

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Kristopher Nitz,  
Appellant,

v.

Kimball County Board of Equalization,  
Appellee.

Case No: 15E 0071

Decision Affirming the Determination of the  
Kimball County Board of Equalization

**For the Appellant:**

Kristopher Nitz,  
Pro Se

**For the Appellee:**

David Wilson,  
Kimball County Attorney

This appeal was heard before Commissioners Keetle and Salmon.

**I. THE SUBJECT PROPERTY**

The Appellant applied for a Motor Vehicle Tax Exemption for Honorably Discharged Veterans for his 2011 Dodge Ram 3500 Longhorn Edition (the Subject Property).

**II. PROCEDURAL HISTORY**

The Kimball County Treasurer determined that the Subject Property was not exempt from taxation for tax year 2015. Kristopher Nitz (the Taxpayer) protested this determination to the Kimball County Board of Equalization (the County Board) and requested that the Subject Property be exempt from taxation. The Kimball County Board determined that the Subject Property was not exempt from taxation for tax year 2015.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibit. The Commission held a hearing on July 20, 2016.

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<sup>1</sup> Exhibit 1.

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup> “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”<sup>3</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>4</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>5</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.”<sup>8</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to

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<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>3</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>4</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

it.<sup>9</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>10</sup>

#### IV. EXEMPTION

##### A. Law

Nebraska law specifies that:

“A motor vehicle tax is imposed on motor vehicles registered for operation upon the highways of this state, except:

...

(2) One motor vehicle owned and used for his or her personal transportation by a disabled or blind veteran of the United States Armed Forces as defined in section 77-202.23 whose disability or blindness is recognized by the United States Department of Veterans Affairs and who was discharged or otherwise separated with a characterization of honorable if an application for the exemption has been approved under subsection (1) of section 60-3,189;”<sup>11</sup>

Section 77-202.23 defines Disabled or Blind Honorably Discharged Veteran as:

- “(1) Disabled person shall mean a veteran who has lost the use of or has undergone amputation of two or more extremities or has undergone amputation of one or more extremities and has lost the use of one or more extremities; and
- (2) Blind shall mean a veteran whose sight is so defective as to seriously limit his ability to engage in the ordinary vocations and activities of life.”

“Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.”<sup>12</sup>

The Courts have spoken of two overriding factors to be considered when a request for an exemption is before them. Those factors are: the property tax burden is necessarily shifted from

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<sup>9</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-60-3,189 (Reissue 2010).

<sup>12</sup> *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009) (citations omitted).

the beneficiary of an exemption to others who own taxable property, and that the power and right of the state to tax is always presumed.<sup>13</sup>

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed;<sup>14</sup> (2) the alleged exempt property must clearly come within the provision granting the exemption;<sup>15</sup> (3) the laws governing property tax exemptions must be strictly construed;<sup>16</sup> (4) the courts must give a “liberal and not a harsh or strained construction ...to the terms ‘educational,’ ‘religious,’ and ‘charitable’ in order that the true intent of the constitutional and statutory provisions may be realized[;]”<sup>17</sup> and (5) this interpretation should always be reasonable.<sup>18</sup>

### **B. Summary of the Evidence and Analysis**

The Taxpayer argues that he is entitled to a Motor Vehicle Tax Exemption for Honorably Discharged Veterans due to disabilities he received related to service in the United States Military and the high disability rating assigned to him by the Department of Veterans Affairs. The Taxpayer argued that he believed that someone could qualify for the Motor Vehicle Exemption for Honorably Discharged Veterans under Nebraska law with a disability rating lower than the disability rating that he has received from the Department of Veterans Affairs and that this result is unfair and operates against the intent of the exemption statutes.

The County Board expressed a desire to grant the Taxpayer a motor vehicle tax exemption but argued that the language of the statute prevented the granting of the Taxpayer’s application.

The Taxpayer was honorably discharged from the United States Army in November of 1998.<sup>19</sup> The Taxpayer testified that his service connected disabilities leave him in pain 24/7. The Taxpayer receives benefits from the Department of Veterans Affairs related to service-connected disabilities.<sup>20</sup> The Taxpayer’s combined service-connected evaluation or final degree of disability is 80%.<sup>21</sup> The Taxpayer testified that he has not lost the use of or had amputated two or more extremities. The Taxpayer testified that he has not undergone amputation of one or

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<sup>13</sup> See, e.g., *Jaksha v. State*, 241 Neb. 106, 112, 486 N.W.2d, 858, 864 (1992); *Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com’rs*, 122 Neb. 586, 241 N.W. 93 (1932).

<sup>14</sup> *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

<sup>15</sup> *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

<sup>16</sup> *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993).

<sup>17</sup> *Lincoln Woman’s Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).

<sup>18</sup> *Id.* (citing, *Young Men’s Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

<sup>19</sup> Exhibit 4.

<sup>20</sup> Exhibit 4.

<sup>21</sup> Exhibits 4 & 5

more extremities and lost the use of one or more extremities. The Taxpayer testified that his sight is not so defective as to seriously limit his ability to engage in the ordinary vocations and activities of life.

While the Taxpayer has demonstrated that he has received a significant disability rating from the Department of Veterans Affairs due to his service-connected disabilities, he has also testified that he has not lost the use of or had amputated two or more extremities, not undergone amputation of one or more extremities and lost the use of one or more extremities, or that his sight is not so defective as to seriously limit his ability to engage in the ordinary vocations and activities of life. For purposes of a Motor Vehicle Tax Exemption Nebraska Statutes require a veteran to have lost the use of or has undergone amputation of two or more extremities or has undergone amputation of one or more extremities and has lost the use of one or more extremities to be defined as disabled; and a veteran to have sight so defective as to seriously limit his ability to engage in the ordinary vocations and activities of life to be defined as blind.<sup>22</sup> The courts have held “[a]bsent a statutory indication to the contrary, we give words in a statute their ordinary meaning. And we will not look beyond a statute to determine the legislative intent when the words are plain, direct, or unambiguous.”<sup>23</sup> More recently the Nebraska Supreme Court has stated “[s]tatutory language is to be given its plain and ordinary meaning, and this court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.”<sup>24</sup> Relating to the interpretation of exemption statutes specifically the Nebraska Supreme Court has further held that “[s]tatutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.”<sup>25</sup>

While the Commission is sympathetic to the positions of the Taxpayer and the County, absent Nebraska Statutes or Case Law to the contrary, the Commission must find that the Taxpayer does not meet the requirements set forth in Statute to receive a Motor Vehicle Tax Exemption for an Honorably Discharged Veteran.

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<sup>22</sup> See, Neb. Rev. Stat. 77-202.23 (Reissue 2009).

<sup>23</sup> *Moyera v. Quality Pork International*, 284 Neb. 963, 971 (2013), see also *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

<sup>24</sup> *ML Manager v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566 (2014).

<sup>25</sup> *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009) (citations omitted).

## V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Kimball County Board of Equalization denying the Motor Vehicle Tax Exemption for tax year 2015 is affirmed.<sup>26</sup>
2. The Subject Property is not exempt from taxation for tax year 2015.
3. This decision and order, if no appeal is timely filed, shall be certified to the Kimball County Treasurer and the Kimball County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2015.
7. This order is effective for purposes of appeal on September 15, 2016.

Signed and Sealed: September 15, 2016.

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Steven A. Keetle, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.

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<sup>26</sup> Assessed value, as determined by the County Board of Equalization, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.