

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 580

Introduced by Cornett, 45.

Read first time January 21, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-5016, Revised Statutes Cumulative Supplement, 2008; to
3 change a standard of review by the Tax Equalization and
4 Review Commission; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5016, Revised Statutes Cumulative
2 Supplement, 2008, 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
14 be bound by the usual common-law or statutory rules of evidence
15 except during a formal hearing. Any party to an appeal filed
16 under section 77-5007 may request a formal hearing by delivering a
17 written request to the commission not more than thirty days after
18 the appeal is filed. The requesting party shall be liable for the
19 payment of fees and costs of a court reporter pending a final
20 decision. The commission shall be bound by the rules of evidence
21 applicable in district court in any formal hearing held by the
22 commission. Fees and costs of a court reporter shall be paid by the
23 party or parties against whom a final decision is rendered, and all
24 other costs shall be allocated as the commission may determine;

25 (2) The commission may administer oaths, issue subpoenas,

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

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

25 (4) Every party shall have the right of cross-examination

1 of witnesses who testify and shall have the right to submit
2 rebuttal evidence;

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

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

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

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

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

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

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

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

17 Sec. 2. Original section 77-5016, Revised Statutes
18 Cumulative Supplement, 2008, is repealed.