

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

VFW #3113  
Appellant,

v.

Jefferson County Board of Equalization  
Appellee

Case No: 10E-001

Decision Reversing the  
Jefferson County Board of Equalization

**For the Appellant:**  
Stanley Schiermeyer,  
Commander

**For the Appellee:**  
Linda Bauer  
Jefferson County Attorney

Heard before Commissioners Hotz and Salmon

**I. THE SUBJECT PROPERTY**

The Subject Property is a commercial parcel located in Jefferson County. The parcel is improved with an 8,400 square foot building known as the Post Hall, a 2,800 square foot shed, and 576 square feet of concrete paving. The legal description of the parcel is found at Exhibit 1. The property record card for the subject property is found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Jefferson County Assessor determined that 10% of the Post Hall was subject to taxation, but that 90% of the Post Hall, as well as the remainder of the land and improvements on the parcel, were exempt from taxation for tax year 2010. The taxable value of the subject property was determined to be \$7,790. VFW #3113 (Taxpayer) protested this determination to the Jefferson County Board of Equalization (BOE). The County Board also determined that 10% of the Post Hall was subject to taxation and the remainder of the land and improvements were exempt from taxation for tax year 2010. (E1).

The Taxpayer appealed the decision of the BOE to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of all exchanged exhibits. The Commission held a hearing on January 20, 2012.

### III. STANDARD OF REVIEW

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

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.

*Id.* 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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 it. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

### IV. EXEMPTION

#### A. Law

The Nebraska Constitution permits the Legislature to classify exempt properties “owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes...” Neb. Const., Art. VIII, § 2. The following property shall be exempt from property taxes:

Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. Form purposes of this subdivision educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subject or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education.

Neb. Rev. Stat. § 77-202(1)(d) (2011 Supp.).

“Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant. *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, N.W.2d 103(1983).” *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009).

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 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. 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).

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999); (2) the alleged exempt property must clearly come within the provision granting the exemption, *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991); and (3) the laws governing property tax exemptions must be strictly construed. *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); (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”, *Lincoln Woman’s Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965); and (5) this interpretation should

always be reasonable, *Id.* (citing, *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

“Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009).

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

The actual value of the subject property is not disputed. The actual value of the land was \$71,410, and the actual value of the improvements was \$77,890.<sup>1</sup> E2:2. The taxable value of improvements amounted to 10% of actual value, or \$7,790. E2:2. The only issue in dispute regarding the exemption of the subject property concerned the use of the subject property for the sale of alcoholic liquors as contemplated in Neb. Rev. Stat. § 77-202(1)(d)(ii).

Stanley Schiermeyer testified on behalf of the Taxpayer as an officer of VFW #3113. Schiermeyer had timely filed the “Statement of Reaffirmation of Tax Exemption,” Form 451A, on November 13, 2009, on behalf of the Taxpayer. He testified that at all relevant times the Taxpayer served alcohol at the subject property in the bar area of the Post Hall, but that at no relevant time was alcohol sold for more than 20 hours per week. The County Board did not dispute this assertion.

Vicki Haskell, the County Assessor, testified on behalf of the County Board. She stated that the bar area consisted of 1,147 square feet, which was 10% of the square footage of the total of the improvements on the subject property.<sup>2</sup> She explained that this was the basis for the 90% exemption and 10% tax.

State Statute § 77-202(1)(d) lays out the requirements for qualifying for an exemption from property taxes. It is not disputed by the parties that the subject property is owned by a charitable organization, VFW #3113, and is used exclusively for charitable purposes without gain or profit by the owner or user. The Statute also requires that in order to maintain an exemption, the use of the subject property for the sale of alcohol must not exceed 20 hours per

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<sup>1</sup> This includes the total value of the Post Hall, the shed, and the concrete paving.

<sup>2</sup> Post Hall 8,400 square feet + Shed 576 square feet + concrete paving 2,800 square feet = 11,776 square feet.  $1,147/11,776=10\%$ . Exhibit 2:4-5.

week. Since the County Board did not dispute the Taxpayer's assertion that at no relevant time was alcohol sold for more than 20 hours per week, the Commission finds that the Taxpayer's application for exemption met the statutory requirements in every respect. The only basis for taxing 10% of the subject property would be if the Taxpayer used the subject property for the sale of alcohol in excess of 20 hours per week. The Commission finds that the undisputed testimony of Schiermeyer regarding the use of the property for the sale of alcohol is clear and convincing evidence that the County Board's determination to tax 10% of the subject property was arbitrary or unreasonable.

## **V. CONCLUSION**

The Commission finds that there is 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 clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination by the County Board is reversed; the subject property should be exempt from property tax.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decision of the Jefferson County Board of Equalization determining that 10% of subject property is subject to property taxation for tax year 2010 is vacated and reversed.
2. The subject property is exempt from property taxation for tax year 2010.
3. The assessed value of the subject property for tax year 2010 is \$0.
4. This decision and order, if no appeal is timely filed, shall be certified to the Jefferson County Treasurer and the Jefferson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2010.

8. This order is effective for purposes of appeal on February 2, 2012

Signed and Sealed: February 2, 2012

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Robert W. Hotz, 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 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.