NEBRASKA ADMINISTRATIVE CODE

Title 350 - Nebraska Department of Revenue Property Assessment Division ~~and Taxation~~
Chapter 11 - Agricultural or Horticultural Land Special Valuation Regulations
Effective Date ~~1/3/07~~

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

Chapter 11 - Agricultural or Horticultural Land

Special Valuation Assessment Regulations

REG-11-001 PURPOSE

001.01 Since urban development and other non-agricultural development can have an economic impact on neighboring agricultural or horticultural land, Neb. Rev. Stat. Sections 77-1343 through 77-1348 were enacted. The special valuation assessment provides for a taxable value based solely on seventy-five (75) percent of the actual value of land for agricultural or horticultural purposes or uses, without regard to the actual value the land might have for other purposes or uses, allowing persons wishing to continue to engage in agriculture as a livelihood, from being forced to discontinue their agricultural endeavors as a result of excessive tax burdens. It is also recognized that special valuation assessment reduces the value base for property tax purposes. To limit this effect, a recapture of the tax benefit received is imposed through 2008 ~~2009~~, when the property ceases to qualify for the special valuation.

001.02 Under advisement of the Greenbelt Advisory Committee, the following regulations set forth the requirement of the assessor to determine (1) the actual value of the land based on current sales, and, (2) the actual value of the land based on current sales of similar land not subject to influences other than the agricultural and horticultural uses of the land, or (3) actual value of the land based on the present value attributable to agricultural and horticultural uses of the land.

(Neb. Const., Art.VIII, Sec. 1, subsec.5, ~~Neb. Rev. Stat. Sections 77-702 and 77-1346, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections 77-1343, ~~77-1344, 77-1345,~~ 77-1345.01~~,~~ and 77-1347, ~~77-1348 and 77-1355,~~ R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1344, 77-1345, 77-1346, 77-1348 and 77-1355, R.S. Supp., 2007.)

REG-11-002 DEFINITIONS

~~002.01 For purposes of these regulations, the following definitions shall be used:~~

002.01~~A~~ Additional taxes shall mean the amount of potential tax liability constituting the difference between real property taxes due as a result of the special valuation assessment and taxes which would have been due had the land been taxed at the recapture valuation.

~~002.01B Agricultural use shall mean the use of land primarily for agricultural and horticultural purposes as defined in Neb. Rev. Stat. Section 77-1359.~~

~~002.01B(1) Primarily used shall mean that the use of the land is mainly agricultural or horticultural.~~

~~002.01C Zoned for agricultural use shall mean the designation of any land predominantly for general farming and ranching operations by a valid zoning ordinance duly passed by a county or municipality under the authority vested in it by statute. The prevailing allowable use must be agricultural.~~

002.02~~1D~~ Actual value shall mean the market value of real property in the ordinary course of trade. It is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which it is capable of being used. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach.

002.03~~1E~~ Special valuation shall mean the actual value of the land if the land were available only for agricultural or horticultural purposes or uses without regard to any other purpose or use to which the land may be used.

002.04~~1F~~ Special valuation assessment shall mean seventy-five (75) percent of the special valuation.

002.05~~1G~~ Recapture ~~value~~ valuation shall mean the actual value of the land.

~~002.01H Agricultural and horticultural purposes shall mean used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.~~

002.06~~1I~~ Recapture valuation assessment shall mean eighty (80) percent of the recapture valuation for tax years 2006 and 2005. For tax year 2007 and thereafter the recapture valuation assessment shall mean seventy-five (75) percent of the recapture valuation.

002.07 Agricultural land and horticultural land is a parcel of land primarily used for agricultural or horticultural purposes. This includes wasteland lying in or adjacent to and in common ownership or management with other

agricultural and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.

002.08 Agricultural and horticultural purposes shall mean used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.

002.08A~~1I(1)~~ Agricultural or horticultural purposes includes land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act, except when the parcel or a portion thereof is used for purposes other than agricultural or horticultural purposes.

002.08B~~1I(2)~~ Agricultural or horticultural purposes also includes land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production.

002.08B(1) Land encumbered by an easement under the Wetlands Reserve Program cannot be used for agricultural or horticultural purposes and therefore cannot be characterized as agricultural or horticultural land and must be valued at its actual value.

002.09~~1J~~ Owner shall mean an owner of record of agricultural or horticultural land or the purchaser of agricultural or horticultural land under a contract for sale.

002.10~~01K~~ Lessee for purposes of Neb. Rev. Stat. Sections 77-1343 through 77-1348, shall mean a person leasing agricultural or horticultural land from a state or governmental subdivision which is an owner that is subject to taxation under Neb. Rev. Stat. Section 77-202.11.

002.11~~01L~~ Applicant for purposes of Neb. Rev. Stat. Sections 77-1343 through 77-1348 shall mean the owner or lessee that is responsible for paying the property taxes levied on the land.

002.12 Parcel shall mean a contiguous tract of land under the same ownership and in the same tax district and section. Parcel may include all lots in a block that belong to the same owner and are in the same tax district. Parcel shall also mean an improvement on leased land (IOLL). A parcel cannot contain more than one section.

002.13 Commercial production shall mean agricultural and horticultural products produced for the primary purpose of obtaining a monetary profit.

(Neb. Rev. Stat. Section 23-372, R.S. Supp., 2000, ~~Neb. Rev. Stat. Sections 77-702 and 77-1346, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections 23-174.03, 77-1343, 77-1347, ~~77-1348~~ and 77-1359, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1346 and 77-1348, R.S. Supp., 2007.)

