NEBRASKA ADMINISTRATIVE CODE

Title 350 - Nebraska Department of Revenue, Property Assessment Division ~~and Taxation~~

Chapter 91 – Proceedings Instituted By The Department of Revenue Property Assessment Division ~~and Taxation~~

Effective Date ~~1/3/07~~

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Title 350 - Nebraska Department of Revenue ~~Property Assessment and Taxation~~

Chapter 91 – Proceedings Instituted By The Department of Revenue ~~Property Assessment and Taxation~~

REG-91-001 PURPOSE

001.01 The scope and purpose of these regulations is to set forth the types of proceedings that may be instituted by the Department of Revenue ~~Property Assessment and Taxation~~ acting on behalf of the Tax Commissioner ~~Property Tax Administrator~~ and which are decided by the Tax Commissioner ~~Property Tax Administrator~~ after a hearing conducted by the Tax Commissioner ~~Property Tax Administrator~~ or his or her delegate.

(Neb. Rev. Stat. Sections 77-702~~, R.R.S. 2003~~ and ~~Neb. Rev. Stat. Section~~ 77-1330, R.S. Supp., 2007~~2006~~.)

REG-91-002 DEFINITIONS

002.01 Corrective order shall mean a written order of the Tax Commissioner ~~Property Tax Administrator~~ requiring a county or assessor to institute measures to comply with the Nebraska Constitution, and statutes, and the rules, regulations, manuals and directives of the Tax Commissioner and Property Tax Administrator.

002.02 Invalidate shall mean to suspend or revoke the certificate held by a certificate holder for a period of five (5) years.

002.03 Revocation shall mean to invalidate the assessor's certificate of a certificate holder and render the holder ineligible to hold office for a period of five (5) years.

002.04 Suspend shall mean to cause a temporary interruption, not exceeding five (5) years, in duration of the assessment function of a county or the validity of an assessor's certificate.

(Neb. Rev. Stat. Sections 77-421, 77-422, 77-702, ~~and~~ 77-707, ~~R.R.S. 2003 and Neb. Rev. Stat. Sections 77-422~~ and 77-1330, R.S. Supp., 2007~~2006~~.)

REG-91-003 PROCEEDINGS TO INVALIDATE ASSESSOR'S CERTIFICATE

003.01 The Tax Commissioner ~~Property Tax Administrator~~ shall have the authority, after notice and a hearing in compliance with this regulation and Practice and Procedure Regulations, Chapter 90, to invalidate the assessor's certificate held by any assessor or deputy assessor who willfully fails or refuses to faithfully perform his or her duties pursuant to the Constitution and laws of the state of Nebraska, any rules, regulations or instructions adopted, promulgated and issued by the Tax Commissioner and Property Tax Administrator and any manuals of assessment adopted by the Tax Commissioner and Property Tax Administrator. For the purposes of these regulations, the term "instructions" as used in this regulation shall include, but not be limited to directives, manuals, instructions, guides or similar materials issued by the Tax Commissioner and Property Tax Administrator or Department of Revenue ~~Property Assessment and Taxation~~ relating to the duties of assessors.

003.02 Willful failure.

003.02A For the purpose of this regulation, an assessor or deputy assessor has willfully failed or refused to perform duties when he or she has deliberately or intentionally not complied with the constitutional or statutory provisions, or rules, regulations, or other directions, including but not limited to, directives, manuals, guidelines, instructions or other directions developed by the Tax Commissioner and Property Tax Administrator or Department of Revenue ~~Property Assessment and Taxation~~ delineating the duties of an assessing official in the state of Nebraska. Willful failure constitutes more than a mere mistake; it contemplates an assessing official having knowledge of his or her duties and choosing not to perform them or to perform them in an incorrect manner.

003.02B Willful failure to comply with state statutes, rules and regulations, and instructions and manuals of the Tax Commissioner and Property Tax Administrator may be justified only where compliance would violate provisions of state law or rules and regulations, or would in fact, based on a preponderance of the evidence, lead to a significant decline in the quality of assessments or would lead to a significant decline in the uniformity and proportionality of assessments.

003.03 Notice. No assessor's certificate shall be invalidated by an order of the Tax Commissioner ~~Property Tax Administrator~~ except after adequate notice and hearing.

