

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA  
DEPARTMENT OF TAXATION,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT OF  
THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND THE  
HONORABLE KENNETH C. CORY,  
Respondents,  
and  
HARRAH'S OPERATING COMPANY,  
INC.,  
Real Party in Interest.

No. 56722

**FILED**

**JUL 07 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingersoll*  
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus and prohibition challenges a district court order determining that a use tax refund matter should proceed in the district court as an independent action subject to de novo review, rather than as a petition for judicial review under the Nevada Administrative Procedure Act, NRS Chapter 233B.<sup>1</sup>

Having reviewed the parties' filings, we conclude that writ relief is warranted. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Recently, in Southern California Edison v. District Court, 127 Nev. \_\_\_, \_\_\_, \_\_\_ P.3d \_\_\_, \_\_\_ (Adv. Op. No. 22, May 26, 2011), reh'g pending, we concluded that as the result of several amendments over the past several years, "NRS 372.680 now contemplates

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<sup>1</sup>The Honorable Kristina Pickering, Justice, voluntarily recused herself from consideration of this matter.

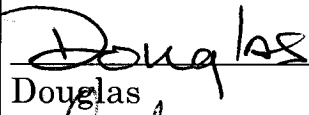
judicial review, in accordance with NRS Chapter 233B, and a petition for judicial review under those statutes is the sole remedy after a final decision by the [Tax] Commission in regard to a sales and use tax refund matter.” Accordingly, here, the district court improperly directed that the matter proceed as an independent action subject to de novo review; instead, the matter should proceed as a petition for judicial review under NRS Chapter 233B.

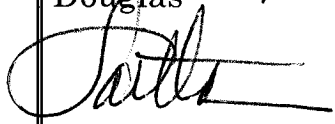
Petitioner argues that, in the event the court agrees that the matter must be brought as a petition for judicial review, this case must be dismissed because it was untimely filed under NRS Chapter 233B more than 30 days after service of the final agency decision. But even though NRS Chapter 233B applies generally, NRS 372.680 operates to provide a 90-day filing period; thus NRS 233B.130(2)(c)’s 30-day deadline to file a petition for judicial review does not apply here. A specific statute that conflicts with a general statute will take precedence over the general statute. Andersen Family Assocs. v. State Engineer, 124 Nev. 182, 187, 179 P.3d 1201, 1204 (2008). Accordingly, because it specifically applies to tax refund claims while NRS Chapter 233B applies generally to judicial review proceedings, NRS 372.680’s 90-day provision takes precedence over NRS 233B.130’s 30-day provision. See NRS 233B.020(2) (“The provisions of this chapter are intended to supplement [not supplant] statutes applicable to specific agencies. This chapter does not abrogate or limit additional requirements imposed on such agencies by statute or otherwise recognized by law.”).

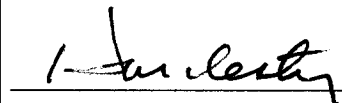
Consequently, we grant this petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to allow real party in interest to take any steps necessary to comply with the

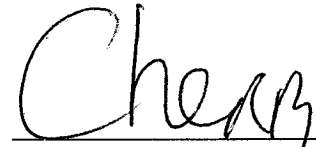
applicable provisions of NRS Chapter 233B and to thereafter proceed with its review of this matter under that chapter.<sup>2</sup>

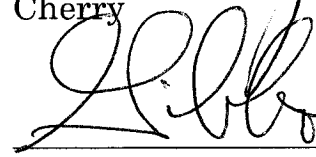
It is so ORDERED.

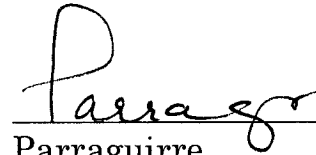
 \_\_\_\_\_, C.J.  
Douglas

 \_\_\_\_\_, J.  
Saitta

 \_\_\_\_\_, J.  
Hardesty

 \_\_\_\_\_, J.  
Cherry

 \_\_\_\_\_, J.  
Gibbons

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge  
Attorney General/Las Vegas  
John Bartlett, Attorney at Law  
Eighth District Court Clerk

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<sup>2</sup>In light of this order, petitioner's alternative request for a writ of prohibition is denied as moot.