

LEGISLATIVE BILL 15

Approved by the Governor March 9, 2005

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 60-3005, 60-3006, 77-5018, 77-5019, 77-5026, and 77-5028, Reissue Revised Statutes of Nebraska, and sections 77-202.04, 77-1345.01, 77-1514, 77-5005, 77-5007, and 77-5016, Revised Statutes Supplement, 2004; to change procedures relating to valuation of property and changing taxable status of certain property; to change appeal procedures; to change deadlines as prescribed; to change and eliminate provisions relating to the Tax Equalization and Review Commission; to harmonize provisions; to repeal the original sections; to outright repeal section 77-5032, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 60-3005, Reissue Revised Statutes of Nebraska, is amended to read:

60-3005. (1) The Department of Motor Vehicles shall (a) determine the value when new of passenger cars, trucks, utility vehicles, and vans, weighing up to and including seven tons, and (b) certify such determination to the county treasurer or designated county official pursuant to section 23-186 of each county by November 15 of the prior year. The department shall make a determination for such makes and models of motor vehicles already manufactured or being manufactured and shall, as new makes and models of motor vehicles become available to Nebraska residents, continue to make such determinations. The value when new is the manufacturer's suggested retail price for a new motor vehicle of that year using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

(2) Any person or taxing official may, within ten days after a determination has been certified by the department, file objections in writing with the department stating why the determination is incorrect.

(3) Any affected person may file an objection to the determination of the department not more than fifteen days before and not later than thirty days after the registration date. The objection must be filed in writing with the department and state why the determination is incorrect.

(4) Upon the filing of objections the department shall fix a time for a hearing. Any party may introduce evidence in reference to the objections, and the department shall act upon the objections and make an a written order, mailed to the objector within seven days after the order. The final determination decision by the department may be appealed. The appeal shall be to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the written order. In an appeal, the department's determination of the manufacturer's suggested retail price shall be presumed to be correct and the party challenging the determination shall bear the burden of proving it incorrect.

(5) The rules, regulations, and orders of the Property Tax Administrator under this section shall remain in effect unless changed or eliminated by the Department of Motor Vehicles.

Sec. 2. Section 60-3006, Reissue Revised Statutes of Nebraska, is amended to read:

60-3006. (1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3002 shall apply for the exemption to the county treasurer or designated county official pursuant to section 23-186 not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3002 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date

for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer or designated county official and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Property Tax Administrator within thirty days after the hearing. The county board of equalization shall ~~certify its~~ mail or deliver its final decision to the applicant and the county treasurer or designated county official within ~~ten~~ seven days after the ~~hearing~~ date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

Sec. 3. Section 77-202.04, Revised Statutes Supplement, 2004, is amended to read:

77-202.04. (1) Notice of a county board of equalization's decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board's decision. Persons, corporations, or organizations may appeal denial of an application for exemption by a county board of equalization. Only the county assessor may appeal the grant of such an exemption by a county board of equalization. Appeals pursuant to this section shall be made to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization. The Property Tax Administrator may in his or her discretion intervene in any such appeal pursuant to this section.

(2) Any owner may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the taxable status of real property for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in sections 77-202 to 77-202.25.

Sec. 4. Section 77-1345.01, Revised Statutes Supplement, 2004, is amended to read:

77-1345.01. (1) On or before July 15 in the year of application, the county assessor shall approve or deny the application for special valuation filed pursuant to section 77-1345. On or before July 22, the county assessor shall send notification of his or her action to the applicant by regular mail to the address on the application. If the application is approved, the county assessor shall value the land as provided in section 77-1344.

(2) If the application is denied, the applicant may protest the denial to the county board of equalization on or before August 15. The protest shall be in writing and filed with the county clerk. The county board of equalization shall decide the protest on or before September 15. The county clerk shall mail notice of the board's decision to the applicant within seven days after the date of the decision. If the protest is denied, the notice shall state the reason for denial.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision.

(4) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507 and the taxpayer filed an application for special valuation pursuant to subsection (3) of section 77-1345, the county assessor shall approve or deny the application within fifteen days after the filing of the application and issue notice of the approval or denial as prescribed in subsection (1) of this section. If the application is denied, the applicant may protest the denial to the county board of equalization within thirty days after the mailing of the notice of the action of the county assessor. The protest shall be in writing and filed with the county clerk. The county board of equalization shall decide the protest within thirty days after the filing of the protest by the applicant. The applicant may appeal the decision of the county board of equalization to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision.

(5) Any applicant may petition the Tax Equalization and Review

Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the land will receive special valuation for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section.

Sec. 5. Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value, special value, or recapture value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1507.