REG 11-003 ELIGIBILITY

003.01 In order to be eligible for the special valuation assessment the land must meet the following criteria:

003.01A The land must be located outside the corporate boundaries of any sanitary and improvement district, city, or village, except that land within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves an agreement creating the easement, would be eligible;

003.01B The land must be ~~used for~~ agricultural or horticultural land. ~~purposes. Incidental use of the land for nonagricultural purposes shall not disqualify the land.~~ Eligibility shall be determined annually as of January 1. However, the land must remain eligible the entire year in order to retain the special valuation assessment for that year. To remain eligible in succeeding years the land must continue to be agricultural or horticultural land.

003.02 An approved application will remain in effect until such time as the land becomes disqualified pursuant to REG-11-006.

~~003.03 If eligibility is lost in 2007, the land shall be assessed and taxed at the recapture value for that year. The additional taxes accrued during the prior two or lesser years shall be collected pursuant to REG-11-009 and are considered a lien against the property as of December 31 of each tax year in which the special valuation assessment was allowed.~~

~~003.04 If eligibility is lost in 2008, the land shall be assessed and taxed at the recapture value for that year. The additional taxes accrued during the prior year if the special valuation was in effect shall be collected pursuant to REG-11-009 and are considered a lien against the property as of December 31 of the prior year if the special valuation assessment was allowed.~~

~~003.05 If eligibility is lost in 2009, the land shall be assessed and taxed at the recapture value for that year. There will be no additional taxes collected for any previous years.~~

~~003.06 When eligibility is lost and the land is acquired by an owner who may make application for exemption from property taxes pursuant to Neb. Rev. Stat. Section 77-202.03 (3) the lien for additional taxes for the current year shall attach as of the day preceding the sale or transfer . The lien for additional taxes in the previous years shall attach as of December 31 of each tax year, in which the special valuation assessment was allowed.~~

~~003.07 No additional taxes are due for the current or any previous tax year when eligibility is lost as a result of:~~

~~(a) a sale or transfer to an entity, which did or has authority to acquire land through eminent domain; or~~

~~(b) the land is owned by a public entity and is disqualified because it is being used or is being developed for use in a public purpose or is exchanged for other property to be used or developed for use in a public purpose; or~~

~~(c) when the land is donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, State of Nebraska or a political subdivision of the State of Nebraska and will be used by the organization, state or political subdivision for a public, educational, religious, charitable, or cemetery purpose.~~

(~~Neb. Rev. Stat. Sections 77-702 and 77-1346, R.R.S. 2003,~~ Neb. Rev. Stat. Sections 77-202.03, ~~77-1344, 77-1345,~~ 77-1345.01, 77-1347~~, 77-1348~~ and 77-5013, R.S. Supp., 2006 and Neb Rev. Stat. Sections 77-702, 77-1344,77-1345, 77-1346 and 77-1348, R.S. Supp., 2007.)

REG-11-004 ~~INITIATION OF SPECIAL VALUATION~~ APPLICATION PROCEDURE

004.01 The initiation of special valuation assessment is dependent on the filing of an application for special valuation assessment by the applicant or authorized representative of the applicant. If the land qualifies for the special valuation assessment pursuant to REG-11-003, the assessor shall approve the application. No action of a county board of equalization is required for the special valuation assessment to be implemented.

004.02 Application for the special valuation assessment shall be submitted to the assessor on or before June 30. Any application received after June 30 shall be accepted only as an application for the following year, except for action by the county board of equalization pertaining to the assessment of agricultural and horticultural land that is undervalued, overvalued, or omitted from the assessment roll and clerical errors involving the assessment of agricultural and horticultural land. See REG-11-004.08 for the submitting of applications because of county board of equalization action on undervalued, overvalued or omitted agricultural and horticultural land and clerical errors involving agricultural and

horticultural land. The application shall be made on the Special Valuation Application, Form 456, prescribed by the ~~Property Tax Administrator~~ Tax Commissioner and supplied by the assessor. The application must be submitted on behalf of the applicant seeking the special valuation assessment on the property and be signed by one of the following persons:

004.02A The applicant as defined in REG-11-002.11,~~01L,~~

004.02B Any person of legal age duly authorized to sign an application on behalf of an applicant described in this regulation,

004.02C The guardian or conservator of an applicant or the executor or administrator of the applicant's estate.

004.03 The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the application a true copy of the deed, contract of sale, power of attorney, lease or other appropriate instrument evidencing the signer's qualification pursuant to REG~~S~~-11-004.02A through 11-004.02C.

004.04 On or before July 15, the assessor, upon receiving an application and necessary documentation as required pursuant to REG-11-004.03, shall verify the information as to the status of the applicant and the eligibility of the land pursuant to the criteria in REG-11-003.01. If all of the information is proper and all criteria for the special valuation assessment is met, the assessor shall approve, sign the application, and on or before July 22, send written notification of approval to the owner and applicant if different from the owner. After approving the application, the assessor shall apply the special valuation assessment whenever appropriate to the land. An approved application will remain in effect until the land becomes disqualified.

004.05 On or before July 15 in the year of application, the assessor shall approve or deny the application for the special valuation assessment filed pursuant to Neb. Rev. Stat. Section 77-1345 based upon the ~~three~~ two criteria required in REG-11-003.01. If the application is denied, the assessor shall on or before July 22, send written notification of his or her action to the owner and the applicant if different from the owner, by regular mail to the address on the application. The assessor shall state the reason or reasons why the application was denied.

