Board of Equalization and the Department**. The regulations must include, without limitation, standards for the appraisal and reappraisal of land to determine its taxable value.
>
> *Emphasis added.*

Finally, the Nevada Tax Commission has not adopted any regulations applicable to tax years 2003/04, 2004/05 and 2005/06 that would support the State Board's position that the taxable value determined by the Assessor is different than the taxable value that "may" be determined by the State Board pursuant to NRS 361.395.

B. The Equalization Process that Occurred Before the State Board that Resulted in the February 8, 2013 Order Constituted a Quasi-Judicial Function of the State Board and Not a Legislative Function.

NRS 361.395(1) sets forth the State Board's equalization obligations which provides as follows:

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> 1. During the annual session of the State Board of Equalization beginning on the fourth Monday in March of each year, the State Board of Equalization shall:
>
> (a) Equalize property valuations in the State.
>
> (b) Review the tax rolls of the various counties as corrected by the county boards of equalization thereof and raise or lower, equalizing and **establishing the taxable value of the property**, for the purpose of the valuations therein established by all the county assessors and county boards of equalization and the Nevada Tax Commission, of any class or piece of property in whole or in part in any county, including those classes of property enumerated in NRS 361.320.
>
> *Emphasis added.*

The Nevada Supreme Court analyzed the equalization duties of the State Board pursuant to NRS 361.395 in *Marvin v. Fitch*, 232 P.3rd 425, (Nev. 2010). In *Marvin*, the Nevada Supreme Court provided the following conclusions with regard to the equalization process set forth in Chapter 361 of the Nevada Revised Statutes, specifically :

> We disagree and conclude that the State Board's process is a quasi judicial function. Considering the factors in the "functional approach," the members of the State Board perform quasi judicial functions because the equalization process requires the members to perform functions (fact finding and making legal conclusions) similar to judicial officers, the process is adversarial, it applies procedural safeguards similar to a court, error can be corrected on appeal, and the statutory scheme retains State Board Members independence from political influence.
>
> *See Marvin @* 430...
>
> The State Board is presented with evidence of property valuations from the County tax rolls or from interested property owners, and is required to make findings and issue decisions regarding the necessity and method of equalization. **See NRS 361.395(1)**; NRS 361.385(1). Evaluating the necessity of equalization, State Board Members have the ability to issue subpoenas and acquire witness testimony, NAC 361.712, as well as authority to regulate the course of hearings and "hold such number of [hearings] as may be necessary to care for the business of equalization presented to it." NRS 361.380(1). Because State Board Members receive evidence, render decisions, and regulate hearings, we conclude that members of the State Board function like judicial officers.
>
> *See Marvin @* 431...
>
> We conclude that the ability to contest the assessed values of one's own property or present evidence questioning the value of the property of others is a quintessential indicator of the

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> adversarial nature of the equalization process. Thus, we deem the State Board's equalization process to be adversarial in nature and "functionally comparable" to an adjudicatory process. See Butz, 438 U.S. 513, 98 S.Ct. 2894...
>
> Based on the foregoing, we conclude that the State Board performs a quasi judicial function when deciding to equalize property valuations...
>
> *See Marvin* @ 432. *Emphasis added.*

Therefore, contrary to the assertions of the State Board's Responsive Brief @ 12-13 that the equalization action of the State Board was a legislative action, the Nevada Supreme Court has already concluded that the equalization process contemplated in NRS 361.395 is a quasi-judicial function and not a legislative function or quasi-legislative function. The State Board after concluding that the equalization process before the State Board was a legislative function attempts to distinguish the *Marvin* case as being inapplicable suggesting that the holding in *Marvin* does not apply to equalization actions pursuant to NRS 361.395. While it is true that NRS 361.355 was discussed in *Marvin,* the Nevada Supreme Court specifically addressed NRS 361.395 in the *Marvin* decision and the equalization process set forth in NRS 361.395 (reviewing County tax rolls). The Bakst Appellant Interveners made exhaustive citation to *Marvin* to refute the argument of the State Board that equalization pursuant to NRS 361.395 is a legislative or quasi-legislative function of the State Board as opposed to a quasi-judicial function.

