NEBRASKA ADMINISTRATIVE CODE

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

Chapter 90– Practice and Procedure Regulations

Effective Date ~~1/3/07~~

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Title 350 - Nebraska Department of Revenue, Property Assessment Division ~~and Taxation~~
Chapter 90 – Practice and Procedure Regulations

REG-90-001 PURPOSE

001.01 The scope and purpose of these regulations is to set forth the procedures to be used and followed in the administrative adjudication of contested cases before the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate. The procedures contained in these regulations shall apply to all matters heard by the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate, with the exception of protests filed by assessors relating to the inclusion of data in the sales file. The procedures relating to the sales file protest process, including notice and hearing, are contained in Sales File Regulations, Chapter 12.

(Neb. Rev. Stat. Sections 84-901 and 84-909.01, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003~~ and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007~~2006~~.)

REG-90-002 DEFINITIONS

002.01 Contested case shall mean a proceeding before the Department of Revenue ~~Property Assessment and Taxation~~ in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a hearing before the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate.

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

002.03 Ex Parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communications shall not include:

002.03A Communications which do not pertain to the merits of the case;

002.03B Communications required for the disposition of ex parte matters as authorized by law;

002.03C Communications in a rulemaking proceeding; and

002.03D Communications to which all parties have given consent.

002.04 Hearing officer shall mean the person or persons conducting a hearing, contested case or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

002.05 Invalidate shall mean to suspend or revoke the assessor's certificate held by a certificate holder for a period of five years.

002.06 Party means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

002.07 Person shall mean any individual, organization, corporation, body politic, county or city official, society, community, the public generally, individual, partnership, or association.

002.08 Petition means the initial document filed by or with the Tax Commissioner ~~Property Tax Administrator~~ that sets forth a claim and request for Department action.

002.09 ~~Property Tax Administrator~~ Tax Commissioner or his or her authorized representative and Department shall mean the Department of Revenue ~~Property Assessment and Taxation~~ unless the context requires otherwise.

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

002.11 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 84-901, 84-912.01, 84-913, 84-914 and 84-915, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Section~~s 77-612, 77-802.02, 77-1330 and~~ 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007.)

REG-90-003 PROHIBITIONS AGAINST EX PARTE COMMUNICATIONS

003.01 Prohibitions; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given.

003.02 Prohibitions; to whom applicable.

003.02A Parties and public. No party in a contested case or other person outside the Department having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the Tax Commissioner ~~Property Tax Administrator~~, hearing officer or Department employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

003.02B Persons in decision making roles. The Tax Commissioner ~~Property Tax Administrator~~, hearing officer, or Department employee who is or may reasonably be expected to be involved in the decision making process of the contested case shall not make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Department having an interest in the contested case.

003.02C Investigators. Neither the Tax Commissioner ~~Property Tax Administrator~~ nor employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer, the Tax Commissioner ~~Property Tax Administrator~~ or employee of the Department who is or may reasonably be expected to be involved in the decision making process of the contested case.

003.03 Disclosure of contacts. The Tax Commissioner ~~Property Tax Administrator~~, hearing officer or Department employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication shall file in the record of the contested case:

003.03A All such written communications;

003.03B Memoranda stating the substance of all such oral communications; and

003.03C All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

003.03D The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

003.03E Filing and notice of filing shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

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

REG-90-004 INTERVENTION IN A CONTESTED CASE

004.01 Intervention in a contested case shall be allowed when the following requirements are met:

004.01A A petition for intervention must be submitted in writing to the hearing officer or designee at least five days prior to the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of hearing;

004.01B The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

004.01C The hearing officer or designee must determine that the interest of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

004.02 The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interest of justice and will not impair the orderly and prompt conduct of the proceedings.

004.03 If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time intervention is granted or at any subsequent time. Those conditions may include:

004.03A Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

004.03B Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

004.03C Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

004.04 The hearing officer or designee, at least twenty-four (24) hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

004.04A The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

004.04B The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention and to all parties.

(Neb. Rev. Stat. Section 84-912.02, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003~~ and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007~~2006~~.)