004.05B The owner or the applicant if different from the owner may protest the denial of their application for the special valuation assessment to the county board of equalization within thirty days after the mailing of the notice by the assessor.

004.05B(1) The protest shall be written in triplicate, signed and filed with the county clerk.

004.05B(2) If the protest is not timely filed, it shall automatically be dismissed.

004.05B(3) The protest shall contain a written statement of why the application should not have been denied.

004.05B(4) Each protest filed can only pertain to one parcel and not a combination of parcels.

004.06 The county board of equalization shall decide the protest within thirty days after the filing of the protest.

004.06A Within seven days after the county board of equalization's decision, the county clerk shall mail written notice of the board's decision to the owner and the applicant if different from the owner. If the protest is denied the notice shall state the reason for denial.

004.07 Within 30 days after the date of the decision of the county board of equalization, the owner and if not the same, the applicant may appeal the board's decision to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.

004.08 When the county board of equalization takes action on agricultural and horticultural land which was undervalued, overvalued or omitted from the assessment roll or clerical errors involving agricultural or horticultural land, the owner or lessee may file an application for the special valuation assessment within thirty days after the mailing date of the valuation notice, by the county board of equalization. The application shall be made on the Special Valuation Application, Form 456, prescribed by the ~~Property Tax Administrator~~ Tax Commissioner and supplied by the assessor. The application must be submitted on behalf of the applicant seeking the special valuation assessment on the property and be signed by one of the following persons:

004.08A The applicant as defined in REG-11-002.11,~~01L,~~

004.08B Any person of legal age duly authorized to sign an application on behalf of a applicant described in this regulation,

004.08C The guardian or conservator of ~~a~~ an applicant or the executor or administrator of the applicant's estate.

004.09 The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the application a true copy of the deed, contract of sale, power of attorney, lease or other appropriate instrument evidencing the signer's interest or authority.

004.10 The assessor upon receiving an application and necessary documentation as required pursuant to REG-11-004.08, shall verify the information as to the status of the applicant and the eligibility of the land pursuant to the criteria in REG-11-003.01. Within fifteen days after the filing of the application, the assessor shall approve or deny the application and sign the application. Within twenty-two days after the filing of the application, the assessor shall send written notification of approval or denial to the owner and the applicant if different from the owner. If the application is denied, the assessor shall state the reason or reasons why the application was denied.

004.11 If the application is approved, the assessor shall apply the special valuation assessment whenever appropriate to the land. An approved application will remain in effect until the land becomes disqualified.

004.12 The owner or the applicant if different from the owner may protest the denial of the application by the assessor to the county board of equalization within thirty days after the mailing date of the notice from the assessor.

004.12A The protest shall be written in triplicate, signed and filed with the county clerk.

004.12B If the protest is not timely filed, it shall automatically be dismissed.

004.12C The protest shall contain a written statement of why the application should not have been denied.

004.12D Each protest filed can only pertain to one parcel and not a combination of parcels.

004.13 The county board of equalization shall decide the protest within thirty days from the date the protest was filed with the county clerk.

004.13A Within seven days after the county board of equalization's decision, the county clerk shall mail written notice of the board's decision to the owner and the applicant if different from the owner. If the protest is denied the notice shall state the reason for denial.

004.14 Within 30 days after the date of the decision of the county board of equalization, the owner and if not the same, the applicant may appeal the board's decision to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.

004.15 If failure to give notice pursuant to REG-11-004.05, REG-11-004.06A REG-11-004.10 and REG-11-004.13A prevented the timely filing of a protest or appeal, an owner or applicant if different from the owner, may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013 on or before December 31, of each year for a determination as to whether the land will receive the special valuation assessment for that year.

004.16 No appeal or petition shall in any manner suspend the collection of any tax or the duties of officers relating thereto during the pendency of the appeal or petition, and all taxes affected thereby, which may be collected, shall be distributed as though no appeal or petition were pending.

004.16A If by final order of the Commission, it is determined that such tax or a part thereof should be refunded, the county treasurer is authorized to make the refund upon receiving a certified copy of such final order.

004.17 If the appeal of the denial of an application for special valuation is reversed on final order and the application is approved the land shall be valued pursuant to Neb. Rev. Stat. Section 77-1344.

004.17A The county board of equalization shall send the property valuation notice for the special valuation assessment and the recapture valuation to the owner and if not the same, the applicant, or his or her successor in interest within fourteen days after the date of the final order.

004.18 If an application is denied, the owner and if not the same the applicant may file an application in a future year to once again seek the special valuation assessment.

(~~Neb. Rev. Stat. Sections 77-702 and 77-1346, R.R.S. 2003,~~ Neb. Rev. Stat. Sections 77-202.03,~~ 77-1344, 77-1345,~~ 77-1345.01, 77-1347~~, 77-1348~~ and 77-5013, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1344, 77-1345, 77-1346 and 77-1348, R.S. Supp., 2007.)

REG-11-005 VALUATION

005.01 The assessor shall annually use comparable sales from within the influenced area or other areas of similar influence to determine the actual value of the agricultural land and horticultural land in the area.

005.01A Actual valuation of agricultural land and horticultural land shall be based on a market

analysis of arms length transactions that may include property that sold subject to certain probable and legal purposes and uses. For the purposes of these regulations, probable and legal uses shall mean those which are immediately feasible, and permitted by current zoning or other statutorily permitted uses. The actual value may additionally be influenced by other probable uses that are not yet feasible or legal under current zoning. These include, but are not limited to use of the land for residential (homesite) purposes, use of the land for commercial use purposes, use of the land for industrial use purposes, or use of the land for recreational use purposes.

