

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 332

Introduced by Janssen, 15

Read first time January 11, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5016 and 77-5017, Revised Statutes Cumulative
3 Supplement, 2006; to change provisions relating to
4 appeals to the Tax Equalization and Review Commission;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5016, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-5016 Any hearing or proceeding of the commission shall
4 be conducted as an informal hearing unless a formal hearing is
5 granted as determined by the commission according to its rules and
6 regulations. In any hearing or proceeding heard by the commission
7 or a panel of commissioners:

8 (1) The commission may admit and give probative
9 effect to evidence which possesses probative value commonly
10 accepted by reasonably prudent persons in the conduct of their
11 affairs excluding incompetent, irrelevant, immaterial, and unduly
12 repetitious evidence and shall give effect to the privilege rules
13 of evidence in sections 27-501 to 27-513 but shall not otherwise be
14 bound by the usual common-law or statutory rules of evidence except
15 during a formal hearing. Any party to an appeal filed under section
16 77-5007 may request a formal hearing by delivering a written
17 request to the commission not more than thirty days after the
18 appeal is filed. The request shall include the requesting party's
19 agreement to be liable for the payment of costs incurred and
20 upon any appeal or review, including the cost of court reporting
21 services which the requesting party shall procure for the hearing.
22 The commission shall be bound by the rules of evidence applicable
23 in district court in any formal hearing held by the commission. All
24 costs of a formal hearing shall be paid by the party or parties
25 against whom a final decision is rendered;

1 (2) The commission may administer oaths, issue subpoenas,
2 and compel the attendance of witnesses and the production of
3 any papers, books, accounts, documents, statistical analysis, and
4 testimony. The commission may adopt and promulgate necessary rules
5 for discovery which are consistent with the rules adopted by the
6 Supreme Court pursuant to section 25-1273.01;

7 (3) The commission may consider and utilize the
8 provisions of the Constitution of the United States, the
9 Constitution of Nebraska, the laws of the United States, the
10 laws of Nebraska, the Code of Federal Regulations, the Nebraska
11 Administrative Code, any decision of the several courts of the
12 United States or the State of Nebraska, and the legislative history
13 of any law, rule, or regulation, without making the document
14 a part of the record. The commission may without inclusion in
15 the record consider and utilize published treatises, periodicals,
16 and reference works pertaining to the valuation or assessment of
17 real or personal property or the meaning of words and phrases
18 if the document is identified in the commission's rules and
19 regulations. All other evidence, including records and documents
20 in the possession of the commission of which it desires to avail
21 itself, shall be offered and made a part of the record in the case.
22 No other factual information or evidence other than that set forth
23 in this section shall be considered in the determination of the
24 case. Documentary evidence may be received in the form of copies or
25 excerpts or by incorporation by reference;

1 (4) Every party shall have the right of cross-examination
2 of witnesses who testify and shall have the right to submit
3 rebuttal evidence;

4 (5) The commission may take notice of judicially
5 cognizable facts and in addition may take notice of general,
6 technical, or scientific facts within its specialized knowledge
7 or statistical information regarding general levels of assessment
8 within a county or a class or subclass of real property within
9 a county and measures of central tendency within such county or
10 classes or subclasses within such county which have been made
11 known to the commission. Parties shall be notified either before
12 or during the hearing or by reference in preliminary reports or
13 otherwise of the material so noticed. They shall be afforded
14 an opportunity to contest the facts so noticed. The commission
15 may utilize its experience, technical competence, and specialized
16 knowledge in the evaluation of the evidence presented to it;

17 (6) Any person testifying under oath at a hearing
18 who knowingly and intentionally makes a false statement to the
19 commission or its designee is guilty of perjury. For the purpose of
20 this section, perjury is a Class I misdemeanor;

21 ~~(7) The commission shall hear appeals and cross appeals~~
22 ~~as in equity and without a jury and determine de novo all~~
23 ~~questions raised in the proceedings upon which the order, decision,~~
24 ~~determination, or action appealed from is based;~~

