

LEGISLATIVE BILL 140

Approved by the Governor May 25, 1999

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Landis, 46; Raikes, 25; Schellpeper, 18

AN ACT relating to the Tax Equalization and Review Commission; to amend section 77-5015, Reissue Revised Statutes of Nebraska, and sections 77-1504.01, 77-5007, 77-5016, 77-5019, and 77-5022, Revised Statutes Supplement, 1998; to change provisions for appeals to and from the commission; to authorize the use of videoconferencing at certain hearings and meetings; to provide for refunds of multiple filing fees; to repeal the original sections; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-1504.01, Revised Statutes Supplement, 1998, is amended to read:

77-1504.01. After completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before ~~August 4~~ July 26. The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference and shall comply with section 84-1411, except that a member of the commission need not be present at each videoconference site. A duly appointed representative of the commission shall be present at each videoconference site to take custody of any exhibits and keep a record of persons who appear at the hearing. Hearings conducted pursuant to this section shall be in the manner prescribed in section 77-5026. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Sec. 2. Section 77-5007, Revised Statutes Supplement, 1998, is amended to read:

77-5007. The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Property Tax Administrator determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Property Tax Administrator determining adjusted valuation pursuant to section 79-1016;

(5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 to 77-1233.06;

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3005;

(9) Any other decision of any county board of equalization; and

(10) Any other decision of the Property Tax Administrator.

Any person appealing from a final decision under this section shall file the appeal with the commission within thirty days after the date of the decision appealed from.

Sec. 3. Section 77-5015, Reissue Revised Statutes of Nebraska, is amended to read:

77-5015. Cases may be appealed to the commission within thirty days after the final action of the county board of equalization or Property Tax Administrator. Appeals regarding the valuation or exemption of multiple

parcels involving the same owner and the same issues may be consolidated at the discretion of the commission. Any multiple filing fees for consolidated appeals shall be refunded by the commission if such fees were paid prior to the consolidation of appeals by the commission. In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable. Opportunity shall be afforded all parties to present evidence and argument. The commission shall prepare an official record, which includes testimony and exhibits, in each case, but it shall not be necessary to transcribe shorthand notes unless requested for purposes of rehearing, in which event the transcript and record shall be furnished by the commission upon request and tender of the cost of preparation. Informal disposition may also be made of any case by stipulation, agreed settlement, consent order, or default. The commission shall adopt and promulgate rules and regulations for notice and hearing in cases appealed.

Sec. 4. Section 77-5016, Revised Statutes Supplement, 1998, is amended to read:

77-5016. All cases appealed to the commission shall be granted an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In cases appealed to the commission:

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Any party to a formal hearing before the commission, from which a decision may be appealed to the courts of this state, may request that the commission be bound by the rules of evidence applicable in district court by delivering to the commission at least three days prior to the holding of the hearing a written request. The request shall include the requesting party's agreement to be liable for the payment of costs incurred and upon any appeal or review, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The commission may administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony, and cause the depositions of witnesses residing either within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(3) All evidence including records and documents in the possession of the commission of which it desires to avail itself shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

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

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

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

(7) The commission shall hear appeals and cross appeals taken under section 77-5007 as in equity and without a jury and determine de novo all questions raised before the county board of equalization or the Property Tax Administrator which relate to the liability of the property to assessment or the amount thereof. The commission shall affirm the action taken by the board

or Property Tax Administrator unless evidence is adduced establishing that the action of the board or the Property Tax Administrator was unreasonable or arbitrary.

Sec. 5. Section 77-5019, Revised Statutes Supplement, 1998, is amended to read:

77-5019. (1) Any ~~person party~~ aggrieved by a final decision in a case appealed to the commission, ~~whether the decision is affirmative or negative in form,~~ and any county or other political subdivision aggrieved by an order of the commission issued pursuant to section 77-5028 shall be entitled to judicial review in the Court of Appeals. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the Court of Appeals within thirty days after the ~~notification of the final decision~~ date on which a final appealable order is entered by the commission. All parties of record shall be made parties to the proceedings for review. If the commission's only role in a case is to act as a neutral factfinding body, the commission shall not be a party of record. In all other cases, the commission shall be a party of record. Summons shall be served within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the commission is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the commission within thirty days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. If the commission has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the commission is not sufficiently serious to justify the commission's action in the circumstances. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the commission. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The commission may require payment or bond prior to the transmittal of the record.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Sec. 6. Section 77-5022, Revised Statutes Supplement, 1998, is amended to read:

77-5022. The commission shall annually equalize the values of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property which is valued by the state. For this purpose the commission shall meet ~~at the State Capitol~~ as soon as the abstracts of assessments have been submitted by the county assessors. The commission shall have the power to adjourn from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference and shall comply with section 84-1411, except that a member of the commission need not be present at each videoconference site. A duly appointed representative of the commission shall be present at each videoconference site to take custody of any exhibits and keep a record of persons who appear at the meeting.

Sec. 7. Original section 77-5015, Reissue Revised Statutes of Nebraska, and sections 77-1504.01, 77-5007, 77-5016, 77-5019, and 77-5022, Revised Statutes Supplement, 1998, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.