NEBRASKA ADMINISTRATIVE CODE

TITLE 442, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 3

TAX EQUALIZATION AND REVIEW COMMISSION

AUTHORITY AND DUTIES

Issue Date: 09/03/96
Last Revision Date: ~~12/29/03~~01/03/07
Effective Date: ~~01/03/07~~_____

NEBRASKA ADMINISTRATIVE CODE

TITLE 442 — TAX EQUALIZATION AND REVIEW COMMISSION

CHAPTER 3 — AUTHORITY AND DUTIES

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CHAPTER 3 AUTHORITY AND DUTIES

001 Limitation of Authority. The Commission's authority to act is limited by statute as follows:

001.01 The Commission has no authority to affect lawful levies. County boards, city councils, school boards, and all other bodies legally authorized to make levies are free to make the rate of levy for their respective political subdivisions or municipalities at any amount not prohibited by the Constitution of Nebraska or the laws of the State. Neb. Rev. Stat. §77-5010.

001.02 The Commission has no authority to consider questions not raised in the action or proceedings upon which the order, decision, determination, or action appealed from is based. Neb. Rev. Stat. § 77-5016(7).

002 Powers and Duties of the Commission.

002.01 The Commission has the power, and therefore the duty, to review and equalize assessments of property for taxation within the state. The Commission reviews and equalizes assessments both within and between counties of the State. Neb. Const. Art. IV, §28.

002.02 The Commission has 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 the acceptable range. Neb. Rev. Stat. §77-5023(1).

002.03 The Commission has the power and duty to hear and determine appeals of decisions and hear and grant or deny relief on petitions as

follows:

002.03A 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;

002.03B 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;

002.03C Decisions of the Tax Commissioner and decisions of the Property Tax Administrator made before July 1, 2007, determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

002.03D Decisions of the Tax Commissioner and decisions of the Property Tax Administrator made before July 1, 2007, determining adjusted valuation pursuant to section 79-1016;

002.03E Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;

002.03F 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;

002.03G Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

002.03H Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section ~~60-3005~~60-3,188;

002.03I Decisions of the Tax Commissioner and decisions of the Property Tax Administrator made before July 1, 2007, made

under section 77-1330;

002.03J Any other decision of any county board of equalization;

002.03K Any other decision of the Property Tax Administrator made before July 1, 2007, and decisions made by the Tax Commissioner regarding property valuation, exemption, or taxation made on or after July 1, 2007;

002.03L Decisions of the Tax Commissioner pursuant to section 77-3520; and

002.03M Any other decision, determination, action, or order from which an appeal to the Commission is authorized.

002.03N The Commission has the power and duty to hear and grant or deny relief on petitions. Neb. Rev. Stat. §77-5007.

002.~~04~~03N1 The Commission ~~has the power to invalidate the certificate 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 or suspended except upon a proper hearing before the Commission~~may hear petitions to determine the taxable status or real property Neb. Rev. Stat. §77-202.04(2).

002.03N2 The Commission may hear petitions to determine whether special valuation is applicable to a parcel. Neb. Rev. Stat. ~~§77-5020.~~§77-1345.01 (10).

~~002.05~~

002.03N2 The Commission may hear petitions to determine actual value, special value, or recapture value of real property. Neb. Rev. Stat. §77-1507.01

002.04 The Commission has the power to hear and decide appeals of decision(s) by the ~~Property~~ Tax ~~Administrator~~Commissioner determining adjusted valuations of each class of property in a school district. Neb. Rev. Stat. §79-1016(~~3~~4).

002.0~~6~~5 The Commission has the power to hear and decide an appeal of the decision by the ~~Property~~ Tax ~~Administrator~~Commissioner to deny a claim of overpayment of tax due to clerical error, misunderstanding, or mistake. Neb. Rev. Stat. §77-1775.

~~002.07 The Commission, through the Presiding Hearing Officer, may administer oaths. Neb. Rev. Stat. §77-5016(2).~~

~~002.08 The Commission, through its Chairperson, may issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. Neb. Rev. Stat. §77-5016(2).~~

~~002.09 The Commission may adopt and promulgate rules of discovery which are consistent with the rules of discovery adopted by the Nebraska Supreme Court pursuant to Neb. Rev. Stat. § 25-1273.01. Neb. Rev. Stat. 77-5016(2).~~

002.~~10~~06 The Commission has the power to hear and decide appeals from determinations of the tax exempt status of property under Neb. Rev. Stat. §60-3006 (motor vehicles) and §77-3519 (homestead).

002.~~11~~07 The Commission has the power to hear and decide an appeal by a taxpayer seeking special valuation under Neb. Rev. Stat. §77-1344. Neb. Rev. Stat. §77-1345.01.

002.~~12~~08 The Commission has the power to hear and decide appeals of persons denied exemption from real or tangible personal property taxation by a county board of equalization. The Commission further has the power to hear and decide appeals by a county assessor of the grant of an exemption from real or tangible personal property taxation. Neb.

