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Property Tax Appeals: An Appeal for Practical Due Process

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ERRATA

Nancy J. Stara, listed as the sole author of *Property Tax Appeals: An Appeal for Practical Due Process*, 68 Neb. L. Rev. 601 (1989), would like to acknowledge William E. Peters as a co-author of that article. Mr. Peters was inadvertently not listed as a contributor to that piece.
Property Tax Appeals: An Appeal for Practical Due Process

TABLE OF CONTENTS

I. Introduction ............................................. 602
II. Valuation and Equalization .............................. 603
    A. Notice ............................................ 604
    B. Protest ........................................... 608
    C. Issues for Appeal .................................. 612
       1. Actual Value .................................. 612
       2. Equalization ................................... 615
    D. Appeal to District Court ........................... 618
    E. Review by State Board of Equalization and Assessment ................................. 619
III. Valuation and Equalization—By Class or Subclass ..... 620
    A. Classes and Subclasses ............................. 622
    B. Action by State Board of Equalization and Assessment ................................. 623
       1. Review and Equalization by State Board of Equalization and Assessment ........... 623
       2. Hearing Before State Board of Equalization and Assessment ....................... 624
    C. Appeal from State Board of Equalization and Assessment .............................. 625
    D. Appeal—Standing ................................... 625
IV. Omitted and Undervalued Property ....................... 627
    A. Omitted, Undervalued, and Improved Property ............................................. 627
    B. Penalties ......................................... 629
    C. Notice and Protest ................................. 629
    D. Appeal from County Board of Equalization ............................................. 630
V. Levy and Appeal .......................................... 631
VI. Exemption ............................................... 632
VII. Refunds ................................................ 633
     A. Voluntary Payment ................................ 633
     B. Clerical Error, Misunderstanding, Honest Mistake, or Invalid Tax—Defined ........... 634
        1. Clerical Error .................................. 634
“Unfortunately, as is too often the case with regard to appeal statutes, the language of the statutes involved only adds to the confusion.”1

The appeal procedures for Nebraska property taxes are confusing. Amendments made to correct specific problems have, in turn, created their own problems. While taxpayers are technically provided due process by the existing procedures, practically they are not. The purpose of this Article is to promote greater practical due process in Nebraska’s property tax appeal procedures. In achieving that purpose, this Article analyzes Nebraska’s property tax appeal procedures for property taxes administered by the counties, shows how those procedures lack practical due process, and suggests several changes which would give practical due process to those paying property taxes in Nebraska.

Lack of practical due process can shift the property tax burden to the homeowner and small business person. This Article focuses on such taxpayers and the property taxes they pay to their local governments. To show that such taxpayers will find the cost of appealing their local property taxes difficult and costly, this Article discusses the issues of valuation and equalization—how and when they must be raised if they are to be successfully argued. The Article explains how a taxpayer may be assessed without the right to notice or protest when real property has been undervalued, and it discusses exemptions and the unique rules which apply. Finally, it explains when and how refunds may be obtained.

II. VALUATION AND EQUALIZATION

Before discussing the due process offered by Nebraska's appeal procedures for property taxes, a brief overview of these procedures is necessary. Two procedures exist. One necessitates that action be initiated by the taxpayer. The other necessitates that action be initiated by the Tax Commissioner.

Initially either the county assessor or the county board of equalization will notify a taxpayer of a change in the valuation of his property. Where the county assessor increases the valuation of real property, the county assessor is to notify the "record owner" of the property before April 1 of the relevant year. This notice is to be by "first-class mail addressed to such owner's last known address." The taxpayer initiates action by filing a protest with the county board of equalization within thirty days after the county assessor files an assessment roll with the county clerk. The assessment roll must be filed on or before April 1 of each year. If a taxpayer wants to protest real estate valuations which are not increased, then such protest must be filed within the same 30-day period, which period starts to run with the filing of the assessment roll, which can be anytime between January 1 and April 1. Since personal property is self reported, it is questionable as to whether the taxpayer has a right to appeal to the county board on personal property absent affirmative action on the part of the assessing office.

