

NEBRASKA ADMINISTRATIVE CODE

Last Revision Date: 12/29/03

TITLE 442 --- Tax Equalization and Review Commission

Chapter 9

CHAPTER 9 EQUALIZATION DUTIES

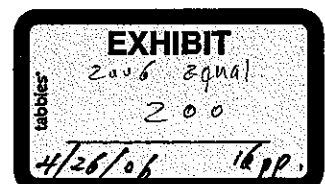
001 Authority.

001.01 The Commission, pursuant to the Nebraska Constitution, Article IV, §28, shall have the power to review and equalize assessments of property for taxation within the state, and shall have such other powers and perform such other duties as the Legislature may provide.

001.02 The Commission, pursuant to law, shall annually equalize the values of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property which is valued by the state.

002 Definitions.

002.01 **Class or Subclass of Real Property.** "Class or subclass of real property" shall mean a group of properties that share one or more characteristics typically common to all properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots and orchards for agricultural and horticultural land, parcel use, parcel type, location, geographic characteristics, zoning, city size, and market characteristics for all classifications of land so that the categories reflect uses appropriate for the valuation of such land, a class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it



affects the actual value of properties not within the market characteristic class or subclass.

- 002.02 **Established Indicator of Central Tendency.** The Commission's preferred "established indicator of central tendency" is the median.
- 002.03 **Median Defined:** The median is a measure of central tendency. The median is the value of the middle item in an uneven number of items arranged or arrayed according to size; the arithmetic average of the two central items in an even number of items similarly arranged; a positional average that is not affected by the size of extreme values.
- 002.04 **Property Valued By the State.** A "property valued by the state" shall mean property of the type specified by state law or in the Rules and Regulations of the Department of Property Assessment and Taxation.
- 002.05 **Taxing Authority.** "Taxing Authority" shall mean counties, townships, cities, villages, school districts, and all other subdivisions of the state and all governmental agencies having the power to levy or to provide for the levy of general or special taxes.
- 003 **Representation.** In a hearing or portion of a hearing held before the Commission as part of the Commission's constitutional or statutory duties outlined in this chapter the following representation requirements shall apply:
 - 003.01 **County.** In a hearing before the Commission the interest of the County may be represented by:
 - 003.01A A member of the county board of equalization; or
 - 003.01B The county clerk, who serves as secretary to the county board of equalization (pursuant to Neb. Rev. Stat. §77-1501); or,

- 003.01C The county assessor, or current deputy county assessor, holding office at the time of the hearing; or,
- 003.01D The county attorney, or his or her deputy, (pursuant to Neb. Rev. Stat. §23-1201(2)); or,
- 003.01E Any legal counsel retained by the county board of equalization to represent the county.

003.02 **Agricultural and Horticultural Land Valuation Board.** In a hearing before the Commission the Agricultural and Horticultural Land Valuation Board shall be represented by any member of the Agricultural and Horticultural Land Valuation Board. The board member may be accompanied by legal counsel.

004 **Duties of Agricultural and Horticultural Land Valuation Boards.**

004.01 The Agricultural and Horticultural Land Valuation Boards ("AHLVBs" or "Board") have the authority after April 1 and on or before April 15 of each year, to:

004.01A Increase or decrease by percentage the value of a class or subclass of agricultural and horticultural land in any county in its land manual area in order to establish equalization of value between the various counties in its land manual area effective for that year; and,

004.01B Make necessary changes in classification of agricultural and horticultural land within its land manual area if the evidence discloses incorrect classification.

004.02 The AHLVBs shall submit a written report to the Commission. The report shall state the substance of any action taken, the basis for the action, and shall be mailed to the

Commission within ten (10) days of the date of the meeting of the Board.

004.03 The AHLVBs shall order the county assessor to implement the Board's action, and within ten days after the action taken the Board shall publish, in at least one newspaper of general circulation in an affected county, the Board's action along with a notice that appeals of the Board's action must be filed with the Tax Equalization and Review Commission.

