

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 385

Introduced by Lindstrom, 18.

Read first time January 13, 2017

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Tax Equalization and Review Commission
- 2 Act; to amend sections 77-5013 and 77-5016, Revised Statutes
- 3 Cumulative Supplement, 2016; to change provisions relating to who
- 4 may execute appeals and the burden of proof for certain appeals; and
- 5 to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5013, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-5013 (1) The commission obtains exclusive jurisdiction over an
4 appeal or petition when:

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

7 (b) An appeal or petition is timely filed;

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

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

14 Only the requirements of this subsection shall be deemed
15 jurisdictional.

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

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

29 (4) The form and requirements for execution of an appeal or petition
30 may be specified by the commission in its rules and regulations. In
31 addition to any other person or entity provided for by the commission in

1 its rules and regulations, the following persons with a relationship with
2 the taxpayer may also execute an appeal on behalf of the taxpayer;

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

6 (b) A person with a power of attorney;

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

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

9 Sec. 2. Section 77-5016, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 77-5016 Any hearing or proceeding of the commission shall be
12 conducted as an informal hearing unless a formal hearing is granted as
13 determined by the commission according to its rules and regulations. In
14 any hearing or proceeding heard by the commission:

15 (1) The commission may admit and give probative effect to evidence
16 which possesses probative value commonly accepted by reasonably prudent
17 persons in the conduct of their affairs excluding incompetent,
18 irrelevant, immaterial, and unduly repetitious evidence and shall give
19 effect to the privilege rules of evidence in sections 27-501 to 27-513
20 but shall not otherwise be bound by the usual common-law or statutory
21 rules of evidence except during a formal hearing. Any party to an appeal
22 filed under section 77-5007 may request a formal hearing by delivering a
23 written request to the commission not more than thirty days after the
24 appeal is filed. The requesting party shall be liable for the payment of
25 fees and costs of a court reporter pending a final decision. The
26 commission shall be bound by the rules of evidence applicable in district
27 court in any formal hearing held by the commission. Fees and costs of a
28 court reporter shall be paid by the party or parties against whom a final
29 decision is rendered, and all other costs shall be allocated as the
30 commission may determine;

31 (2) The commission may administer oaths, issue subpoenas, and compel

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

6 (3) The commission may consider and utilize the provisions of the
7 Constitution of the United States, the Constitution of Nebraska, the laws
8 of the United States, the laws of Nebraska, the Code of Federal
9 Regulations, the Nebraska Administrative Code, any decision of the
10 several courts of the United States or the State of Nebraska, and the
11 legislative history of any law, rule, or regulation, without making the
12 document a part of the record. The commission may without inclusion in
13 the record consider and utilize published treatises, periodicals, and
14 reference works pertaining to the valuation or assessment of real or
15 personal property or the meaning of words and phrases if the document is
16 identified in the commission's rules and regulations;

17 (4) All evidence, other than that described in subdivision (3) of
18 this section, including records and documents in the possession of the
19 commission of which it desires to avail itself, shall be offered and made
20 a part of the record in the case. No other factual information or
21 evidence other than that set forth in this section shall be considered in
22 the determination of the case. Documentary evidence may be received in
23 the form of copies or excerpts or by incorporation by reference;

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

27 (6) The commission may take notice of judicially cognizable facts
28 and in addition may take notice of general, technical, or scientific
29 facts within its specialized knowledge or statistical information
30 regarding general levels of assessment within a county or a class or
31 subclass of real property within a county and measures of central

1 tendency within such county or classes or subclasses within such county
2 which have been made known to the commission. Parties shall be notified
3 either before or during the hearing or by reference in preliminary
4 reports or otherwise of the material so noticed. They shall be afforded
5 an opportunity to contest the facts so noticed. The commission may
6 utilize its experience, technical competence, and specialized knowledge
7 in the evaluation of the evidence presented to it;

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

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

17 (9)(a) ~~(9)~~ In all appeals, excepting those arising under section
18 77-1606 and those described in subdivision (9)(b) of this section, if the
19 appellant presents no evidence to show that the order, decision,
20 determination, or action appealed from is incorrect, the commission shall
21 deny the appeal. If the appellant presents any evidence to show that the
22 order, decision, determination, or action appealed from is incorrect,
23 such order, decision, determination, or action shall be affirmed unless
24 evidence is adduced establishing that the order, decision, determination,
25 or action was unreasonable or arbitrary;

26 (b) In appeals regarding the assessed value of a property that has
27 increased by more than five percent over the assessed value for the same
28 property for the prior tax year, the county board of equalization shall
29 have the burden of proving, by a preponderance of the evidence, that the
30 assessed value reflects the property's actual value as defined in section
31 77-112 or, for agricultural land and horticultural land, the property's

1 value as described in subsection (2) or (3) of section 77-201, as
2 applicable. This subdivision shall not apply if the assessed value that
3 is the subject of the appeal is based on improvements made during the
4 prior tax year;

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

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

18 (12) The costs of any appeal, including the costs of witnesses, may
19 be taxed by the commission as it deems just, except costs payable by the
20 appellant pursuant to section 77-1510.01, unless (a) the appellant is the
21 county assessor or county clerk in which case the costs shall be paid by
22 the county or (b) the appellant is the Tax Commissioner or Property Tax
23 Administrator in which case the costs shall be paid by the state;

24 (13) The commission shall deny relief to the appellant or petitioner
25 in any hearing or proceeding unless a majority of the commissioners
26 present determine that the relief should be granted; and

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

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