Where the county board of equalization is considering raising the valuation of "any tract, lot, or parcel of real estate or . . . items of personal property" it must give "due notice" to the owner or agent at his last known address. The county board of equalization meets to review protests from April 1 to May 31 of each year. Within seven days of the final decision of the county board of equalization, the county clerk is to notify the protestor of the board's action.

To appeal the action of the county board of equalization to the district court, the taxpayer must file no later than July 15: (1) a notice of appeal with the county clerk requesting a transcript and posting the required appeal bond, and (2) a petition and praecipe for summons in the district court. Here, the county may also cross-appeal to increase

3. Id.
8. Id.
the valuation.\textsuperscript{10} The district court, without a jury, determines anew “all questions raised before the county board which relate to the liability of the property to assessment or the amount thereof.”\textsuperscript{11} However, the district court will affirm the board’s decision unless the evidence establishes that the board’s decision was unreasonable, arbitrary, or the property was assessed too low.\textsuperscript{12}

Regardless of what action is initiated by the taxpayer, the Nebraska State Board of Equalization and Assessment may, \textit{at the request of the Tax Commissioner}, direct the Tax Commissioner to conduct a hearing reviewing any changes in valuation of real and personal property made by a county board of equalization.\textsuperscript{13} After the Tax Commissioner conducts hearings, the Board may meet to hear the recommendation of the Tax Commissioner.\textsuperscript{14} If the Board meets to hear the Tax Commissioner’s recommendation, notice of such recommendation must be issued five days before the meeting.\textsuperscript{15} At the meeting the Board may hear testimony relevant to the Tax Commissioner’s recommendation from “any interested person.”\textsuperscript{16} After such determination by the Board, it must certify its order to the county assessor, county, clerk, and chairperson of the county board on or before August 15.\textsuperscript{17} More importantly, any person, county, or municipality may appeal the State Board’s final decision to the Nebraska Supreme Court.\textsuperscript{18} However, a notice of intention to obtain judicial review must be filed with the State Board within ten days of the State Board’s final decision.\textsuperscript{19} While the statutes provide for the above procedure before the State Board, it is little used, if at all.

A. Notice

If taxpayers are to be offered due process by the property tax appeal procedures, the required statutory notices should make them aware of their right to protest. The notice should provide sufficient time for the taxpayers to file an adequate protest. If it does not, practical due process is not given.

The county assessor and county board of equalization must give notice if a property valuation is to be increased.\textsuperscript{20} This notice is

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id. NEB. REV. STAT. § 77-1511 (1986).
\item Id.
\item Id. NEB. REV. STAT. § 77-509 (Cum. Supp. 1988). For additional details see appendix supra Table I.
\item Id. NEB. REV. STAT. § 77-507.01 (Cum. Supp. 1988).
\item Id.
\item Id.
\item Id.
\item Id. NEB. REV. STAT. § 77-510 (Cum. Supp. 1988).
\item Id.
\item Id. NEB. REV. STAT. § 77-1515 (1986); NEB. REV. STAT. § 77-1504 (Supp. 1989). While
\end{enumerate}
\end{footnotesize}
mandatory. If a tax is levied on an increase made without notice to the owner, it is void and collection may be enjoined.\footnote{21} However, to have an issue on appeal, the notice must be defective and the owner must be prejudiced by the defect.

The statutory notice requirements differ depending on whether the notice is given by the county board of equalization or the county assessor. "The county board of equalization may . . . correct the assessment . . . by raising, after due notice has been given to the owner or agent at his or her last-known address . . . ."\footnote{22} However:

The \emph{county assessor} shall, before . . . filing [the assessment roll on April 1], notify the record owner of every piece of real estate which has been assessed at a higher figure than at the last previous assessment. Such notice shall be given by first-class mail addressed to such owner’s last-known address. It shall describe such real estate and state the old and new actual valuation thereof and the date of the convening of the board of equalization and the dates for filing of protests.\footnote{23}

Compare the statutory provisions. First, the county board of equalization must give "due notice," whereas the county assessor has specific statutory requirements that must be met. "Due notice" does, however, infer that reasonable notice be given. The statutory requirements for notice by the county assessor provide one example of reasonable notice. Other notices may, however, be reasonable and provide "due notice." Second, the county board of equalization may give notice to either the "owner or the agent" but the county assessor must give notice to the "record owner."