25 ~~(8) In all appeals, excepting those arising under~~

1 section 77-1606, if the appellant presents no evidence to show
 2 that the order, decision, determination, or action appealed
 3 from is incorrect, the commission shall deny the appeal. If
 4 the appellant presents any evidence to show that the order,
 5 decision, determination, or action appealed from is incorrect,
 6 such order, decision, determination, or action shall be affirmed
 7 unless evidence is adduced establishing that the order, decision,
 8 determination, or action was unreasonable or arbitrary;

9 (7) The commission may dismiss an appeal or cross
 10 appeal if the appellant presents no evidence to show that
 11 the order, decision, determination, or action appealed from is
 12 incorrect. The order, decision, determination, or action appealed
 13 from shall be affirmed unless evidence before the commission
 14 establishes that the order, decision, determination, or action was
 15 unreasonable, arbitrary, or unlawful. If the commission determines
 16 that the order, decision, determination, or action appealed from
 17 was unreasonable, arbitrary, or unlawful, taxable value shall only
 18 be redetermined if proven by a preponderance of the evidence. This
 19 subsection is not applicable to appeals or cross appeals arising
 20 under section 77-1606;

21 ~~(9)~~ (8) Any decision rendered by the commission shall
 22 be certified to the parties and, if applicable, to the county
 23 treasurer and the official charged with the duty of preparing the
 24 tax list. When such decision becomes final, the officials shall
 25 correct their records accordingly;

1 ~~(10)~~ (9) If the appeal concerns a decision by the county
2 board of equalization that property is, in whole or in part, exempt
3 from taxation, the decision to be rendered by the commission shall
4 only determine the exemption status of the property. The decision
5 shall not determine the taxable value of the property unless
6 stipulated by the parties according to subsection (2) of section
7 77-5017;

8 ~~(11)~~ (10) If the appeal concerns a decision by the
9 county board of equalization that property owned by the state
10 or a political subdivision is or is not exempt and there has
11 been no final determination of the value of the property, the
12 decision to be rendered by the commission shall only determine the
13 exemption status of the property. The decision shall not determine
14 the taxable value of the property unless stipulated by the parties
15 according to subsection (2) of section 77-5017;

16 ~~(12)~~ (11) The costs of any appeal, including the costs of
17 witnesses, may be taxed by the commission as it deems just, except
18 costs payable by the appellant pursuant to section 77-1510.01,
19 unless the appellant is the county assessor or county clerk in
20 which case the costs shall be paid by the county; and

21 ~~(13)~~ (12) The commission shall deny relief to the
22 appellant or petitioner in any hearing or proceeding unless a
23 majority of the commissioners present determine that the relief
24 should be granted.

25 Sec. 2. Section 77-5017, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 77-5017 (1) In resolving an appeal or petition, the
3 commission may make such orders as are appropriate for resolving
4 the dispute but in no case shall the relief be excessive compared
5 to the problems addressed. The commission may make prospective
6 orders requiring changes in assessment practices which will improve
7 assessment practices or affect the general level of assessment or
8 the measures of central tendency in a positive way. If no other
9 relief is adequate to resolve disputes, the commission may order a
10 reappraisal of property within a county, an area within a county,
11 or classes or subclasses of property within a county.

12 (2) In an appeal specified in subdivision ~~(10) or (11)~~
13 (9) or (10) of section 77-5016 for which the commission determines
14 exempt property to be taxable, the commission shall order the
15 county board of equalization to determine the taxable value of
16 the property, unless the parties stipulate to such taxable value
17 during the hearing before the commission. The order shall require
18 the county board of equalization to (a) assess such property
19 using procedures for assessing omitted property, (b) determine
20 such taxable value within ninety days after the issuance of the
21 commission's order, and (c) apply interest, but not penalty, to the
22 taxable value as of the date the commission's order was issued or
23 the date the taxes were delinquent, whichever is later.

24 (3) A determination of the taxable value of the property
25 made by the county board of equalization pursuant to subsection (2)

1 of this section may be appealed to the commission within thirty
2 days after the board's decision.

3 Sec. 3. Original sections 77-5016 and 77-5017, Revised
4 Statutes Cumulative Supplement, 2006, are repealed.