005.02 The assessor shall annually determine the special valuation assessment. The information shall be based upon sales of similar classes or subclasses of agricultural land and horticultural land from agricultural and horticultural areas in which actual value is not subject to influences by other purposes and uses.

Sales within the same county that, in the judgment of the assessor, do not have nonagricultural or nonhorticultural influences on the value of agricultural or horticultural land, may be used for market comparison in determining the special valuation assessment. Care should be taken to ensure that the uninfluenced sales represent land that is comparable to the land to which the special valuation assessment is being applied.

005.02A Sales in neighboring counties shall be used in the market comparison approach if all agricultural and horticultural sales within the county have been determined to reflect selling prices that have been influenced by other than agricultural and horticultural purposes and uses.

005.02B Special valuation of agricultural and horticultural land shall be based on a market analysis of arms length sales that may include property that sold subject to certain probable and legal agricultural and horticultural purposes and uses. These include, but are not limited to:

005.02B(1) Additions to existing land holdings;

005.02B(2) Like-kind exchanges (1031 Exchanges);

005.02B(3) Location to existing towns or other locations of marketing influences such as grain elevators, grain processors, feedlots, livestock sale barns, livestock buying stations, packing plants, fertilizer dealers, fuel sales, feed supplement sales, and other suppliers of purchased inputs used in farming and ranching;

005.03 The assessor shall capitalize net cash rent to determine a valuation based on the earnings of the property from the agricultural or horticultural use only. The valuation indicated by such an income capitalization approach shall

be used as the special valuation if the market comparison approach results in a value that reflects a value influenced by purposes and uses other than agricultural or horticultural**.** Where the differences between the market comparison approach and income capitalization approach is more than a mere difference of opinion the assessor must determine which value most accurately reflects the property's value for agricultural or horticultural purposes.

005.03A The income estimate shall be based upon;

005.03A(1) Typical cash rent for the land capability group observed for the parcel of land;

005.03A(2) Typical crop-share rental income based on a typical crop rotation observed for similar land in the county or land manual area including government program payments received. In accounting for government program payments in developing the income estimate, the assessor shall analyze the nature of the government payment and its relationship to the cash rent or the crop-share rental income for the property;

005.03A(3) Typical cash rent per animal unit month in the case of grassland use.

005.03B The expenses deducted shall reflect those typical to the land capability group observed for the parcel of land and may include a proration of shared input costs of production if a crop-share income is estimated.

005.03C The capitalization rate shall include, but not be limited to:

005.03C(1) An appropriate discount rate for the land use of the parcel of land;

005.03C(2) An adjustment for change in land value;

005.03C(3) The effective tax rate for the parcel of land; and,

005.03C(4) Any other appropriate adjustment to arrive at an overall capitalization rate.

005.04 The assessor shall maintain a file of all data used for determining the special and actual valuation. This information shall be filed with the Department of Revenue Property Assessment Division on or before March 1 of each year. The information shall be considered a public record and available for inspection by the Department of Revenue, Property Assessment Division ~~Department of Property Assessment and Taxation~~, the Tax Equalization and Review Commission, or any interested person. The file shall include, but not be limited to:

005.04A A determination of the highest and best use of the properties to be valued;

005.04B An explanation of the valuation models used in arriving at the value estimates;

005.04C A delineation and explanation of "market areas" recognized in the analysis;

005.04D An explanation and analysis including documentation of adjustments made to sales to reflect current cash equivalency or typical market conditions;

005.04E An explanation and analysis of the estimate of economic rent or net operating income used in an income capitalization approach including estimates of yields, commodity prices, typical crop share, or documentation of cash rents;

005.04F An explanation and analysis of typical expenses allowed in an income capitalization approach;

005.04G An explanation and analysis of the overall capitalization rate used in an income capitalization approach; and,

005.04H Any other information necessary in supporting the estimate of valuations.

(Neb. Rev. Stat. Section~~s 77-702, 77-1346 and~~ 77-1371, R.R.S. 2003 and Neb. Rev. Stat. Sections 77-702 and 77-1346, R.S. Supp., 2007.)

REG-11-006 DISQUALIFICATION CRITERIA

006.01 Any land upon which the special valuation assessment has previously been granted shall cease to be eligible for the special valuation assessment upon the occurrence of any of the following events:

006.01A Written notification by the applicant or his or her successor in interest, or the applicant's agent, guardian, conservator, or executor of the applicant's estate to the assessor to remove the special valuation assessment; or

006.01B Sale or transfer of the land to an ownership if it results in a status of tax exemption. If the property is sold or transferred to an entity that may qualify for a property tax exemption pursuant to Neb. Rev. Stat. Section 77-202(1) (c) or (d), then this subsection shall not apply until the exemption has been granted; or

006.01C Sale or transfer to the state or its political subdivisions unless the land continues to qualify as agricultural or horticultural land; or

006.01D Annexation of the land by a sanitary and improvement district, city, or village except for land in a conservation and preservation easement, inside the corporate limits of a city or village; or

006.01E The land no longer qualifies as agricultural or horticultural land ; or

006.01F The land is donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, State of Nebraska or a political subdivision of the State of Nebraska and will be used by the organization, state or political subdivision for a public, educational, religious, charitable, or cemetery purpose.