003.03A A proceeding instituted by the Department of Revenue ~~Property Assessment and Taxation~~ to invalidate an assessor's certificate, for the purpose of this regulation, shall be initiated in writing and shall set forth the grounds for the proceeding in a manner reasonably calculated to inform the holder of the certificate of the factual basis for the proceeding and the provisions of the statutes, rules and regulations or other materials issued by the Tax Commissioner and Property Tax Administrator allegedly violated by the assessor.

003.03B Proceedings for the invalidation of an assessor's certificate initiated by the Department of Revenue ~~Property Assessment and Taxation~~ shall begin with a Petition for Hearing filed with the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate. Such a petition shall be in writing and shall set forth the factual basis for the petition and the provisions of the statutes, rules and regulations or other materials promulgated by the Tax Commissioner and Property Tax Administrator providing for duties with which the holder of the assessor's certificate has willfully failed to comply. The Petition for Hearing shall be reviewed by the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate. If the Petition alleges facts which, if true, would be cause for invalidation of an assessor's certificate, the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate shall issue a Notice of Hearing setting forth a time and place for hearing at least twenty (20) days in advance of hearing. If the petition fails to allege sufficient facts to merit a hearing, the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate shall issue an order dismissing the petition. The Petition for Hearing and Notice of Hearing shall be served pursuant to the Practice and Procedure Regulations, Chapter 90.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.03, 84-913, 84-914, 84-915, and 84-917, R.R.S. 1994, ~~Neb. Rev. Stat. Sections 77-702 and 77-5014, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections ~~77-1330, 77-5007,~~ 77-5015 and 84-915.01, R.S. Supp., 2006 and Neb Rev. Stat. Sections 77-702, 77-1330, 77-5007 and 77-5014, R.S. Supp., 2007.)

REG-91-004 CONDUCT OF PROCEEDINGS

004.01 Any proceeding to invalidate an assessor's certificate initiated by the Department of Revenue ~~Property Assessment and Taxation~~ shall be conducted pursuant to Practice and Procedure Regulations, Chapter 90, governing contested cases.

004.02 Burden of Proof.

004.02A The burden of proof in a proceeding to invalidate an assessor's certificate initiated by the Department of Revenue ~~Property Assessment and Taxation~~ shall be on the Department of Revenue to show, by a preponderance of evidence, that the holder of the assessor's certificate has willfully failed to perform his or her duties under the applicable constitutional or statutory provisions, or the rules, regulations or instructions promulgated by the Tax Commissioner and Property Tax Administrator. For the purposes of these regulations, preponderance of the evidence shall mean evidence which, as a whole, shows that the facts or set of facts sought to be proved is more probable than not.

004.02B In any proceeding to invalidate an assessor's certificate, if the holder of the assessor's certificate seeks to assert that he or she was justified in willfully failing to perform duties required of the holder of an assessor's certificate, such an assertion shall be treated as an affirmative defense. In such instances, the holder of the assessor's certificate shall have the burden of proof to show, by a preponderance of the evidence, that compliance with the state law or rule or regulation alleged by the Department of Revenue to have been violated would lead to a significant decline in the quality of assessments, or a significant decline in the uniformity and proportionality of assessments.

(Neb. Rev. Stat. Sections 84-901, 84-912.02, 84-912.03, 84-913, 84-914, 84-915 and 84-917, R.R.S. 1994, ~~Neb. Rev. Stat. Sections 77-702 and 77-5014, R.R.S. 2003,~~ Neb. Rev. Stat. Section~~s 77-1330, 77-5007 and~~ 77-5015, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1330, 77-5007 and 77-5014, R.S. Supp., 2007.)

REG-91-005 ORDERS

005.01 Following a hearing conducted before the Tax Commissioner ~~Property Tax Administrator~~ or his or her designee, the Tax Commissioner ~~Property Tax Administrator~~ shall issue an order, in writing, determining whether invalidating the assessor's certificate is appropriate, based on the record made at hearing. The Tax Commissioner ~~Property Tax Administrator~~ may not consider evidence not presented at hearing.

005.02 The order shall contain findings of fact and conclusions of law as set forth in Practice and Procedure Regulations, Chapter 90. The order shall be served on the parties or their representatives pursuant to Practice and Procedure Regulations, Chapter 90.

(Neb. Rev. Stat. Sections 84-901, 84-913, 84-913.04, 84-914, 84-915 and 84-917, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Section~~s 77-1330 and~~ 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702 and 77-1330, R.S. Supp., 2007.)