C. The Equalization Process that Resulted in the February 8, 2013 Order Constitutes a Contested Case ad Defined in NRS 233B.032.

NRS 233B.032 defines a contested case as follows:

> "Contested case" means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.

Again, in *Marvin*, the Supreme Court concluded that "the equalization process requires the member to perform functions (fact finding and making legal conclusions) similar to

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judicial officers, the process is adversarial, it applies procedural safeguards similar to a Court, error can be corrected on appeal..." *Marvin* @ 432. A process wherein a state agency is required to make findings of fact and conclusions of law does constitute a contested case as the property owner's legal rights are being determined in that equalization process. *See* NRS 233B.125.

Therefore, the equalization process as set forth in NRS 361.395 is a proceeding in which the legal rights and duties of the Bakst Appellant Interveners were addressed by the State Board and fit squarely within the definition of a contested case as set forth in NRS 233B.032.

D. The State Board Is Estopped Both by Application of the Judicial Doctrine of Res Judicata as Well as the Judicial Doctrine of Collateral Estoppel from Reappraising or Otherwise Assessing the Bakst Appellant Interveners' Homes Again.

The State Board states that the holding in *CIR Sunnen*, 331 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948) is inapplicable in this case because "collateral" estoppel is inappropriate because equalization pursuant to NRS 361.395 and the Assessor's determinations of taxable values are legally different processes deriving different values for ad valorem tax purposes. Therefore, collateral estoppel is inapplicable. *See* Respondents' Brief @ 19.

1. Res Judicata.

The State Board in its Responsive Brief @ 10-23 offers no response as to why the doctrine of res judicata is inapplicable in this case. The failure to respond to an issue in a responsive brief is deemed to be a confession of error. In *Polk v. State,* 126 Nev. Adv. Op. 19 (2010), the Nevada Supreme Court addressed when a respondent's failure to respond to a point constitutes a confession of error. Specifically, the Nevada Supreme Court provided:

> We have also determined that a party confessed error when that party's answering brief effectively failed to address a

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> significant issue raised in the appeal. See Bates v. Chronister, 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984) (treating the respondent's failure to respond to the appellant's argument as a confession of error); A Minor v. Mineral Co. Juv. Dep't, 95 Nev. 248, 249, 592 P.2d 172, 173 (1979) (determining that the answering brief was silent on the issue in Nev. 645, 647, 572 P.2d 216, 217 (1977) (concerning that even through the State acknowledged the issue on appeal. It failed to supply any analysis, legal or otherwise, to support its position and ""effect[ively] filed no brief at all," which constituted confession of error), overruled on other grounds by Miller v. State, 121 Nev. 92, 95-96, 110 P.3d, 53, 56 (2005).

See Polk @ p.5

As set forth in Bakst Appellant Interveners' Opening Brief, the judicial doctrine of res judicata is applicable in a tax case when the repetitious suit involves the same cause of action. *See Sunnen* @ 598. In the tax context, each tax year represents a new cause of action. *See Sunnen* @ 598. Therefore, if the repetitious suits are addressing the **same tax year**, the doctrine of res judicata is applicable because the repetitious suits are addressing the same cause of action.

In the case before the Nevada Supreme Court, the prior judgments obtained by the Bakst Appellant Interveners are for the same tax years which are the subject of the State Board's February 8, 2013 equalization order.[1] As provided in *Sunnen*, the previous judgments obtained by the Bakst Appellant Interveners puts an end to the cause of action for each respective tax year which cannot be brought into litigation between the parties **upon any ground whatever**, absent fraud or some other factor invalidating the judgment. *See Sunnen* @ 597. Therefore, tax years 2003/04, 2004/05 and 2005/06 are **final** and cannot be disturbed by the State Board's February 8, 2013 Order or otherwise.

As very aptly stated in *Sunnen*, "once a party has fought out a matter in litigation with the other party, he cannot later renew that duel." *Sunnen* @ 598. The State Board's

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[1]The *Bakst I* decision applies to the 2003/04 tax year. *Bakst II (State ex rel. State Board of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092 (2008))* applies to the 2004/05 tax year and the State Board rendered a decision in favor of Bakst Appellant Interveners for 2005/2006.

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