005 Review of Actions of the AHLVBs.

005.01 In addition to any other authority conferred by law, the Commission has the authority to review changes made by a Board and shall hear appeals from a Board pursuant to Neb. Rev. Stat. §77-1384. The Commission has no jurisdiction to review the decision made by a Board to take no action as authorized by law.

005.02 At least five (5) calendar days' notice shall be given to the appropriate county clerk, appropriate county assessor, and appropriate county board, and the chairperson of the Agricultural and Horticultural Land Valuation Board. At the hearing, the legal representatives of the appropriate county or the legal representative of the Agricultural and Horticultural Land Valuation Board may appear and show cause why the value of the property of the county should not be corrected or adjusted. At the hearing, the Commission may receive testimony from any interested person.

005.03 Appeals made under these provisions shall be made, and the Commission shall act regarding such appeals, as set forth in the Commission's Rules and Regulations, except as set forth below.

005.03A The legal representative(s) of the AHLVB shall participate in appeals of the actions of the AHLVB.

- 005.03B** Any affected person may appeal an action of an AHLVB increasing or decreasing values or reclassifying land within the county to the Tax Equalization and Review Commission.
- 005.03C** The Commission shall hold a hearing and shall enter its order on or before May 15.
- 005.03D** Any appeal filed under this Chapter shall be filed within fifteen (15) days after the action by the AHLVB by mailing notice to the Commission setting forth the order from which the appeal is being taken, the date of the order, and a summary of the reason for the appeal.
- 005.03E** No AHLVB shall be required to file an answer to the appeal. Notice of the day, time and place of the hearing on the merits of the appeal shall be made upon the AHLVB by certified mail, a return receipt may be requested. The hearing on the appeal shall be scheduled for not less than five (5) calendar days from the date of the Notice of Hearing.
- 005.03F** The hearing shall be an informal hearing.
- 005.03G** The burden of proof shall be on the party appealing the order to establish that the order of the AHLVB is incorrect and unreasonable or arbitrary.
- 005.04** In order to vacate the order of the AHLVB, the record before the Commission must demonstrate that the order of the AHLVB was incorrect and unreasonable or arbitrary. (Neb. Rev. Stat. §77-1384)
- 005.05** The Commission shall, in order to preserve a record of the proceedings, tape record the proceedings, or secure the services of a certified court reporter.

006 Removal of Members of AHLVBs. In addition to any other authority conferred by law, the Commission has the authority to remove members of an Agricultural and Horticultural Land Valuation Board pursuant to Neb. Rev. Stat. §77-1380. Removal of a member of a Board shall only be made in accordance with Chapter 10 of the Commission's Rules and Regulations.

007 County Petition Process.

007.01 After completion of its actions and based upon the hearings conducted pursuant to Neb. Rev. Stat. §§77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county.

007.02 Petitions must be filed with the Commission on or before July 26. Petitions may be filed in person, or by mail. The Commission shall hear and take action on a petition filed by a county board of equalization on or before August 10.

007.03 Hearings conducted pursuant to this section shall be in the manner prescribed by law. Hearings via video conferencing are specifically authorized as provided by Neb. Rev. Stat. §77-1504.01. The burden of proof is on the petitioning county to demonstrate that failure to make an adjustment would result in values that are not equitable and in accordance with the law. The County must adduce evidence of the consequences of the requested adjustment in the form of ratio studies which demonstrate that the requested adjustment will, in fact, improve the level, the uniformity and the proportionality of assessments within the County.

007.04 After a hearing the Commission shall, within the powers granted in Neb. Rev. Stat. §77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to Neb. Rev. Stat. § 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or

subclass of real property to be affected. When issuing an order to adjust a class or subclass of real property, the Commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the Commission directs in its order. On or before August 10 of each year, the Commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

007.05 The county assessor of the county adjusted by an order of the Commission shall make the specified changes to each item or property in the county as directed by the order of the Commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, no additional adjustment shall be made applying the Commission's order, but such an exclusion from the Commission's order shall not preclude adjustments to those properties for corrections or omissions.