REG-90-005 COMMENCEMENT OF A CONTESTED CASE

005.01 A contested case before the Tax Commissioner ~~Property Tax Administrator~~ shall begin with the filing of a petition and request for hearing with the Department of Revenue ~~Property Assessment and Taxation~~. The petition is the initial document filed by or with the Department that sets forth a claim and request for action on the part of the Tax Commissioner ~~Property Tax Administrator~~ or Department of Revenue ~~Property Assessment and Taxation~~.

005.02 The parties to a contested case shall be the petitioner or person by whom a contested case is brought and the respondent or person against whom a contested case is brought.

005.03 A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

005.04 The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection, order, or other formal written document filed in a proceeding before an agency. Any pleading filed in a contested case shall meet the following requirements:

005.04A The pleading shall contain a heading specifying the name of the agency and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Tax Commissioner ~~Property Tax Administrator~~ is being requested to take, shall contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of the attorney. In instances where the Department of Revenue ~~Property Assessment and Taxation~~ provides a form for the purposes of requesting agency action, the use of that form shall satisfy the above-described requirements.

005.04A(1) Attorneys shall also include their address, telephone number and bar number.

005.04A(2) The initial petition shall also contain the name and address of the respondent.

05.04B All pleadings, with the exception of those for which a form prepared by the Department of Revenue ~~Property Assessment and Taxation~~ are used, shall be made on white, letter-sized (8 ½ x 11) paper and shall be legibly type-written, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

005.05 All pleadings shall be timely filed with the Department of Revenue ~~Property Assessment and Taxation~~ at its official office in Lincoln, Nebraska. Filing may be accomplished by personal delivery or by first class or certified mail and will be received during regular office hours of the agency. For the purposes of these regulations, a filing is considered timely if it bears a U.S. postmark date on or before the date set forth for filing the pleading by statute, regulation, directive or order of the Tax Commissioner ~~Property Tax Administrator~~ or his or her designate.

005.06 The Department of Revenue ~~Property Assessment and Taxation~~ shall serve a copy of the petition on each respondent listed in the petition personally or by first-class or certified mail. Each respondent who chooses to file a responsive pleading must do so within thirty (30) days from the date of personal service or the date of agency mailing of the petition.

005.07 All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the agency.

005.08 Unless state law provides that a hearing is not required, a hearing date shall be set by the Department of Revenue ~~Property Assessment and Taxation~~ pursuant to statutory requirements. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the agency upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include proof of such service and will be filed with the Department of Revenue ~~Property Assessment and Taxation~~.

005.09 In computing time prescribed or allowed by this regulation, or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day. For a filing to be considered timely filed, it shall be personally served or mailed bearing a postmark on or before the applicable filing date.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.02 and 84-913, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Section~~s 77-612, 77-802.02, 77-1330 and~~ 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Section 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007.)

REG-90-006 HEARING OFFICER; CRITERIA

006.01 The Tax Commissioner ~~Property Tax Administrator~~ may delegate to a hearing officer the functions of conducting a prehearing conference and/or hearing and submitting a recommended decision to the Tax Commissioner ~~Property Tax Administrator~~. However, in any contested case in which the Tax Commissioner ~~Property Tax Administrator~~ is statutorily required to issue an order, the final order shall be issued by the Tax Commissioner ~~Property Tax Administrator~~.

006.02 A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in REG-90-006.04.

006.03 A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same manner proceeding except as provided in REG-90-006.04.

006.04 If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

006.05 A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

006.06 A person may serve as hearing officer at successive stages of the same contested case.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.02, 84-913, 84-913.01, 84-913.02, 84-913.04, 84-914 and 84-915, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections ~~77-612, 77-802.02, 77-1330,~~ 84-913.03 and 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007.)

REG-90-007 PREHEARING PROCEDURES

007.01 Prehearing conferences and orders. The Tax Commissioner ~~Property Tax Administrator~~ or a hearing officer designated to conduct a hearing may determine, subject to these rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, the Tax Commissioner ~~Property Tax Administrator~~ or a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

007.01A If a prehearing conference is conducted:

007.01A(1) The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer shall promptly notify the Department of Revenue ~~Property Assessment and Taxation~~ of the determination that a prehearing conference will be conducted. The Tax Commissioner ~~Property Tax Administrator~~ may assign a hearing officer for the prehearing conference; and

007.01A(2) The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

The Department of Revenue ~~Property Assessment and Taxation~~ shall give notice to other persons entitled to notice. Such notice shall include the following:

007.01A(2)(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

007.01A(2)(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Department of Revenue ~~Property Assessment and Taxation~~;

007.01A(2)(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

007.01A(2)(d) A statement of the time, place, and nature of the prehearing conference;

007.01A(2)(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

007.01A(2)(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

007.01A(2)(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

007.01A(2)(h) Any other matters that the hearing officer considers necessary to expedite the proceedings.