REG-91-006 SANCTIONS

006.01 If the Tax Commissioner ~~Property Tax Administrator~~ finds that the holder of the assessor's certificate sought to be invalidated by the Department of Revenue ~~Property Assessment and Taxation~~ has willfully failed or refused to perform his or her duties, the Tax Commissioner ~~Property Tax Administrator~~ may issue a written order suspending the certificate or indicating an intention to revoke the certificate.

006.01A In determining whether the appropriate sanction is suspension or revocation and in determining the length of any suspension imposed, the Tax Commissioner ~~Property Tax Administrator~~ shall consider the severity of the violations committed by the assessor, the length of time during which such violations occurred, the impact of such violations on the level of value and quality of assessment in the county, the impact of such violations on the uniformity and proportionality of assessments in the county, and whether the certificate holder has previously been determined by the Tax Commissioner ~~Property Tax Administrator~~, the Tax Equalization and Review Commission or any other administrative agency or court to have violated the Nebraska Constitution, statutes or regulations, manuals or directives of the Tax Commissioner and Property Tax Administrator relating to assessment practices.

006.01B If the Tax Commissioner ~~Property Tax Administrator~~ issues a written order intending to revoke an assessor's certificate, the order shall include a one (1) year probationary period. Such an order may require the certificate holder to correct those practices found by the Property Tax Administrator to violate the Nebraska Constitution, statutes and the regulations, manuals and directives of the Tax Commissioner and Property Tax Administrator.

006.01C The written order shall also schedule a hearing, at the end of the probationary period, to determine whether the certificate holder has successfully met the conditions contained in the order.

006.01D The burden of showing the certificate holder has not successfully met the conditions for the probationary period shall be on the Department of Revenue to show, by a preponderance of the evidence, that such conditions have not been met.

006.01E If the evidence adduced at the hearing following the probationary period indicates the certificate holder has successfully met the terms of the probationary period, the Tax Commissioner ~~Property Tax Administrator~~ shall issue a written order rescinding the potential revocation of the certificate.

006.01F If the evidence adduced at the hearing following the probationary period indicates the certificate holder has not successfully met the terms of the probationary period, the Tax Commissioner ~~Property Tax Administrator~~ shall issue a written order revoking the certificate. Such order shall set forth the date on which such revocation shall take effect.

006.02 In the event that an assessor certificate is invalidated, the office held by the certificate holder shall become vacant. The position of the certificate holder may be filled by the county, or by the state in instances where

the holder of the certificate is employed by the state, pursuant to the applicable statutes or regulations dealing with filling vacancies at the county or state level.

006.03 In the event that an assessor's certificate is suspended, the certificate holder shall not be eligible to be elected or appointed to, or hold the office of assessor or serve as deputy assessor during the period of suspension.

006.04 In the event that the certificate held by an assessor or deputy assessor is revoked, the certificate holder shall not be eligible to be elected or appointed to, or hold the office of assessor or serve as deputy assessor for a period of five (5) years from the date of revocation pursuant to the order of the Tax Commissioner ~~Property Tax Administrator~~.

006.04A A certificate holder whose certificate has been suspended or revoked shall be ineligible to hold his or her position as assessor or deputy assessor not only in the county for which he or she worked at the time of the invalidation of the certificate but also in any other county in the state during the period of revocation or suspension.

006.04B Before the holder of an assessor's certificate that has been invalidated may be eligible to be elected or appointed as an assessor or deputy assessor, or hold the office of county assessor or serve as deputy assessor, he or she must retake and pass the written examination held by the Property Tax Administrator for applicants for certification as assessor. An applicant for re-examination under this section shall be required to pay the applicable examination fee to the Tax Commissioner ~~Property Tax Administrator~~.

006.04C In order to be re-certified, in addition to retaking and passing the written examination, a certificate holder whose certificate has been invalidated must satisfy the educational requirements of the Education, Certification, and Re-certification Regulation, Chapter 71.

006.04D Upon reinstatement, a certificate holder must maintain the educational requirements as set forth in the Education, Certification, and Re-certification Regulation Chapter 71.

(Neb. Rev. Stat. Section 23-3202, R.S. Supp., 2002~~,~~ and Neb. Rev. Stat. Sections 77-414, ~~and~~ 77-702, ~~R.R.S. 2003~~ and ~~Neb. Rev. Stat. Section~~ 77-1330, R.S. Supp., 2007~~2006~~.)