006.02 It is the duty of the applicant, the applicant's agent, guardian or the conservator, or executor of the applicant's estate, to notify the assessor of any change in the status of the land, which will disqualify it from receiving the special valuation assessment.

006.03 It shall be the duty of the assessor to continually verify, throughout the year, that all properties listed for the special valuation assessment continue to qualify and apply the recapture valuation assessment through tax year 2008 ~~2009~~, to any properties which are no longer eligible.

(~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Section~~s~~ 77-1347, ~~77-1348,~~ R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702 and 77-1348, R.S. Supp., 2007.)

Reg-11-007 ~~NOTICE OF~~ DISQUALIFICATION PROCEDURE

007.01 If land that has been receiving the special valuation assessment is disqualified ~~by the assessor on or before March 19~~, the assessor shall send written notice of the disqualification and the reason for disqualification to the owner and applicant if different from the owner within fifteen days after his or her determination.

007.01A The owner and if not the same, the applicant may protest the disqualification by the assessor to the county board of equalization within thirty days after the mailing date of the notice.

007.01A(1) The protest shall be written in triplicate, signed and filed with the county clerk.

007.01A(2) If the protest is not timely filed, it shall automatically be dismissed.

007.01A(3) The protest shall contain a statement of why the land should not be disqualified.

007.01A(4) Each protest filed can only pertain to one parcel and not a combination of parcels.

007.01B The county board of equalization shall decide any protest filed within thirty days from the date the protest was filed with the county clerk.

007.01C Within seven days after the county board of equalization's decision, the county clerk shall mail written notice of the board's decision to the owner and, if not the same, the applicant. If the protest is denied the notice shall state the reason for denial.

007.01D Within 30 days after the date of the decision of the county board of equalization, the owner and if not the same, the applicant may appeal the board's decision to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.

~~007.02 If land that has been receiving the special valuation assessment is disqualified by the assessor after March 19 and on or before July 25, the assessor shall prepare a report for the county board of equalization setting forth the parcel to be disqualified, the reason for disqualification and the actual valuation of the property.~~

~~007.02A The county board of equalization may meet on or after June 1 and on or before July 25 to consider the question of the disqualification and the valuation of the property reported to them pursuant to REG-11-007.02. After a review of the report or reports from the assessor, the county board of equalization may issue a written notice to the owner and if not the same, the applicant stating that the parcel is going to be disqualified and also stating the valuation of the parcel after disqualification.~~

~~007.02B The owner and if not the same, the applicant may protest the disqualification or valuation, or both to the county board of equalization within thirty days after the mailing date of the notice.~~

~~007.02B(1) The protest shall be written in triplicate, signed and filed with the county clerk.~~

~~007.02B(2) If the protest is not timely filed, it shall automatically be dismissed.~~

~~007.02B(3) The protest shall contain a statement of why the land should not be disqualified.~~

~~007.02B(4) Each protest filed can only pertain to one parcel and not a combination of parcels.~~

~~007.02C The county board of equalization shall decide any protest filed within thirty days from the date the protest was filed with the county clerk.~~

~~007.02D Within seven days after the county board of equalization's decision, the county clerk shall mail written notice of the boards decision to the owner and, if not the same, the applicant. If the protest is denied the notice shall state the reason for denial.~~

~~007.02E Within 30 days after the date of the decision of the county board of equalization, the owner and if not the same, the applicant may appeal the board's decision to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.~~

007.02~~F~~ If failure to give notice pursuant to REGS -11-007.01~~,~~ and 11-007.01C, ~~11-007.02A and 11-007.02D~~ prevented the timely filing of a protest or appeal, an owner or the applicant if different from the owner having a right to protest or appeal may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013

on or before December 31 of the year in which the notice should have been sent, for a determination of the qualification or disqualification of the land.

007.02A~~G~~ No petition or appeal shall in any manner suspend the collection of any tax or the duties of officers relating thereto during the pendency of the petition or appeal, and all taxes affected thereby, which may be collected, shall be distributed as though no petition or appeal were pending.

007.02B~~H~~ If by final order of the Commission, it is determined that such tax or a part thereof should be refunded, the county treasurer is authorized to make the refund upon receiving a certified copy of such final order.

007.03 Notice of disqualification shall not be sent for the following occurrences:

(a) sale or transfer to an entity, which did or has the authority to acquire land through eminent domain; or

(b) the land is owned by a public entity and is disqualified because it is being used or is being developed for use in a public purpose or is exchanged for other property to be used or developed for use in a public purpose; or

(c) the land is donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, State of Nebraska or a political subdivision of the State of Nebraska and will be used by the organization, state or political subdivision for a public, educational, religious, charitable, or cemetery purpose.

(~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Section~~s~~ 77-1347, ~~and 77-1348,~~ R.S. Supp., 2006 and Neb Rev. Stat. Sections 77-702 and 77-1348, R.S. Supp., 2007.)

REG-11-008 NOTICE OF VALUE

008.01 For a parcel of land that has an approved application on file as of the certification of the assessment roll, the assessor shall send notice to the owner and the applicant if different from the owner thereof, pursuant to REG-10-002.02F and REG-10-002.02G, if either the special valuation assessment or the recapture valuation assessment is different from the previous year. The notice shall state the information as required pursuant to Neb. Rev. Stat. Section 77-1315(2)~~ along with the prior year's and current year's recapture valuation and the special valuation assessment~~. The protest procedures for the special ~~value~~ valuation assessment and the recapture~~ value~~ valuation assessment shall be as set

out in REG-10-002.04 through REG-10-002.04C1. After tax year 2008 the recapture valuation assessment will not be included on the notice of valuation.