Sec. 6. Section 77-1514, Revised Statutes Supplement, 2004, is amended to read:

77-1514. The county assessor shall prepare abstracts of the property assessment rolls of locally assessed property of his or her county on forms prescribed and furnished by the Property Tax Administrator. The county assessor shall file the real property abstract with the Property Tax Administrator on or before March 19 and the personal property abstract on or before June 15. The abstracts shall show the taxable value of real or personal property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the real property abstract and the statutory deadlines provided in sections 77-1381, 77-1381.01, 77-1384, and 77-5027. The Property Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county.
~~7 and 77-5028.~~

Sec. 7. Section 77-5005, Revised Statutes Supplement, 2004, is amended to read:

77-5005. (1) Within ten days after appointment, the commissioners shall meet at their office in Lincoln, Nebraska, and enter upon the duties of their office.

(2) A majority of the commission or, in cases when a panel of three commissioners hears a case, a majority of the panel shall at all times constitute a quorum to transact business, and one vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by or before a panel of three commissioners. ~~with the approval of the commission.~~

(4) ~~The commission shall issue its final decision, accompanied by findings of fact and conclusions of law, in writing or on the record.~~

~~(5)~~ All investigations, inquiries, hearings, and decisions of a panel of commissioners and every order made by a panel of commissioners shall be deemed to be the order of the commission. The full commission may grant a rehearing and determine de novo any decisions of or orders made by a panel of commissioners. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.

~~(6)~~ (5) All hearings or proceedings of the commission shall be open to the public.

~~(7)~~ (6) The Open Meetings Act applies only to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Sec. 8. Section 77-5007, Revised Statutes Supplement, 2004, is amended to read:

77-5007. The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Property Tax Administrator determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Property Tax Administrator determining adjusted valuation pursuant to section 79-1016;

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

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the

requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3005;

(9) Decisions of the Property Tax Administrator made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Property Tax Administrator;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520;

and

(13) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions brought pursuant to section 77-1380 and any other petition the commission is authorized to hear.

Sec. 9. Section 77-5016, Revised Statutes Supplement, 2004, is amended to read:

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

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. ~~It shall give effect to the privilege rules of evidence in sections 27-501 to 27-513. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing.~~ Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The request shall include the requesting party's agreement to be liable for the payment of costs incurred and upon any appeal or review, including the cost of court reporting services which the requesting party shall procure for the hearing. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;

(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations. All other evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case. No other factual information or evidence other than that set forth in this section shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

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

(5) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may

utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

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

(7) The commission shall hear appeals and cross appeals as in equity and without a jury and determine de novo all questions raised in the proceedings upon which the order, decision, determination, or action appealed from is based;

(8) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

(9) Any decision rendered by the commission shall be certified to the parties and, if applicable, to the county treasurer and the official charged with the duty of preparing the tax list. When such decision becomes final, the officials shall correct their records accordingly;

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

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

(12) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county; and

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

Sec. 10. Section 77-5018, Reissue Revised Statutes of Nebraska, is amended to read:

77-5018. (1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed upon request to each party or his or her attorney of record. Any decision rendered by the commission shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly.

(2) The commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order.

Sec. 11. Section 77-5019, Reissue Revised Statutes of Nebraska, is amended to read:

77-5019. (1) Any party aggrieved by a final decision in a case appealed to the commission and any ~~county or other political subdivision aggrieved by an order of the commission issued pursuant to section 77-1504.01 or 77-5028~~ party aggrieved by a final decision of the commission on a petition shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or

political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2) (a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals ~~and delivery of a copy of the petition to the commission~~ within thirty days after the date on which a final appealable order is entered by the commission. All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1380, 77-1504.01, 77-5020, or 77-5023. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. ~~If the commission is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the commission within thirty days after the filing of the petition.~~ The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. ~~If the commission has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the commission is not sufficiently serious to justify the commission's action in the circumstances.~~ The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) ~~Within thirty days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the commission. The official record~~ Upon receipt of a petition the date for submission of the official record shall be determined by the court. The commission shall prepare a certified copy of the official record of the proceedings had before the commission in the case. The official record, unless limited by the written request of the petitioner, shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The commission may require payment or bond prior to the transmittal of the record. If payment is required, payment of the cost, as estimated by the commission, for preparation of the official record shall be paid to the commission prior to preparation of the official record and the commission shall not transmit the official record to the court until payment of the actual costs of its preparation is received.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all

civil cases.

Sec. 12. Section 77-5026, Reissue Revised Statutes of Nebraska, is amended to read:

77-5026. Pursuant to section 77-5023, if the commission finds that the level of assessment of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A legal representative of the county may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Sec. 13. Section 77-5028, Reissue Revised Statutes of Nebraska, is amended to read:

77-5028. After a hearing conducted pursuant to section 77-5024 or 77-5026, the commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to the class or subclass of real property affected. The specified changes shall be made by the county assessor to each item of real property in the county so affected.

Sec. 14. Original sections 60-3005, 60-3006, 77-5018, 77-5019, 77-5026, and 77-5028, Reissue Revised Statutes of Nebraska, and sections 77-202.04, 77-1345.01, 77-1514, 77-5005, 77-5007, and 77-5016, Revised Statutes Supplement, 2004, are repealed.

Sec. 15. The following section is outright repealed: Section 77-5032, Reissue Revised Statutes of Nebraska.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.