REG-91-007 APPEALS

007.01 Any assessor or deputy assessor whose certificate has been invalidated may appeal the decision of the Tax Commissioner ~~Property Tax Administrator~~ to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013 and the rules and regulations promulgated and adopted by the Commission.

007.02 An appeal of the invalidation of an assessor's certificate under this section shall not act as an automatic stay of the order of the Tax Commissioner ~~Property Tax Administrator~~ invalidating the certificate.

(~~Neb. Rev. Stat. Sections 77-702, and 77-5014, R.R.S. 2003,~~ Neb. Rev. Stat. Sections ~~77-1330, 77-5007,~~ 77-5013 and 77-5015, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1330, 77-5007 and 77-5014, R.S. Supp., 2007.)

REG-91-008 CORRECTIVE MEASURES

008.01 The Property Tax Administrator or his or her agent or representative may examine or cause to have examined any books, papers, records, or memoranda of any county relating to the assessment of property to determine compliance with the Nebraska Constitution and statutes as well as any regulations, manuals and directives promulgated and adopted by the Tax Commissioner and Property Tax Administrator.

008.01A The production of records by a county may be required by the Property Tax Administrator by administrative order or summons.

008.01B A willful failure on the part of an assessor or deputy assessor to produce records requested by the Property Tax Administrator shall constitute grounds for the invalidation of the assessor's certificate held by the assessor or deputy assessor failing to produce such records.

008.01C After an examination of the books and records of a county, the Property Tax Administrator shall provide a written report of the results of the examination to the assessor and county board. If the examination indicates a failure to meet the standards contained in the constitution, statutes or rules, regulations, manuals or directives promulgated and adopted by the Tax Commissioner and Property Tax Administrator, the Property Tax Administrator shall, in the report of the examination, set forth the facts and nature of such failures as well as recommend corrective measures the county or assessor should implement to correct those failures.

008.02 Proceeding to Require Corrective Measure

008.02A Following the examination of a county's records and the issuance of a report of the results of the examination, the Property Tax Administrator may seek to order a county to take whatever corrective measures the Property Tax Administrator deems necessary to achieve compliance with the Nebraska Constitution and statutes as well as rules, regulations, manuals or directives promulgated and adopted by the Tax Commissioner and Property Tax Administrator.

008.02B No such corrective measures may be ordered by the Property Tax Administrator except after adequate notice and hearing.

008.03 Notice.

008.03A A proceeding instituted by the Department of Revenue ~~Property Assessment and Taxation~~ to require a county to institute a corrective order shall be initiated in writing and shall set forth the grounds for the proceeding in a manner reasonably calculated to inform the county of the factual basis for the proceeding, the provisions of the statutes, rules, regulations or other materials that have been violated by the county and the corrective measure sought to be imposed.

008.03B Proceedings for the imposition of a corrective measure shall be initiated by the Department of Revenue ~~Property Assessment and Taxation~~ and shall begin with a Petition for Hearing filed with the Tax Commissioner ~~Property Tax Administrator~~. Such a petition shall be in writing and shall set forth the factual basis for the petition, the provisions of the statutes, rules and regulations or other materials promulgated by the Tax Commissioner and Property Tax Administrator with which the county has failed to comply and the corrective measures recommended by the Department of Revenue ~~Property Assessment and Taxation~~. The Petition for Hearing shall be reviewed by the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate. If the Petition alleges facts which, if true, would indicate a failure on the part of the county to comply with the statutes, rules, regulations, directives or manuals relating to property assessment, the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate shall issue a Notice of Hearing setting forth a time and place for hearing at least twenty days in advance of the hearing. If the Petition does not allege sufficient facts to merit the setting of a hearing, the Tax Commissioner ~~Property Tax Administrator~~ shall issue an order dismissing the petition. The Petition for Hearing and Notice of Hearing shall be served pursuant to the Practice and Procedure Regulations, Chapter 90.

008.04 Conduct of Proceedings.

008.04A Any proceeding to require corrective measures on the part of the county shall be conducted pursuant to the Practice and Procedure Regulations, Chapter 90, governing contested cases except as specifically set forth in this regulation.

008.04B Burden of Proof.