007.01B The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order

of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

007.01C The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

007.02 Discovery in contested cases.

007.02A The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer, at the request of any party or upon the motion of the Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may issue subpoenas, discovery orders, and protective orders pursuant to the rules of civil procedure except as may otherwise be prohibited by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

007.02B Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

007.02B(1) Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

007.02B(2) State the reasons supporting the motion;

007.02B(3) Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

007.02B(4) Be filed with the Tax Commissioner ~~Property Tax Administrator~~. The moving party must serve copies of all such motions to all parties to the contested case.

007.02C Other than is provided in REG-90-007.02B(4) above, discovery materials need not be filed with the Tax Commissioner ~~Property Tax Administrator~~.

007.03 Continuances. The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

007.03A Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

007.03A(1) Illness of the party, legal counsel or witness;

007.03A(2) A change in legal representation; or,

007.03A(3) Settlement negotiations are underway.

007.04 Amendments.

007.04A A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the Tax Commissioner ~~Property Tax Administrator~~ or hearing officer.

007.04B The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

007.05 Informal Disposition. Unless otherwise precluded by law, informal disposition may be made a part of any contested case by stipulation, agreed settlement, consent order, or default.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.02, 84-913, 84-913.01, 84-913.02 and 84-914, R.R.S. 1994, Neb. Rev. Stat. Section ~~77-702, R.R.S. 2003 and Neb. Rev. Stat. Sections 77-612, 77-802.02, 77-1330 and~~ 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007.)

REG-90-008 CONDUCTING A CONTESTED CASE HEARING

008.01 Order. At the discretion of the Tax Commissioner ~~Property Tax Administrator~~ or hearing officer, the hearing may be conducted in the following order:

008.01A The hearing is called to order by the Tax Commissioner ~~Property Tax Administrator~~ or hearing officer. Any preliminary motions, stipulations or agreed orders will be heard.

008.01B Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

008.01C Presentation of evidence.

008.01C(1) Evidence will be received in the following order:

008.01C(1)(a) Evidence is presented by the petitioner;

008.01C(1)(b) Evidence is presented by the respondent;

008.01C(1)(c) Rebuttal evidence is presented by the petitioner; and

008.01C(1)(d) Surrebuttal evidence is presented by the respondent.

008.01C(2) With regard to each witness who testifies, the following examination may be conducted:

008.01C(2)(a) Direct examination conducted by the party who calls the witness;

008.01C(2)(b) Cross-examination by the opposing party;

008.01C(2)(c) Redirect examination by the party who called the witness;

008.01C(2)(d) Recross-examination by the opposing party.

008.01D After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. Tax

Commissioner ~~Property Tax Administrator~~ or hearing officer may request that the parties submit briefs in lieu of closing arguments.

008.02 Evidence.

008.02A In contested cases the Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

008.02B Any party to a hearing before the Tax Commissioner ~~Property Tax Administrator~~ or hearing officer, from which a decision may be appealed to the Tax Equalization and Review Commission, may request that the hearing be governed by the rules of evidence applicable in the district courts of this state by delivering to the Tax Commissioner ~~Property Tax Administrator~~ at least three days prior to the holding of the hearing a written request therefore and shall be served upon all parties to the contested case. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

008.02C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

008.02D All evidence including records and documents in the possession of the Department of Revenue ~~Property Assessment and Taxation~~ of which it desires to avail itself shall be made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

008.02E The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may administer oaths and issue subpoenas pursuant to the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

008.02F The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer shall give effect to the rules of privilege recognized by law.

008.02G The Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts

within the specialized knowledge of the Tax Commissioner ~~Property Tax Administrator~~ and the rules and regulations adopted and promulgated by the Department of Revenue ~~Property Assessment and Taxation~~.