008.02 For a parcel that has an approved application filed after the certification of the assessment roll and on or before June 30, the county board of equalization shall send the valuation change notice as required under REG-11-008.01, except that the notice shall state that the owner or the applicant if different from the owner, has thirty (30) days after the date the notice was mailed to protest the valuations to the county board of equalization.

008.02A The county board of equalization shall decide the protest within thirty (30) days after the date the protest was filed with the county clerk.

008.02A(1) Within seven (7) days after the county board of equalization's decision, the county clerk shall mail written notice of the board's decision to the owner and the applicant if different from the owner.

008.02B The owner and if not the same, the applicant, upon receiving notice of the decision of the county board of equalization regarding his or her valuation protest, may within thirty (30) days from the notice date, appeal the decision, to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.

008.03 For a parcel of land that has an approved application filed after June 30, because of county board of equalization action on agricultural or horticultural land that was undervalued, overvalued or omitted from the assessment roll or clerical errors involving agricultural or horticultural land, the county board of equalization shall send to the owner and the applicant if different from the owner, a notice of valuation stating the special valuation assessment and the recapture valuation assessment. After tax year 2008 the recapture valuation assessment will not be included on the notice of valuation. The notice of valuation shall be sent at the same time as the application approval notice.

008.03A The valuation notice shall state that the owner or the applicant if different from the owner, has thirty (30) days after the date of the valuation notice to protest the valuations to the county board of equalization. The protest procedures for the special value assessment and the recapture value shall be as set out in REG-10-002.04 through REG-10-002.04C1 except for date restrictions.

008.03B The county board of equalization shall decide the protest within thirty (30) days after the date the protest was filed with the county clerk.

008.03B(1) Within seven (7) days after the county board of equalization's decision, the county clerk shall mail written notice of the board's decision to the owner and the applicant if different from the owner.

008.03C Within thirty (30) days after the date of the decision of the county board of equalization, the owner and if not the same, the applicant may appeal the board's decision to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.

008.04 If failure to give notice pursuant to REG-11-008.01, REG-11-008.02, REG-11-008.02A(1), REG-11-008.03 and REG-11-008.03B(1) prevented the timely filing of a protest or appeal, an owner or applicant if different from the owner having a right to protest or appeal may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013 on or before December 31 of the year in which the notice should have been sent, for a determination of the special valuation assessment or the recapture valuation assessment.

008.05 No appeal or petition shall in any manner suspend the collection of any tax or the duties of officers relating thereto during the pendency of the appeal or petition, and all taxes affected thereby, which may be collected, shall be distributed as though no appeal or petition were pending.

008.06 If by final order of the Commission, it is determined that such tax or a part thereof should be refunded, the county treasurer is authorized to make the refund upon receiving a certified copy of such final order.

(~~Neb. Rev. Stat. Section 77-702, R.R.S. 2003 and~~ Neb. Rev. Stat. Sections 77-1315, 77-1502 and 77-5013, R.S. Supp., 2006 and Neb. Rev. Stat. Section 77-702, R.S. Supp., 2007.)

REG-11-009 DISQUALIFICATION AND TAX CALCULATION

009.01 Each year through 2008 ~~2009~~, the assessor shall maintain the assessment roll to show the recapture valuation assessment and special valuation assessment on all land receiving the special valuation assessment.

009.02 Upon disqualification by the assessor or after protest to the county board of equalization, the assessor shall determine the total additional taxes due. This determination of the additional taxes shall be calculated as the difference from the recapture valuation assessment, minus the special valuation assessment, times the levies accrued during the applicable past years for which the property received the special valuation assessment~~, plus the current year~~. The total of these tax liabilities shall constitute the additional taxes and first liens on the disqualified land.

009.02A The assessor shall on certain dates issue tax list corrections to the county treasurer for the applicable years showing the amounts of additional taxes due and payable, and the periods during which the taxes accrued.

009.02A(1) Any date that the applicant wishes to pay the additional taxes and accrued interest during the thirty day appeal period of the notice of disqualification.

009.02A(2) The date following the expiration of the thirty day appeal period of the notice of disqualification if no protest was filed.

009.02A(3) The date the county board of equalization decides the disqualification protest and the decision is in agreement with the assessor's determination.

009.02B The assessor shall on the dates set out in Regs-11-009.02A(1) through 11-009.02A(3), mail or provide written notification to the applicant that all or a portion of the land receiving the special valuation assessment, has become disqualified and state the amount of additional taxes and interest due for the past number of applicable years for which the property received the special valuation assessment.

009.02B(1) The notice shall also state that the additional taxes for the past number of applicable years for which the property received the special valuation assessment have become a first lien on the property, will accrue interest at the annual rate of six percent (6%) for sixty (60) days after the date of the notice of disqualification pursuant to Reg-11-007 and after the expiration of the sixty (60) days the additional taxes and interest combined shall be considered delinquent and subject to interest at the annual rate of fourteen percent (14%). For the current tax year, all taxes levied against the land shall become due and payable on December 31, in the same manner as all other real property taxes.

009.02C The county treasurer shall compute interest at the annual rate of six percent on the additional taxes from December 31 of the year such tax would have become payable had the special valuation assessment not been granted. Interest shall continue to accrue at the annual rate of six percent for sixty days after the date of disqualification pursuant to Reg-11-007. Upon the expiration of the sixty-day period the additional taxes and interest shall be considered delinquent. The combined delinquent taxes and interest shall become subject to interest at the annual rate of fourteen percent.