008.04B(1) The burden of proof in a proceeding to require a corrective measure initiated by the Department of Revenue ~~Property Assessment and Taxation~~ shall be on the Department of Revenue to show, by a preponderance of the evidence that the county has failed or neglected to comply with applicable statutes, rules, regulations, manuals or directives relating to property assessment practices. For the purposes of this regulation, preponderance of the evidence shall mean evidence which as a whole shows that the fact or set of facts sought to be proved is more probable than not.

008.04B(2) For the purpose of this regulation, "failed or neglected to comply" shall mean that a provision of a statute, rule, regulation, directive or manual required to be instituted or followed by a county has not been instituted by the county. It shall not require any willfulness or intentional noncompliance on the part of the county through the action or inaction of its employees, agents or representatives before the issuance by the Tax Commissioner ~~Property Tax Administrator~~ of a corrective order to the county.

008.04B(3) In any proceeding to require a corrective order, if the county seeks to assert that it was justified in failing to comply with any provision of statute, rule, regulation, directive or manual, such an assertion shall be treated as an affirmative defense. In such instances, the county shall have the burden of proof to show, by a preponderance of the evidence, that compliance with the state law, rule, regulation, directive or manual alleged by the Department of Revenue not to have been complied with would lead to a significant decline in the quality of assessments, or a significant decline in the uniformity and proportionality of assessments.

008.05 Orders.

008.05A Following a hearing conducted before the Tax Commissioner ~~Property Tax Administrator~~ or his or her delegate, the Tax Commissioner ~~Property Tax Administrator~~ shall issue an order, in writing, determining whether a corrective measure relating to its assessment practices shall be required of a county, based on the record made at the hearing. The Tax Commissioner ~~Property Tax Administrator~~ may not consider evidence not presented at the hearing.

008.05B The order shall contain findings of fact and conclusions of law as set forth in Practice and Procedure Regulations, Chapter 90. The order shall be served on the parties or their representatives pursuant to Practice and Procedure Regulations, Chapter 90.

008.06 Implementation

008.06A If after the hearing, the Property Tax Administrator issues a corrective order to a county that would have an impact on property values in the county, the values resulting from the order shall be placed upon the assessment rolls and used as a basis for taxation for the current year, if deemed possible by the Property Tax Administrator in the order issued requiring the corrective measure. If not ordered by the Property Tax Administrator for the current year, changes in value resulting from a corrective order shall be made in the next calendar year.

008.06A(1) The Property Tax Administrator may extend statutory due dates and filing requirements in order to implement a corrective order in the year in which it was made.

008.06A(2) Current year corrections shall be completed no later than August 10 of the year in which the order is issued.

008.06B Each property owner or lessee that is responsible for paying the property taxes pursuant to Neb. Rev. Stat. Section 77-202.11 shall be notified of the valuations to be used as a result of the corrective order in the same manner as is used for adjustments to value pursuant to Neb. Rev. Stat. Section 77-1315. The valuations resulting from the corrective order may be protested by property owners or lessee that is responsible for paying the property taxes pursuant to Neb. Rev. Stat. Sections 77-202.11 and 77-1502.

008.06C The county to whom the Property Tax Administrator issues a corrective order shall implement the order as directed by the Property Tax Administrator in the order.

008.06C(1) The Property Tax Administrator shall have the right to monitor compliance with the corrective order and to require the production for review and inspection of a county's records to ensure such compliance.

008.06C(2) If a county fails to implement a corrective order, the Department of Revenue ~~Property Assessment and Taxation~~ may seek to suspend the assessment function of a county and to implement the corrective order with its own personnel.

008.06C(3) In the event that a county fails to implement all or a substantial portion of a corrective order and the Property Tax Administrator has suspended the assessment function of the county pursuant to REG-91-009 and implemented the order with personnel from the Department of Revenue ~~Property Assessment and Taxation~~, the cost to the Department of Revenue to implement the order shall be a charge on the county that has failed to implement the order.

008.06C(3)(a) Upon completion of the implementation of the corrective order by the Department of Revenue ~~Property Assessment and Taxation~~, the Property Tax Administrator shall notify the county board of the cost to the Department of Revenue of implementing the order and present a demand for payment to the county. For the purposes of this regulation, the costs for which the Department of Revenue ~~Property Assessment and Taxation~~ may be reimbursed include but are not limited to, wages of Department of Revenue personnel, travel, food and lodging expenses during the course of the implementation of the corrective order, and the cost of materials used in the implementation of the order.