008.02G(1) Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

008.02G(2) Parties will be afforded an opportunity to contest facts so noticed.

008.02G(3) The record shall contain a written record of everything officially noticed.

008.02H The Tax Commissioner ~~Property Tax Administrator~~ may utilize his or her experience, technical competence and specialized knowledge in the evaluation of the evidence presented and made part of the record at hearing.

008.03 Conducting the hearing by electronic means. Tax Commissioner ~~Property Tax Administrator~~ or hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

008.04 Official record.

008.04A The Department of Revenue ~~Property Assessment and Taxation~~ shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Department of Revenue ~~Property Assessment and Taxation~~ upon request and tender the cost of preparation.

008.04B The Department of Revenue ~~Property Assessment and Taxation~~ shall maintain an official record of each contested case under the Administrative Procedures Act for at least four years following the date of the final order.

008.04C The Department of Revenue ~~Assessment and Taxation~~ record shall consist only of the following:

008.04C(1) Notices of all proceedings;

008.04C(2) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department of Revenue ~~Property Assessment and Taxation~~ pertaining to the contested case;

008.04C(3) The record of the hearing before the Tax Commissioner ~~Property Tax Administrator~~ or his or her designee, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Tax Commissioner ~~Property Tax Administrator~~ or his or her designee during the proceedings, and all proffers of proof and objections and rulings thereon; and

008.04C(4) The final order.

008.04D As provided in 53 NAC 4, Section 002.03, the Tax Commissioner ~~Property Tax Administrator~~, hearing officer, or employee of the Department of Revenue ~~Property Assessment and Taxation~~ who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

008.04E Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the record of the Department of Revenue ~~Property Assessment and Taxation~~ shall constitute the exclusive basis for any order issued by the Tax Commissioner ~~Property Tax Administrator~~ in contested cases under the act and for judicial review thereof.

008.05 Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-912.01, 84-913, 84-913.02, 84-913.04, 84-914, 84-915 and 84-915.04, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. ~~Sections 77-612, 77-802.02, 77-1330 and~~ 84-913.03, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007.)

REG-90-009 DECISION AND ORDER IN A CONTESTED CASE

009.01 Every decision and order adverse to a party to the proceeding, rendered by the Tax Commissioner ~~Property Tax Administrator~~ in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

009.02 The decision and order should include:

009.02A The name of the Tax Commissioner ~~Property Tax Administrator~~ and name of the proceeding;

009.02B The time and place of the hearing;

009.02C The names of all parties or their attorneys who entered an appearance at the hearing;

009.02D The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

009.02E The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

009.02F The order consisting of the action taken by the Department of Revenue ~~Property Assessment and Taxation~~ as a result of the facts found and the legal conclusions arising therefrom.

009.03 Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

(Neb. Rev. Stat. Sections 84-901, 84-912.01, 84-913, 84-914 and 84-915, R.R.S. 1994, ~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Section~~s 77-612, 77-802.02, 77-1330 and~~ 84-915.01, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-612, 77-702, 77-802.02 and 77-1330, R.S. Supp., 2007.)

REG-90-010 APPEALS

010.01 Any person aggrieved by a final decision in a contested case is entitled to appeal the decision of the Tax Commissioner ~~Property Tax Administrator~~ to the Tax Equalization and Review Commission or to resort to such other means of review as may be provided by law.

010.02 Parties desiring to appeal a decision of the Tax Commissioner ~~Property Tax Administrator~~ must file a petition with the Tax Equalization and Review Commission within thirty days after service of the final decision by the Tax Commissioner ~~Property Tax Administrator~~. The thirty (30) day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition filed with the Tax Equalization and Review Commission must be made pursuant to the Tax Equalization and Review Commission Act and the rules and regulations of the Commission.

(Neb. Rev. Stat. Section 84-912.03, R.S. Supp., 1999, Neb. Rev. Stat. Sections 77-702 and 77-5014, R.R.S. 2003, Neb. Rev. Stat. Section~~s~~ 84-917, R.S. Supp., 2006 and Neb Rev. Stat. Sections 77-612, 77-684, 77-802.02, 77-1249, 77-1330, 77-5007, 77-5015~~,~~ and 79-1016~~ and 84-917~~, R.S. Supp., 2007~~2006~~.)