Rev. Stat. §77-202.04.

002.09 The Commission has various special administrative powers.

002.09A The Commission, through the Presiding Hearing Officer, may administer oaths. Neb. Rev. Stat. §77-5016(2).

002.09B The Commission, through its Chairperson, may issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. Neb. Rev. Stat. §77-5016(2).

002.09C The Commission may adopt and promulgate rules of discovery which are consistent with the rules of discovery adopted by the Nebraska Supreme Court pursuant to Neb. Rev. Stat. § 25-1273.01. Neb. Rev. Stat. 77-5016(2).

002.09D The Commission has the power to invalidate the certificate 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 or suspended except upon a proper hearing before the Commission. Neb. Rev. Stat. §77-5020.

003 Designation of Chairperson and Vice-Chairperson. The Chairperson and Vice-Chairperson of the Commission must each be an attorney admitted to practice before the Nebraska Supreme Court. Neb. Rev. Stat. 77-5003(3).

003.01 Each Chairperson and Vice-Chairperson serves a term of two years on a rotating basis. Neb. Rev. Stat. 77-5003(3).

003.02 The term of office for each Chairperson and Vice-Chairperson commences January 1 of each even numbered year and expires on December 31 of each odd numbered year or upon: written resignation submitted by the Chairperson or Vice-Chairperson; written notice from a physician for the Chairperson or Vice-Chairperson

stating that the Chairperson or Vice-Chairperson is incapable of performing the duties of Chair or Vice-Chairperson, and that such incapacity will continue through the duration of the Chairperson or Vice-Chairperson's term of office as Chairperson or Vice-Chairperson; death of the Chairperson or Vice-Chairperson; expiration of the Chairperson or Vice Chairperson's term of office as a Commissioner. Neb. Rev. Stat. 77-5003(3).

003.03 In the event only one Commissioner is eligible to serve as Chairperson that member is designated Chairperson on expiration of the prior Chairperson's term.

003.04 In the event only one Commissioner is eligible to serve as Vice-Chairperson that member is designated Vice-Chairperson on expiration of the prior Vice-Chairperson's term.

003.05 In the event no Commissioner is eligible to serve as Chairperson that office shall remain vacant until an eligible person is appointed by the Governor.

003.06 In the event no Commissioner is eligible to serve as Vice-Chairperson that office shall remain vacant until an eligible person is appointed by the Governor.

003.07 In the event more than one Commissioner is eligible to serve as Chairperson or Vice-Chairperson an election by secret ballot shall be conducted.

003.08 A Chairperson or Vice-Chairperson may resign his or her office as Chairperson or Vice-Chairperson without resigning from the Commission and may continue to serve as a Commissioner.

004 Locations Where Hearings May Be Held. The Commission may hold hearings at such places within the State of Nebraska as the Chairperson may from time to time determine.

005 Authority of Commissioners to Act Jointly or Severally.

005.01 Any investigation, inquiry, or hearing held or undertaken by the Commission may be held or undertaken by or before a panel of Commissioners with the approval of the Commission. Neb. Rev. Stat. §77-5005(3).

005.02 The Chairperson, or in the absence of the Chairperson the Vice-Chairperson, may issue any procedural order, and that order is deemed to be the order of the Commission.

~~006 Evaluation of Evidence. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. §77-5016(5).~~

00~~7~~6 Orders Authorized.

00~~7~~6.01 In resolving an appeal or petition, the Commission may make such orders as are appropriate for resolving the appeal or petition but the relief granted shall not be excessive compared to the problems addressed. Neb. Rev. Stat. §77-5017(1).

00~~7~~6.02 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. Neb. Rev. Stat. §77-5017(1).

00~~7~~6.03 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. Neb. Rev. Stat. §77-5017(1).

00~~7~~6.04 The Commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Neb. Rev. Stat. §77-5018.

00~~7~~6.05 Every decision and order adverse to a party to the proceeding, rendered by the Commission in a case appealed to the Commission, shall be in writing or stated in the record and shall be accompanied by Findings of Fact and Conclusions of Law. Neb. Rev. Stat. §77-5018.

00~~7~~6.06 A copy of the decision and/or order shall be delivered to each party or his or her lawyer of record. Neb. Rev. Stat. §77-5018.

00~~8~~7 Special Orders.

00~~8~~7.01 Writs of Mandamus. The Commission may issue writs of mandamus compelling compliance with its orders. Neb. Rev. Stat. §77-5008.

00~~8~~7.02 No writ of mandamus shall be issued unless an Order for Hearing and Notice of Hearing has been issued and an opportunity to be heard has been afforded to any party who prospectively may be directly affected by the proposed writ. ~~Such hearing shall be a formal hearing as defined in these Rules and Regulations.~~

00~~8~~7.03 The Commission may, by writ of mandamus, compel the ~~Property~~ Tax ~~Administrator~~Commissioner to enforce its orders, and may charge the party which has not complied with the Commission's orders with costs borne by the Tax Commissioner or by the Property Tax Administrator prior to July 1. 2007. Neb. Rev. Stat. §77-5008.