~~008.06C(3)(b) The county shall issue payment to the Property Tax Administrator within sixty days of the presentation of the demand.~~

008.06C(3)(b)~~(c)~~ If a county fails to make payment to the Property Tax Administrator within one hundred twenty (120) days after the start of the next fiscal year, for the Department of Revenue ~~Property Assessment and Taxation~~'s costs, the Tax Commissioner ~~Property Tax Administrator~~ shall report such nonpayment to the State Treasurer who shall immediately make payment to the Department of Revenue ~~Property Assessment and Taxation~~ for costs incurred by the Department of Revenue for such corrective measures. Payment by the State Treasurer to the Tax Commissioner ~~Property Tax Administrator~~ shall be made out of any money to which such county may be entitled under Neb. Rev. Stat. Chapter 66, articles 4 and 6, and Chapter 77, articles 27 and 35.

008.07 Appeals.

008.07A Any county that has been ordered to implement corrective measures by the Property Tax Administrator following notice and a hearing may appeal the decision of the Property Tax Administrator to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013 and the rules and regulations promulgated and adopted by the Commission.

008.07B An appeal of the order of the Property Tax Administrator requiring a county to take corrective measures shall not act as an automatic stay of the order of the Property Tax Administrator.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.02, 84-912.03, 84-913, 84-913.01, 84-913.02, 84-913.04, 84-914 and 84-915, R.R.S. 1994, ~~Neb. Rev. Stat. Sections 77-702 and 77-5014, R.R.S. 2003,~~ Neb. Rev. Stat. Sections ~~77-1330, 77-5007,~~ 77-5013, 77-5015, 84-913.03 and 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1330, 77-5007 and 77-5014, R.S. Supp., 2007.)

REG-91-009 SUSPENSION OF COUNTY ASSESSMENT AUTHORITY

009.01 The Department of Revenue ~~Property Assessment and Taxation~~ may institute an action before the Property Tax Administrator to require a county to show cause as to why the Property Tax Administrator should not suspend the assessment authority of a county under the following circumstances:

009.01A The county has not complied with a corrective order issued by the Property Tax Administrator pursuant to REG-91-008 within one year of its issuance.

009.02 Notice. No county shall have its assessment authority suspended by the Property Tax Administrator except after adequate notice and a hearing.

009.02A A proceeding to determine whether the assessment authority of a county shall be initiated by the Department of Revenue ~~Property Assessment and Taxation~~ in writing and shall set forth the grounds for the proceeding in a manner reasonably calculated to inform the county of the factual basis for the proceeding and the provisions of the statutes, rules and regulations or other materials allegedly violated by the county.

009.02B Proceedings to determine whether a county's assessment authority should be suspended shall begin with a Petition for Show Cause Hearing filed by the Department of Revenue ~~Property Assessment and Taxation~~ with the Property Tax Administrator. Such petition shall be in writing and shall set forth the factual basis for the petition and the provisions of the statutes, rules and regulations or other

materials promulgated by the Property Tax Administrator with which the county has failed to comply. The petition shall be reviewed by the Property Tax Administrator or his or her designate. If the petition alleges facts which, if true, would meet the conditions of REG-91-009.01A the Property Tax Administrator or his or her designate shall issue a Notice of Show Cause Hearing setting forth the time and place for hearing at least twenty (20) days in advance of hearing. If the petition fails to allege facts sufficient to merit the setting of a hearing, the Property Tax Administrator shall issue an order dismissing the petition. The Petition for Hearing and Notice of Show Cause Hearing shall be served pursuant to Practice and Procedure Regulations, Chapter 90.

009.03 Conduct of Proceedings.

009.03A Any proceedings to determine whether to suspend the assessment authority of a county initiated by the Department of Revenue ~~Property Assessment and Taxation~~ shall be conducted pursuant to the Practice and Procedure Regulations, Chapter 90, governing contested cases.

009.03B Burden of Proof.

009.03B(1) The burden of proof in a show cause proceeding to determine whether a county's assessment authority should be suspended shall be on the county to show, by a preponderance of the evidence, that the county has substantially corrected its failure to comply with the constitution, statutes, rules, regulations, directives or manuals set forth in the Department of Revenue ~~Property Assessment and Taxation~~ report of its inspection of the county's records or that the county has substantially complied with a corrective order of the Property Tax Administrator.