007.06 The county assessor of the county adjusted by an order of the Commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

008 Statewide Equalization Proceedings.

008.01 The Commission shall meet annually for the purpose of reviewing and equalizing assessments of property for taxation within the state. The Commission shall have the power to adjourn from time to time until the equalization process is complete.

008.02 Hearings held pursuant to Neb. Rev. Stat. §77-5022 may be held by means of videoconference. A person shall be present at each videoconference site to take custody of any exhibits which were not provided to the Commission at the hearing

site of the presiding hearing officer, keep a record of persons who appear at the hearing, and otherwise assist the presiding hearing officer with conduct of the hearing.

008.03 The Commission shall have the power to increase or decrease the value of a class or subclass of real property of any county or taxing authority, or real property valued by the state, so that all classes or subclasses of real property in all counties fall within the acceptable ranges.

008.03A Whether or not the established indicator of central tendency falls within the acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques. Neb. Rev. Stat. § 77-5023(5).

008.04 **Acceptable Ranges.** The acceptable ranges are:

008.04A For agricultural and horticultural land as defined in Neb. Rev. Stat. §77-1359, seventy-four (74) to eighty (80) percent of actual value;

008.04B For lands defined in Neb. Rev. Stat. §77-1344 receiving special valuation seventy-four (74) to eighty (80) percent of special valuation as defined in Neb. Rev. Stat. §77-1343, and seventy-four (74) to eighty (80) percent of recapture value as defined in Neb. Rev. Stat. §77-1343; and

008.04C For all other real property, ninety-two (92) to one hundred (100) percent of actual value. (See, Neb. Rev. Stat. §77-5023(2))

008.05 Any increase or decrease shall cause the indicator of central tendency utilized by the Commission to be at the midpoint of the acceptable range. Any decrease or increase to a subclass of property shall also cause the indicator of central tendency utilized by the Commission for the class

from such the subclass is drawn to be within the acceptable range.

008.06 **Statistical Measures.** The Commission, in accordance with professionally accepted mass appraisal methods, may use the following statistical measures, practices and definitions and others in the evaluation of assessments. The purpose of this evaluation is to determine whether the level and quality of assessments satisfy the requirements of state law and standards adopted by the Commission.

008.06A **Assessment/Sales Ratio.** The assessment/sales ratio is a tool used under professionally accepted mass appraisal methods to measure and evaluate the accuracy and uniformity of assessed values. The ratio is determined by dividing the assessed value of real property by the sales price of that real property expressed in terms of a percentage. The phrase may also refer to the total assessed value of all real property of a particular class or subclass of property which was sold during a particular time frame compared to the total sales price of all real property of that class or subclass which was sold during the particular time frame, again expressed as a percentage.

008.06B **Price Related Differential.** The Price Related Differential ("PRD") is a tool used under professionally accepted mass appraisal methods to determine whether properties of differing values are treated uniformly. The Price Related Differential may indicate assessment bias and inequity between lower valued properties and higher valued properties. A PRD that is under 1.00 indicates higher valued properties are valued at a higher assessment level than lower valued properties. When the PRD is over 1.00 it indicates lower valued properties are valued at a higher level than higher valued properties. The

acceptable range for the Price Related Differential shall be .98 to 1.03.

008.06C **Coefficient of Dispersion.** The Coefficient of Dispersion ("COD") is a tool used under professionally accepted mass appraisal methods to measure the uniformity of assessments. The COD is the average absolute deviation from the median stated as a percentage. The COD is calculated by dividing the average absolute deviation by the median assessment/sales price ratio and multiplying by 100 to convert the ratio to a percentage. The acceptable range for the COD shall be: for residential real property 15.0% or less, for agricultural land 20.0% or less, for commercial and industrial property 20.0% or less, and for vacant land and other property classes 20.0% or less.

008.07 The Commission shall evaluate an assessing jurisdiction's level and quality of assessments through statistical ratio studies prepared using professionally accepted methodologies, and other relevant information provided by the county, the Property Tax Administrator, and other interested persons.

