

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

Michael D. Rhoades  
Appellant,

v.

Lincoln County Board of Equalization

Case No: 11H 002

Order Affirming the Determination by the  
County Board of Equalization

**For the Appellant:**  
Michael D. Rhoades,  
Taxpayer

**For the Appellee:**  
Joe Wright,  
Deputy County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Lincoln County. The property record card for the subject property is found at Exhibit 2. The parcel is improved with a 1,164 square foot residence, built in 1980. The legal description of the parcel is found at Exhibit 2, page 14.

**II. PROCEDURAL HISTORY**

Michael D. Rhoades (Taxpayer) filed an application for homestead exemption on June 13, 2011.<sup>1</sup> That application was followed with a letter from the Taxpayer to the County Assessor (Assessor) dated June 17, 2011.<sup>2</sup> The Assessor rejected the homestead exemption application, making the determination that the Taxpayer did not qualify for a homestead exemption for tax year 2011. A Notice of Rejection of Homestead Exemption was sent to the Taxpayer by the Assessor on July 7, 2011.<sup>3</sup> The Taxpayer sent to the County Clerk a written complaint regarding this Rejection, dated August 25, 2011.<sup>4</sup> The Lincoln County Board of Equalization (County Board) held a hearing on the Rejection on September 12, 2011, and affirmed the decision to reject the application on that same date. The Taxpayer appealed the decision of the County

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<sup>1</sup> E1:1, E3:2.

<sup>2</sup> E3:6.

<sup>3</sup> E2:58, E3:3. The Notice of Rejection stated as reasons for the rejection: "Incomplete application (no income form signed). No dr's certification. Under the age of 65. Unable to qualify for homestead for 2011."

<sup>4</sup> E3:4.

Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on June 25, 2012.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board is de novo.<sup>5</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>6</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>7</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>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</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>10</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 it."<sup>11</sup>

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<sup>5</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>6</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>7</sup> *Id.*

<sup>8</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>9</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

## IV. HOMESTEAD EXEMPTION

### A. Law

“A qualified claimant shall mean an owner of a homestead during the calendar year for which the claim is made who was sixty-five years of age or older before January 1 of such year and who shall be entitled to relief pursuant to section 77-3507.”<sup>12</sup> That section of statute says that “[a]ll homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation on homesteads of qualified claimants a percentage of the exempt amount as limited by section 77-3506.03. The percentage of the exempt amount shall be determined based on the household income of a claimant pursuant to subsections (2) through (4) of this section.”<sup>13</sup>

Nebraska statutes also state that:

“(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03. The exemption shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

“(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

“(i) Veterans as defined in section 80-401.01 who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who are totally disabled by a non-service-connected accident or illness;

“(ii) Individuals who have a permanent physical disability and have lost all mobility so as to preclude locomotion without the regular use of a mechanical aid or prostheses; and

“(iii) Individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent.

“(c) Application for the exemption described in subdivision (a) of this subsection shall include certification from a qualified medical physician, physician assistant, or advanced practice registered nurse for subdivisions (b)(i) through (b)(iii) of this subsection or

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<sup>12</sup> Neb. Rev. Stat. §77-3505 (Reissue 2009).

<sup>13</sup> Neb. Rev. Stat. §77-3507(1) (Reissue 2009).

certification from the United States Department of Veterans Affairs affirming that the homeowner is totally disabled due to non-service-connected accident or illness for subdivision (b)(i) of this subsection. Such certification from a qualified medical physician, physician assistant, or advanced practice registered nurse shall be made on forms prescribed by the Department of Revenue...”<sup>14</sup>

“Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.<sup>15</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 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>16</sup>

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed;<sup>17</sup> (2) the alleged exempt property must clearly come within the provision granting the exemption;<sup>18</sup> and (3), the laws governing property tax exemptions must be strictly construed.<sup>19</sup>

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

Michael Rhoades testified and asserted that because the Social Security Administration determined that he was disabled in 1997 he should qualify for a Nebraska Homestead Exemption in relation to the taxable value of the subject property for tax year 2011. Rhoades conceded that he was not 65 years of age.<sup>20</sup> Rhoades also testified that he was not a Veteran. On the Nebraska Homestead Exemption Application, he checked the box for “Disabled Individuals.”<sup>21</sup>

In order to qualify for the Homestead Exemption as a disabled individual, the applicant must either have “a permanent physical disability and have lost all mobility so as to preclude locomotion without the regular use of a mechanical aid or prostheses,” or “have undergone

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<sup>14</sup> Neb. Rev. Stat. §77-3508 (Reissue 2009).

<sup>15</sup> *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).

<sup>16</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>17</sup> *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

<sup>18</sup> *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991);

<sup>19</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>20</sup> Rhoades’ date of birth is shown as November 29, 1961 on Exhibit 1, the Nebraska Homestead Exemption Application. An applicant must be 65 years of age in order to be deemed a qualified claimant. Title 350 Neb. Admin. Code, ch. 45 §002.11 (3/09).

<sup>21</sup> Exhibit 1.

amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent.”<sup>22</sup> To certify the qualification, the disabled applicant (non-Veteran) must have “certification from a qualified medical physician, physician assistant, or advanced practice registered nurse... made on forms prescribed by the Department of Revenue.”<sup>23</sup> The Taxpayer provided evidence that he received Social Security Disability payments,<sup>24</sup> but did not provide the medical certification as required. Rhoades asserted that the determination made in 1997 by the Social Security Administration should be adequate for these purposes.

In order to qualify for the Homestead Exemption as a disabled individual, the applicant must also be an applicant “whose household income, as determined by the Tax Commissioner, is less than the maximum income amount.”<sup>25</sup> Julie Stenger, the Lincoln County Assessor, testified on behalf of the County Board. She testified that for tax year 2011, she utilized the form provided by the Tax Commissioner to determine income amounts, which was Form 458, Schedule I. Stenger testified that she did not receive this form with the Taxpayer’s application, and she noted this failure on the Notice of Rejection which was mailed to the Taxpayer.<sup>26</sup> Rhoades testified that his annual income was \$9,612. He provided evidence that his Social Security Disability payment was \$802.90 per month.<sup>27</sup> Rhoades asserted that the letter from the Social Security Administration should be adequate to verify his income for purposes of his application for Homestead Exemption.

Based upon the evidence received, the Commission finds that the Taxpayer did not comply with the statutory requirements in order to be qualified for the Homestead Exemption for tax year 2011.

## 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

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<sup>22</sup> Neb. Rev. Stat. §77-3508(1)(b) (Reissue 2009)

<sup>23</sup> Neb. Rev. Stat. §77-3508(1)(c) (Reissue 2009)

<sup>24</sup> Exhibit 6

<sup>25</sup> Title 350 Neb. Admin. Code, ch. 45 §002.12 (3/09).

<sup>26</sup> E2:58, E3:3.

<sup>27</sup> Exhibit 6 is a letter from the Social Security Administration, dated April 26, 2012.

determination. The Commission also finds that there is not 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 that the Taxpayer does not qualify for the Homestead Exemption for tax year 2011 is affirmed.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decision of the Lincoln County Board of Equalization determining that the applicant does not qualify for the homestead exemption for tax year 2011 is affirmed.
2. This decision and order, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer and the Lincoln County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2011.
6. This order is effective for purposes of appeal on July 16, 2012.

Signed and Sealed: July 16, 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.