009.03B(2) For the purposes of this regulation, "substantially corrected" or "substantially complied" shall mean that the county has corrected any failures to comply with its statutory or regulatorily mandated duties or has complied with a corrective order in substantive fashion; mere technical noncompliance shall not serve as grounds for the suspension of a county's assessment authority.

009.04 Orders.

009.04A Following a hearing conducted before the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate, the Tax Commissioner ~~Property Tax Administrator~~ shall issue an order, in writing, determining whether suspending a county's assessment function is appropriate, based on

the record made at hearing. The Tax Commissioner ~~Property Tax Administrator~~ may not consider evidence not presented at hearing.

009.04B The order shall contain findings of fact and conclusions of law as set forth in Practice and Procedure Regulations, Chapter 90. The order shall be served on the parties or their representatives pursuant to the Practice and Procedure Regulations, Chapter 90.

009.04C If the record at hearing indicates that the county has met its burden to show it has corrected its failure to comply with the applicable statutory or regulatory provisions set forth in the ~~Department's~~ Department of Revenue's initial report or has complied with the Tax Commissioner's ~~Property Tax Administrator's~~ corrective order, the Tax Commissioner's ~~Property Tax Administrator's~~ order shall rule in favor of the county and dismiss the ~~Department's~~ Department of Revenue's Petition for Show Cause Hearing.

009.05 Sanctions.

009.05A If the Tax Commissioner ~~Property Tax Administrator~~ finds, based on the record made at hearing, that the county has failed to show it has corrected its failure to comply with the applicable constitutional provisions, statutes, regulations, directives, or manuals or has failed to comply with the Tax Commissioner's ~~Property Tax Administrator's~~ corrective order, the Tax Commissioner ~~Property Tax Administrator~~ may issue a written order suspending the assessment authority of the county.

009.05A(1) The Tax Commissioner ~~Property Tax Administrator~~ has the discretion to suspend the assessment authority of a county for a finite or indefinite period. The length of a suspension ordered by the Tax Commissioner ~~Property Tax Administrator~~ shall be based on the severity of the noncompliance with the corrective order on the part of the county, the effort or lack of effort of the county to comply with the order, and any other factor that may impact on the ability of the county to conduct its assessment authority in a manner prescribed by law.

009.05A(2) In the event that the Tax Commissioner ~~Property Tax Administrator~~ suspends the assessment authority of a county indefinitely, he or she shall, in his or her order of suspension, provide for the county to apply to the Tax Commissioner ~~Property Tax Administrator~~ for reinstatement of its assessment authority and that such authority shall be reinstated upon a showing by the county that it has taken the necessary steps to conduct its assessment authority pursuant to constitutional, statutory and regulatory provisions upon reinstatement.

009.05A(3) During the time a county's assessment authority has been suspended by the Tax Commissioner, ~~Property Tax Administrator,~~ the Tax Commissioner, ~~Property Tax Administrator,~~ through the Department of Revenue ~~Property Assessment and Taxation~~, shall succeed to the authority and duties from which the county has been suspended and shall perform the assessment duties of the county. Such performance shall be a charge against the county. Payment for such charges shall be made in the manner described in REG-91-008.06C.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.02, 84-912.03, 84-913, 84-913.01, 84-913.02, 84-913.04, 84-914, 84-915, and 84-917, R.R.S. 1994, ~~Neb. Rev. Stat. Sections 77-702 and 77-5014, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections ~~77-1330, 77-5007,~~ 77-5015, 84-913.03 and 84-915.01, R.S. Supp., 2005 and Neb. Rev. Stat. Sections 77-702, 77-1330, 77-5007 and 77-5014, R.S. Supp., 2007.)

REG-91-0010 APPEALS

0010.01 Any county whose assessment authority has been suspended may appeal the decision of the Tax Commissioner ~~Property Tax Administrator~~ to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013 and the rules and regulations promulgated and adopted by the Commission.

0010.02 An appeal of the suspension of a county's assessment authority shall not act as an automatic stay of the order of the Tax Commissioner ~~Property Tax Administrator~~.

(Neb. Rev. Stat. Section 84-915, R.R.S. 1994, ~~Neb. Rev. Stat. Sections 77-702 and 77-5014, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections ~~77-1330, 77-5007,~~ 77-5013, 77-5015 and 84-915.01 R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1330, 77-5007 and 77-5014, R.S. Supp., 2007.)