

## 2013 Cases

*Harold Warp Pioneer Village Foundation and Kearney County Board of Equalization v. Ewald and Sorensen*

Citation: Case Nos. [11E 002](#) and [11E 003](#), Tax Equalization and Review Commission (2013)

*This case has been appealed.*

**Synopsis:** On January 18, 2013, the Tax Equalization and Review Commission (TERC) held that the motel and campgrounds located at the Pioneer Village Museum complex were not exempt from property tax.

In *Harold Warp Pioneer Village Foundation and Kearney County Board of Equalization v. Ewald and Sorensen*, the Nebraska Department of Revenue (Department) appealed a determination by the Kearney County Board of Equalization that the motel and campgrounds located at the Pioneer Village Museum complex were exempt from property tax. Pioneer Village argued that the motel and campgrounds housed patrons of the museum and generated income for the museum, and was thus beneficial and reasonably necessary for the museum to fulfill its educational mission. TERC held that, while the motel and campgrounds provide direct benefits to Pioneer Village and the public in the form of increased revenue for the museum and convenient lodging, any educational purpose of the motel and campgrounds are incidental to the motel and campgrounds' purpose of providing lodging. TERC further held that the motel and campgrounds were not integral and necessary to the museum's educational mission.

*KAAPA Ethanol v. Bd. of Supervisors of Kearney Cty.*

Citation: 285 Neb. 112 (2013)

**Synopsis:** On January 25, 2013, the Nebraska Supreme Court held that misclassifying real property as personal property is a mistake of law for which no refund is available.

In *KAAPA Ethanol v. Bd. of Supervisors of Kearney Cty.*, KAAPA Ethanol listed certain property as personal property, which the county assessor later included as part of KAAPA's real property. In a separate case, KAAPA had challenged the assessor's classification of the same property as real property, which was upheld by TERC; in a memorandum opinion (case Nos. S-09-707 and S-09-717), the Supreme Court upheld the assessor's determination that the subject property was real property. As a result, KAAPA filed a refund claim, alleging it paid both personal and real property tax on the same property. The refund claim was denied by the Kearney County Board of Supervisors and KAAPA appealed. The court held that KAAPA's decision to list real property as personal property, while yielding "the harsh result of double taxation," was the result of a mistake of law made by KAAPA. The court further held that the refund claim statute is a codification of the common-law rule that refunds of taxes levied upon and paid are only authorized with respect to mistakes of fact.

[Central Nebraska Public Power & Irrigation District and Keith County Board of Equalization v. Ewald and Sorensen](#)

Citation: Case Nos. 11E-005 through 11E-017, Tax Equalization and Review Commission (2013)

*This case has been appealed.*

**Synopsis:** On February 26, 2013, TERC held that payments in lieu of tax made by Central Nebraska Public Power & Irrigation District (Central) rendered moot the issue of whether or not property owned by Central and leased to individuals for residential purposes was being used for a public purpose, and whether the lessees of that property should be subject to taxation.

In *Central Nebraska Public Power & Irrigation District and Keith County Board of Equalization v. Ewald and Sorensen*, the Department appealed a determination by the Keith County Board of Equalization that property on the shoreline of Lake McConaughy owned by Central and leased to individuals for residential purposes was being used for a public purpose. The Department argued that the Central's leases were not "for" Central's public purpose of maintaining the shoreline of Lake McConaughy, and that the lessees should be subject to taxation for the value of the land, as provided in Nebraska's statutes. TERC held that the constitutional provision providing that public power and irrigation districts make payments "in lieu of all other taxes" did not conflict with the constitutional provision exempting property of the state and its governmental subdivisions if the property was being used for a public purpose.

*Krings v. Garfield Cty. Bd. of Equal., Ewald, and Sorensen*

Citation: 286 Neb. 352 (2013)

**Synopsis:** On July 26, 2013, the Nebraska Supreme Court held that agricultural land is not required to be assessed at values that are uniform with other classes of land, and that TERC erred when it equalized the value of the taxpayer's nonagricultural land with the value of agricultural land in the county.

In *Krings v. Garfield Cty. Bd. of Equal., Ewald, and Sorensen*, Mr. Krings had enrolled some of his land in the Wetlands Reserve Program (WRP) sponsored by the U.S. Department of Agriculture. WRP land can have restrictions on the extent and nature of agricultural activity that takes place upon the land. TERC had previously ruled, and the Department's regulations provided, that land enrolled in WRP is not agricultural or horticultural land, and must be taxed at 100 percent of market value. However, TERC found that agricultural and horticultural land in Garfield County had been systematically under-assessed at 70% of market value (as opposed to 75% as required by statute), and that Krings's land should receive an equalization adjustment equal to a factor found by dividing 70% by 75%. The Department appealed. The court reversed the TERC decision and held that the Nebraska Constitution specifically provides that the class of agricultural and horticultural land is not required to be uniform and proportionate with the other classes of land.

*Doug Ewald and Ruth Sorensen v. Box Butte County Board of Equalization and Friends of Carhenge*

Citation: Case No. 12E 001 (2013)

**Synopsis:** On September 5, 2013, TERC held that the Carhenge tourist attraction was a museum for the purpose of exemption from property tax.

In *Doug Ewald and Ruth Sorensen v. Box Butte County Board of Equalization and Friends of Carhenge*, the Department appealed a determination of the Box Butte County Board of Equalization that the Carhenge tourist attraction was a “car art preserve” used exclusively for educational purposes that was exempt from property tax. The Department argued that the Friends of Carhenge was not an educational organization as that term is defined by Neb. Rev. Stat. § 77-202(1)(d)(B) and that the grounds were not being used for educational purposes. TERC held that the definition of “museum” in the Museum Property Act, found at § 51-702(6), was instructive, and could be applied to Carhenge under the theory that the terms “educational,” “religious,” and “charitable” should be given a liberal and not a harsh or strained construction. In finding that the Friends of Carhenge could be considered a museum, TERC found that the property at Carhenge is being used as a museum. This decision will not be appealed to the Nebraska Court of Appeals as the Carhenge property was recently donated to the City of Alliance. The property is now exempt from property taxes as it is owned by a political subdivision of the state.