009.03 The total amount of additional taxes and interest collected by the county treasurer shall be distributed by tax year to the political subdivisions levying the tax in the same manner as other property taxes. If a subdivision no

longer exists that was a part of a prior levy, that subdivision's tax shall be distributed to the subdivision or subdivisions with which it merged or consolidated.

009.04 If eligibility for the special valuation assessment is lost in 2007, the land shall be assessed and taxed at the recapture valuation assessment (75% of the recapture valuation) for that year. The additional taxes accrued during the prior two or lesser years shall be collected and are considered a lien against the property as of December 31 of each tax year in which the special valuation assessment was allowed. The additional taxes for 2006 and 2005 shall be calculated as the difference from the recapture valuation assessment, (80% of the recapture valuation) minus the special valuation assessment, times the levies accrued during the applicable past years.

09.05 If eligibility for the special valuation assessment is lost in 2008, the land shall be assessed and taxed at the recapture valuation assessment (75% of the recapture valuation) for that year. The additional taxes accrued during the prior year if the special valuation was in effect shall be collected and are considered a lien against the property as of December 31 of the prior year if the special valuation assessment was allowed. The additional taxes for 2007 shall be calculated as the difference from the recapture valuation assessment, (75% of the recapture valuation) minus the special valuation assessment, times the applicable levy from the past year.

009.05A Recapture valuation assessment is no longer applicable after 2008. No additional taxes and interest on the additional taxes will be collected after 2008.

009.06 If eligibility for the special valuation assessment is lost in 2009 or any year thereafter, the land will remain assessed at its special valuation assessment for that year. In the years following the year of ineligibility the land shall be assessed according to its classification pursuant to Neb. Rev. Stat. Section 77-201.

009.07 When eligibility is lost in 2007 or 2008 and the land is acquired by an owner who may make application for exemption from property taxes pursuant to Neb. Rev. Stat. Section 77-202.03 (3) or acquired by the state or its political subdivisions by means other than those outlined in REG-11-009.08, (a) (b) (c) the lien for additional taxes for the current year shall attach as of the day preceding the day the exemption was granted. The lien for any previous years shall attach as of December 31, of each year, in which the special valuation assessment was allowed.

009.08 No additional taxes are due for any previous tax year when eligibility is lost as a result of:

(a) a sale or transfer to an entity, which did or has authority to acquire land through eminent domain; or

(b) the land is owned by a public entity and is disqualified because it is being used or is being developed for a public purpose use or is exchanged for other property to be used or developed for a public purpose use; or

(c) when the land is donated to an organization exempt from taxation under section 501(c)((3) of the Internal Revenue Code, state of Nebraska or a political subdivision of the State of Nebraska and will be used by the organization, state or political subdivision for a public, educational, religious, charitable, or cemetery purposes; or

(d) when the land was disqualified due to the change in the definition of agricultural and horticultural land pursuant to Neb. Rev. Stat. Section 77-1359.

009.09~~4~~ Examples of recapture tax calculation.

This process is applicable only to the agricultural or horticultural land on any parcel that received the special valuation assessment. Any nonagricultural or nonhorticultural land and improvements are not part of this process.

Example A

On September 17, 2007, 160 acres of unimproved agricultural land became disqualified and no longer will be eligible to receive the agricultural or horticultural land special valuation assessment. The additional taxes and interest that became due on September 17, 2007 for any applicable previous years were paid on September 17, 2007

The following is the history of the valuations and consolidated tax rates applied to this land for the current year and the applicable past years.

2007 Special Valuation Assessment $128,000.00 Recapture Valuation $800,000.00
Recapture Valuation Assessment $600,000.00 (75% of Recapture Valuation)
~~2007 Additional Taxable Valuation $672,000.00 = ($800,000.00 - $128,000.00)~~
Tax due date will be 12/31/07

2006 Special Valuation Assessment $128,000.00 Recapture Valuation ~~Assessment~~ $800,000.00
Recapture Valuation Assessment $640,000.00 (80% of Recapture Valuation)
2006 Additional Taxable Valuation $~~672,000.00~~ $512,000.00 = ($~~800,000.00~~ $640,000.00 - $128,000.00)
2006 Consolidated Tax Rate .02

Tax due date was 12/31/06

2005 Special Valuation Assessment $112,000.00 Recapture Valuation ~~Assessment~~ $720,000.00

Recapture Valuation Assessment $576,000.00 (80% of Recapture Valuation)

2005 Additional Taxable Valuation ~~$608,000.00~~ $464,000.00 = (~~$720,000.00~~ $576,000.00 - $112,000.00)

2005 Consolidated Tax Rate .0215

Tax due date was 12/31/05

~~2004 Special Valuation Assessment $110,000.00 Recapture Valuation Assessment $720,000.00~~

~~2004 Additional Taxable Valuation $610,000.00 = ($720,000.00 - $110,000.00)~~

~~2004 Consolidated Tax Rate .0225~~

~~Tax due date was 12/31/04~~

Calculation of Additional Real Property Taxes and Interest

2007

For 2007, the taxable valuation for the 160 acres will be the ~~special~~ recapture valuation assessment of ~~$128,000~~ $600,000.00 ~~because the property became disqualified after July 25. See Neb Rev. Stat. Sections 77-1347.01 and 77-1348.~~ **No additional taxes and interest will be collected for the current year because of disqualification.**

~~**The additional taxes and interest for 2007 will be collected in 2008. The additional taxes will be based upon the difference between recapture (actual) value and the special valuation assessment.**~~

2006

Additional real property taxes = ~~$672,000.00~~ $512,000.00 x .02 = ~~$13,440.00~~ $10,240.00.