008.08 The Commission will give consideration to the methodology used by the counties in determining time adjustments and to the impact time adjustments may have on the overall statistical analysis results.

008.08A **Time Adjustments.** "Time adjustments" are changes made to the sales price of real property sold during a particular time frame in order to account for inflationary or deflationary changes in market value. These changes impact the assessment/sales ratio, and also the PRD and COD. Time adjustments become more important as more time elapses between the date of sale and the evaluation date.

008.08B Time adjustments are a standard and required mass appraisal practice, therefore the Commission when considering assessment practices at either the county or state (for centrally assessed property), will evaluate the method and manner of "time adjustments." The assessing body must justify its "time adjustment" practices based on evidence.

008.09 Orders to Show Cause and Notice of Hearing.

008.09A If the Commission finds that the level of assessment of a class or subclass of real property fails to satisfy the requirements of section 008 of this Chapter, the Commission shall issue an Order to Show Cause and Notice of Hearing to the counties which the Commission deems either undervalued or overvalued and shall set a date for hearing at least five (5) days following the mailing of the Order to Show Cause and Notice of Hearing. The Order to Show Cause and Notice of Hearing shall be sent by certified mail, postage prepaid (a return receipt may also be requested) to the county clerk, county assessor, chairperson of the county board, and the County Attorney. The Order to Show Cause and Notice of Hearing shall also be provided to the Property Tax Administrator by delivery of a copy of the Order to the offices of the Property Tax Administrator or through the United States Postal Service by certified mail, a return receipt may be requested.

008.09B Counties Not Deemed Overvalued or Undervalued. The Commission may adopt a motion to issue Findings and Orders to take no action for any counties not deemed undervalued or overvalued by the Commission.

008.10 At the hearing the legal representatives of the county may appear and show cause why the value of a class or subclass of the property of the county should not be adjusted. At

the hearing, the Commission may receive testimony from any interested person.

008.11 The Commission shall raise or lower the valuation of any class or subclass of property in a county when it is necessary to achieve equalization. On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to Neb Rev. Stat. §77-1514 the Property Tax Administrator shall prepare statistical and narrative reports informing the Commission of the level of value and the quality of assessment of the classes and subclasses of real property in each county and certify his or her opinion regarding the level of value and quality of assessment in each county. Neb. Rev. Stat. §77-5027.

008.12 The Property Tax Administrator shall certify his or her opinion regarding the level of value and quality of assessment of the county to each county assessor. For the purposes of informing the Commission, the Property Tax Administrator shall employ the methods specified in Neb. Rev. Stat. §77-112, the assessment/sales ratio study, other statistical studies, and studies of the assessment practices of a county. The Property Tax Administrator may employ transfers of comparable real property in market areas similar to the area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant matter in providing information to the Commission.

008.13 After the show cause hearing the Commission shall enter its order based on all of the information presented to it. The order of the Commission shall be sent by certified mail (a return receipt may be requested) 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. 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 property affected. The specified changes shall be made by the county assessor to each item of real property in the county so affected. Neb. Rev. Stat. §77-5028.

- 008.14** The Commission may reconsider any Order issued by the Commission during the statewide equalization proceedings so long as five (5) calendar days notice is provided to the county clerk, county assessor, and chairperson of the county board. Any Order issued after reconsidering the original order must be issued before the date for completion of equalization of the same year as the original order.
- 008.15** On or before June 5 of each year, the county assessor of any county adjusted by an order of the commission shall recertify the county abstract of assessment to the Property Tax Administrator. On or before August 1 of each year, the Property Tax Administrator shall certify to the Commission that any order issued pursuant to Neb. Rev. Stat. §77-5028 was implemented by the county. The Property Tax Administrator shall audit the records of the county assessor to determine whether the orders were implemented.
- 008.16** On or before August 15 of each year, the Property Tax Administrator shall certify the distributed taxable value of the property valued by the state (centrally assessed property), as equalized by the Commission to each county assessor.
- 008.17** The county shall be bound by the order of the Commission until such time as the Court of Appeals or the Supreme Court rules otherwise.
- 009 Notice of Hearings.** The Commission, when conducting hearings or proceedings pursuant to Neb. Rev. Stat. §§77-1504.01, 77-5024, and 77-5026, shall issue notice of hearings or proceedings as follows:

- 009.01** The Commission shall give notice of the time and place of the first meeting held pursuant to Neb. Rev. Stat. §§77-1504.01, 77-5024, and 77-5026 by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the Commission during normal business hours. The agenda shall be continually revised to remain current. The Commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided for in Neb. Rev. Stat. §§77-1504.01, 77-5024, and 77-5026. The Commission shall publish in its notice a list of those counties certified under Neb. Rev. Stat. §77-5027 as having assessments which may fail to satisfy the requirements of law. The legal notice shall be issued in such a manner which assures publication at least three (3) calendar days prior to the first meeting of the Commission.
- 009.02** The Chairperson of the Commission shall issue notice to the public in a news release. The news release shall be issued in a manner which allows publication at least three (3) calendar days prior to the first meeting of the Commission. The legal notice shall be issued to all news media whose names appear upon a list maintained by the Chairperson. The list shall also contain the names of the news media requesting notification of the meetings of the Commission.
- 009.03** All notices of the Commission shall state the time and place of the meeting an agenda of the subjects to be discussed at the meeting. If an agenda of subjects is not known at the time of issuing the notice, the notice shall contain a statement that the agenda, which shall be kept continually current, shall be available for inspection to any interested person at the offices of the Commission during normal business hours.

009.04 The Commission shall, not less than five (5) business days prior to the first hearing or proceedings pursuant to Neb. Rev. Stat. §§77-1504.01, 77-5024, and 77-5026, cause a copy of the notice and the agenda to be placed on the Commission's website (www.terc.ne.gov) The notice shall contain a statement that the agenda, which shall be kept continually current, shall be available for inspection to any interested person at the offices of the Commission during normal business hours. The agenda shall, for the duration of the hearings or proceedings, be updated on the Commission web site not less than once every five business days to reflect any changes to the agenda.

010 Rules of Practice and Procedure at Equalization Hearings.

010.01 The presiding hearing officer may conduct any hearing before the Commission as follows:

010.01A The hearing is called to order by the presiding hearing officer. The county shall be advised of any information regarding the conduct of the hearing which the presiding hearing officer may deem relevant. Furthermore, all exhibits shall be marked and, if there are no objections, or if objections thereto are overruled, be received. Any preliminary motions, stipulations or agreed orders are heard.

010.01B The county may, as determined by the presiding hearing officer, be permitted to make an opening statement.

010.01C Presentation of Evidence.

010.01C1 Evidence may be presented in the following order:

010.01C1a Evidence is presented by the county.

010.01C1b Evidence is presented by the Property Tax Administrator.

010.01C1c Evidence is presented by any other interested persons.

010.01C2 **Witnesses.** The Commissioners, the Property Tax Administrator, and any other interested persons may question each witness who testifies. The Chairperson shall ensure that questions proposed are relevant to the proceedings and that the questions are not intended to needlessly consume time or harass or unduly embarrass the witness.

010.01C3 **Closing Statement.** After the evidence is presented, the county may be afforded the opportunity to make a closing statement.

010.01D The Commission shall consider all evidence, including the exhibits, statistical reports and opinions of the Property Tax Administrator as well as all evidence offered by the county and any other interested persons in determining the level of value in the class or subclass being considered and any necessary adjustment to that level of value.

010.02 The presiding hearing officer may exclude any person from the hearing room when that person is disrupting the hearing.

011 Appeals. Any party aggrieved by a final decision of the Commission in a case appealed to the Commission, and any county or other political subdivision aggrieved by an order of the Commission issued pursuant to Neb. Rev. Stat. §§77-1504.01 or 77-5028, shall be entitled to judicial review in the Court of Appeals in accordance with Neb. Rev. Stat. §77-5019.