00~~9~~8 Special Master.

00~~9~~8.01 A "Special Master" may hold informal hearing(s) on behalf of the Commission. At the conclusion of the hearing(s), the Special Master shall submit recommended Findings of Fact to the Commission. The duties of a Special Master shall not include the determination of Conclusions of Law or the final determination of any case or controversy. Neb. Rev. Stat. §77-5009.

00~~9~~8.01A The recommended Findings of Fact of the Special Master shall be provided to the parties either on the record or in writing, at

the Special Master's discretion.

00~~9~~8.01B The parties may, with the consent of the Commission, be afforded an opportunity to be heard before the Commission regarding the recommended Findings of Fact of the Special Master. The Commission may, with or without holding a hearing, adopt the recommended Findings of Fact in whole or in part. The Commission, in the alternative, may reject the Special Master's recommended Findings of Fact, and hold further hearings or request further evidence, as the Commission may determine.

00~~9~~8.02 A Special Master may also serve as the presiding hearing officer in a Formal or Informal Hearing. In any case where a Special Master is serving as a presiding hearing officer, that Special Master may make recommended findings of fact but shall not determine conclusions of law or participate in determining the disposition of the appeal.

00~~9~~8.03 Qualifications of Special Master. The Commission may seek to employ as Special Masters persons having such qualification as the Commission may determine.

00~~9~~8.04 Compensation. A Special Master appointed by the Commission will be compensated as the Commission and the Special Master may agree. Such compensation shall only be made in accordance with the provisions of Neb. Rev. Stat. §77-5009.

00~~9~~8.0~~6~~5 Conflict of Interest.

00~~9~~8.0~~6~~5A An individual shall not be appointed as a Special Master if that individual has a conflict of interest as defined in Chapter 2, § 001.14 of these rules.

00~~9~~8.0~~6~~5B A Special Master shall disqualify himself/herself in the case of a conflict of interest as defined in Chapter 2, § 001.14 of these rules.

~~010~~009 Referee.

~~010~~009.01 For the purposes of mediating valuation disputes between the county and the owner of a property the Commission may appoint or contract with a "Referee" to meet with the parties and facilitate agreement on facts and issues prior to the hearing on the appeal. Neb. Rev. Stat. §77-5009.

~~010~~009.02 Referee Conference. A Referee shall meet with the parties to facilitate agreement on facts and issues within 60 days of his or her appointment.

~~010~~009.03 Referee Reports. A Referee shall, at the conclusion of the Referee Conference, prepare a written report to be submitted to the Commission. This Referee's report shall be signed by the Referee and each of the parties and shall specify the following:

~~010~~009.03A That the parties resolved their differences. If the parties resolve their differences at the Referee Conference the Referee Report shall contain a recitation of the agreed upon facts, issues and valuation for the appealed property as determined by the parties to the appeal; or

~~010~~009.03B That the parties have failed to resolve their differences. If the parties have failed to resolve their differences the Referee Report shall identify:

~~010~~009.03B1 The unresolved factual matters and issues to be submitted to the Commission for its determination.

~~010~~009.03B2 All of the facts and issues which have been agreed to by the parties and are not, or are no longer, in dispute.

~~010~~009.04 Action of the Commission upon receipt of Referee Report.

~~010~~009.04A If the parties fail to resolve their differences, the matter shall proceed to a hearing before the Commission.

~~010~~009.04B If the parties resolve their differences, the Commission shall enter an order that reflects the agreement of the parties as set forth in the Referee's Report.

~~010~~009.05 Compensation. A Referee appointed by the Commission may be paid a salary or fee in the discretion of the Commission. If a salary is paid, the amount paid shall be fixed by the Commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the Commission before the referee renders service under his or her appointment. Such compensation shall only be made in accordance with the provisions of Neb. Rev. Stat. §77-5009.

~~010~~009.06 Conflict of Interest.

~~010~~009.06A An individual shall not be appointed as a Referee if that individual has a conflict of interest as defined in Chapter 2, § 001.14 of these rules.

~~010~~009.06B A Referee shall disqualify himself/herself in the case of a conflict of interest as defined in Chapter 2, § 001.14 of these rules.

~~010~~009.07 ~~Nothing in these rules shall be deemed to prevent the parties from meeting and reaching an agreement prior to the hearing on the appeal, prior to or in the absence of an Order Appointing a Referee.~~

~~010.08~~ Confidentiality. The referee may not be called as a witness in a hearing on the merits nor may evidence of any statements made by the parties or the referee pertaining to or at the referee meeting be received by the commission in a hearing on the merits.