Additional interest @ .06 from the tax due date 12/31/06 through 9/17/07 = 260 days. ~~60 days after the date of the disqualification notice.~~

$10,240.00 x .06 = $614.40 ÷ 365 = $1.68 x 260 = $436.80.

Total additional taxes and interest $10,240.00 + $436.80 = $10,676.80.

If the additional taxes and .06 interest ~~are~~ had not been paid on September 17, 2007 they would continue to ~~within the allotted time they will~~ accrue interest at $1.68 per day thru November 16, 2007 after which interest of .14 would be charged against the total additional taxes and interest until paid.

~~**These additional taxes and interest for 2006 will be collected in 2008 since the land became disqualified after July 25, 2007. The additional taxes for 2006 will be based upon the difference between the recapture valuation assessment (80% of actual value) and the special valuation assessment**~~

2005

Additional real property taxes = $464,000.00 x .0215 = $9,976.00.

Additional interest @ .06 from the tax due date 12/31/05 through 9/17/07 = 625 day.

$9,976.00 x .06 = $598.56 ÷ 365 = $1.64 x 625 = $1,025.00.

Total additional taxes and interest $9,976.00 + $1,025.00 = $11,001.00.

If the additional taxes and .06 interest had not been paid on September 17, 2007 they would continue to accrue interest at $1.64 per day thru November 16, 2007 after which interest of .14 would be charged against the total additional taxes and interest until paid.

~~**There are no additional taxes and interest collected for year 2005 on land that became disqualified for special valuation assessment in 2007 after July 25.**~~

2004

There are no additional taxes and interest collected for year 2004 on land that became disqualified for special valuation assessment at any time in 2007.

Example B

On April 25, 2008, 160 acres of unimproved agricultural land became disqualified and no longer was eligible to receive the agricultural or horticultural land special valuation assessment. The additional taxes and interests for 2007 that became due on April 25, 2008 were paid on September 17, 2008. There are no additional taxes and interest for 2006.

The following is the history of the valuations and consolidated tax rates applied to this land for the current year and the past three years.

2008 Special Valuation Assessment $128,000.00 Recapture Valuation $800,000.00

2008 Recapture Valuation Assessment $600,000 (75% of Recapture Valuation)

~~2008 Additional Taxable Valuation $672,000.00 = ($800,000.00 - $128,000.00)~~

Tax due date will be 12/31/08

2007 Special Valuation Assessment $128,000.00 Recapture Valuation $800,000.00

2007 Recapture Valuation Assessment $600,000 (75% of Recapture Valuation)

2007 Additional Taxable Valuation $~~672,000.00~~ $472,000.00 = (~~$800,000.00~~ $600,000.00 - $128,000.00)

2007 Consolidated Tax Rate .02

Tax due date was 12/31/07

~~2006 Special Valuation Assessment $112,000.00 Recapture Valuation Assessment $720,000.00~~

~~2006 Additional Taxable Valuation $608,000.00 = ($720,000.00 - $112,000.00)~~

~~2006 Consolidated Tax Rate .0215~~

~~Tax due date was 12/31/06~~

Calculation of Additional Real Property Taxes and Interest

2008

For 2008, the taxable valuation for the 160 acres will be the recapture ~~(actual)~~ valuation assessment of ~~$800,000.00,~~ $600,000.00. ~~because the property became disqualified before July 25. See Neb Rev Stat. Sections 77-1347.01 and 77-1348.~~ **No additional taxes and interest ~~for 2008~~ will be collected for the current year because of disqualification.**

2007

Additional real property taxes = ~~$672,000.00~~ $472,000.00 x .02 = ~~$13,440.00~~ $9,440.00.

Additional interest @ .06 from the tax due date 12/31/07 thru 6/24/08 = 175 days.

~~$13,440.00~~ $9,440.00 x .06 = ~~$806.40~~ $566.40 ÷ 365 = ~~$2.21~~ $1.55 x 175 = ~~$386.75~~ $271.25.

Additional interest @ .14 from 6/25/08 thru 9/17/08 = 85 days.

~~$13,440.00~~ $9,440.00+ ~~$386.75~~ $271.25 = ~~$13,826.75~~ $9,711.25 x .14 = ~~$1935.75~~ $1,359.58 ÷ 365 = ~~$5.30~~ $3.73 x 85 = ~~$450.50~~ $317.05

Total additional taxes and interest ~~$13,440.00~~ $9,440.00 + ~~$386.75~~ $271.25 + ~~$450.50~~ $317.05 = ~~$14,277.25~~ $10,028.30.

If the additional taxes and interest had not been paid on September 17, 2008, they would continue to accrue interest at ~~$5.30~~ $3.73 per day, until paid.

2006

There are no additional taxes and interest collected for 2006 on land that became disqualified for special the valuation assessment in 2008.

~~**There are no additional taxes and interest collected for prior years on land that became disqualified for the special valuation assessment in 2009.**~~

Starting January 1, ~~2010~~ 2009 and forward, no additional taxes and interest will be collected on land that becomes disqualified for the special valuation assessment.

(Neb. Rev. Stat. Sections 77-702, 77-1344 and 77-1346, ~~R.R.S. 2003~~ R.S. Supp., 2007 ~~and Neb. Rev. Stat. Section 77-1344, R.S. Supp., 2006~~.)