LEGISLATIVE BILL 385

Introduced by Lindstrom, 18.
Read first time January 13, 2017
Committee: Revenue

A BILL FOR AN ACT relating to the Tax Equalization and Review Commission Act; to amend sections 77-5013 and 77-5016, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to who may execute appeals and the burden of proof for certain appeals; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-5013, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-5013 (1) The commission obtains exclusive jurisdiction over an appeal or petition when:

(a) The commission has the power or authority to hear the appeal or petition;

(b) An appeal or petition is timely filed;

(c) The filing fee, if applicable, is timely received and thereafter paid; and

(d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations. In addition to any other person or entity provided for by the commission in
its rules and regulations, the following persons with a relationship with
the taxpayer may also execute an appeal on behalf of the taxpayer;

(a) A person or entity with a contract executed by the taxpayer, or
a legal representative, that includes the power to execute an appeal on
behalf of the taxpayer;

(b) A person with a power of attorney;

(c) A person with a durable power of attorney; and

(d) A person who is a trustee of an estate.

Sec. 2. Section 77-5016, Revised Statutes Cumulative Supplement,
2016, 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:

(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 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;

(4) All evidence, other than that described in subdivision (3) of this section, 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;

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

(6) 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;

(7) 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;

(8) 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;

(9)(a) In all appeals, excepting those arising under section
77-1606 and those described in subdivision (9)(b) of this section, 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;

(b) In appeals regarding the assessed value of a property that has
increased by more than five percent over the assessed value for the same
property for the prior tax year, the county board of equalization shall
have the burden of proving, by a preponderance of the evidence, that the
assessed value reflects the property's actual value as defined in section
77-112 or, for agricultural land and horticultural land, the property's
value as described in subsection (2) or (3) of section 77-201, as applicable. This subdivision shall not apply if the assessed value that is the subject of the appeal is based on improvements made during the prior tax year;

(10) 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) 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) 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 (a) the appellant is the county assessor or county clerk in which case the costs shall be paid by the county or (b) the appellant is the Tax Commissioner or Property Tax Administrator in which case the costs shall be paid by the state;

(13) 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; and

(14) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of this section apply to hearings or proceedings before a single commissioner pursuant to section 77-5015.02.

Sec. 3. Original sections 77-5013 and 77-5016, Revised Statutes Cumulative Supplement, 2016, are repealed.