

## LEGISLATIVE BILL 167

Approved by the Governor February 9, 2007

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Raikes, 25

FOR AN ACT relating to revenue and taxation; to amend sections 77-5003 and 77-5011, Reissue Revised Statutes of Nebraska, and sections 25-1901, 77-1504, 77-1507.01, 77-5016, 77-5017, 77-5020, 77-5023, 77-5026, and 77-5028, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to appeals, equalization, the Tax Equalization and Review Commission, and assessor certification; to harmonize provisions; to repeal the original sections; to outright repeal section 77-5014, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-1901, Revised Statutes Cumulative Supplement, 2006, is amended to read:

25-1901 A judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court, except that the district court shall not have jurisdiction over (1) appeals from a juvenile court as defined in section 43-245, (2) ~~or~~ appeals from a county court in matters arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, in matters involving adoption or inheritance tax, or in domestic relations matters, or (3) appeals within the jurisdiction of the Tax Equalization and Review Commission.

Sec. 2. Section 77-1504, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-1504 The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the ~~county~~ board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, to consider and correct the current year's assessment of any real property which has been undervalued or overvalued. The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may only consider the report of the county assessor pursuant to section 77-1315.01.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15 or on or before September 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission on or before October 15 or on or before October 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Sec. 3. Section 77-1507.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-1507.01 Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value, special value, or recapture value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to ~~77-1507.~~ 77-1510.

Sec. 4. Section 77-5003, Reissue Revised Statutes of Nebraska, is amended to read:

77-5003 (1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. The commission shall have three commissioners, one from each congressional district, and beginning on and after January 1, 2002, the commission shall have four commissioners. One at-large commissioner shall be appointed in addition to the commissioners representing the congressional districts. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature.

(2) The term of the commissioner from district 1 expires ~~two years after the first appointment under this section,~~ January 1, 2010, the term of the commissioner from district 2 expires ~~four years after the first appointment under this section,~~ January 1, 2012, and the term of the commissioner from district 3 expires ~~six years after the first appointment under this section.~~ January 1, 2008. The initial term of the at-large commissioner expires on January 1, 2008. After the initial terms of the commissioners are completed as provided in this section, each subsequent term shall be for six years beginning and ending on January 1 of the applicable year. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The Governor shall designate one commissioner, who is an attorney admitted to practice before the Nebraska Supreme Court, to serve as the chairperson of the commission from January 1, 2002, through December 31, 2003. Beginning on January 1, 2004, the commission shall designate pursuant to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis among the commissioners who are attorneys admitted to practice before the Nebraska Supreme Court.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Sec. 5. Section 77-5011, Reissue Revised Statutes of Nebraska, is amended to read:

77-5011 The chairperson may call special meetings of the commission at such times as its business requires. The chairperson may also administer oaths and affirmations and sign all orders, certificates, and process in the name of the commission. The chairperson shall attest all orders, certificates, and process with the official seal of the commission. In the absence of the chairperson the vice-chairperson may perform the duties of the chairperson. Orders, certificates, and process under the official seal of the commission may be enforced by the district court for Lancaster County.

Sec. 6. Section 77-5016, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(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 excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. ~~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. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.~~ The requesting party shall be liable for the payment of fees and costs of a court reporter pending a final decision. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered, and all other costs shall be allocated as the commission may determine;

(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts,

documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;

(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations. All other 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 other than that set forth in this section 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 real 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;

(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;

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

(7) The commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal;

(8) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

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

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

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

~~(12) (11) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless the appellant is the county~~

assessor or county clerk in which case the costs shall be paid by the county; and

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

Sec. 7. Section 77-5017, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

(3) A determination of the taxable value of the property made by the county board of equalization pursuant to subsection (2) of this section may be appealed to the commission within thirty days after the board's decision.

Sec. 8. Section 77-5020, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5020 The commission, subject to rules and regulations, shall have the power to invalidate or suspend the certificate issued pursuant to section 77-422 of any county assessor or deputy assessor who willfully fails or refuses to comply with any order of the commission. No certificate shall be ~~revoked~~ invalidated or suspended except upon a ~~proper~~ hearing before the commission.

~~After due notice, if the county assessor certificate of a person serving as county assessor or deputy assessor is revoked, such person shall be removed from office, the office declared vacant, and such person shall not be eligible to hold that office for a period of five years from the date of removal. Any county assessor or deputy assessor whose certificate has been so ~~revoked~~ invalidated or suspended may appeal the decision to the Court of Appeals in accordance with section 77-5019.~~

No action shall be brought under this section more than two years after the date of the act, last date of a series of actions complained of, or the last date the county assessor or deputy assessor could have acted to comply, whichever is later.

Sec. 9. Section 77-5023, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5023 (1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343 and sixty-nine to seventy-five percent of recapture valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the ~~indicator of central tendency of assessment~~ utilized level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the ~~indicator of central tendency~~ utilized level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not an established indicator of central tendency the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Sec. 10. Section 77-5026, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5026 Pursuant to section 77-5023, if the commission finds that the level of assessment value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A county assessor or other legal representative of the county may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Sec. 11. Section 77-5028, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5028 After a hearing conducted pursuant to section 77-5026, the commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to ~~the class or subclass~~ each parcel of real property in the class or subclass affected. The specified changes shall be made by the county assessor to each ~~item~~ parcel of real property in the county so affected.

Sec. 12. Original sections 77-5003 and 77-5011, Reissue Revised Statutes of Nebraska, and sections 25-1901, 77-1504, 77-1507.01, 77-5016, 77-5017, 77-5020, 77-5023, 77-5026, and 77-5028, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 13. The following section is outright repealed: Section 77-5014, Reissue Revised Statutes of Nebraska.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.