While the terminology of the statutory provisions differs, the notice requirements imposed by these provisions are similar. Defining the statutory terms "owner" and "last-known address" shows this similarity.

The Nebraska Supreme Court defined these terms in \textit{Reed v. County of Hall}.\footnote{24} The appellants in \textit{Reed} sought an injunction to prevent the county from collecting real estate taxes resulting from increased valuations in 1974 and 1975. They argued the tax was void for lack of required notice.

Two corporations, Sidney, Inc. and Sidney II, Inc., were formed by the appellants to obtain financing and to build an apartment complex in two phases. When Phase I was completed, Sidney, Inc. transferred title to the appellants individually. The appellants held title from December 1972 until August 1973. In August 1973, the appellants trans-

\footnotesize
\begin{itemize}
\item \footnote{21} Gamboni v. County of Otoe, 159 Neb. 417, 425-26, 67 N.W.2d 489, 496 (1954); Rosenbery v. Douglas County, 123 Neb. 803, 808, 244 N.W. 398, 400 (1932).
\item \footnote{22} \textsc{Neb. Rev. Stat.} § 77-1504 (Supp. 1989) (emphasis added).
\item \footnote{23} \textsc{Neb. Rev. Stat.} § 77-1315 (1986) (emphasis added).
\item \footnote{24} 199 Neb. 134, 256 N.W.2d 861 (1977).
\end{itemize}
ferred title in Phase I to Sidney II, Inc. because the corporation needed additional collateral to obtain financing for its development of Phase II. In December 1973, the appellants attempted to transfer title back to themselves. However, the deed erroneously showed Sidney, Inc. rather than Sidney II, Inc. as the grantor. Thus, title was not conveyed.

In 1974, the county assessor mailed a notice of increased valuation for Phase II to one of the appellants, James S. Reed, rather than to the registered agent for the corporation, Warren Zweiback. However, the address on the notice was not that of James S. Reed. Rather, it was that of Warren Zweiback, the registered agent as listed in the articles of incorporation. Warren Zweiback had, however, moved and failed to change his address as the registered agent in the articles of incorporation. Thus, neither Warren Zweiback or James S. Reed received the notice. In 1975, the county assessor mailed notice of assessment on Phase I to Sidney II, Inc., care of James S. Reed, 405 North Pine, Grand Island, Nebraska, 68801. Mr. Reed was the president of Sidney II, Inc. The notice for Phase II was mailed to James S. Reed, et al., at the same address. The addresses used for the notice had been given to the county assessor by Mr. Reed. Mr. Reed received both notices after April 1 although they were mailed before April 1.

The court found the 1974 increase in assessment was void for lack of notice as required by section 77-1315:25

The notice was sent to the last-known address of the registered agent for the corporation, but it was addressed to one of the appellants at that address rather than to the registered agent for the corporation. Because the registered agent had moved his office and the person to whom the notice was addressed had never occupied that office, the notice was not delivered. We have no hesitation in saying that if the notice had been sent to the registered agent at that address, which was the last-known address, there would be no question of notice. That, however, was not done. The notice was defective, and the record indicates it was never received by any of the parties involved in this litigation. We hold the increased assessment for 1974 was void for lack of notice . . . . 26

However, the court upheld the 1975 increase in assessment:

Reed, at the time of the receipt of the notice on Phase II, was the president of the corporation and while he believed that the individuals were the owners of the property rather than the corporation, all parties had notice of the increased assessment. Reed also was the one who dealt with the assessor on behalf of the appellants. On this record, the appellants could not have been prejudiced by any misstatement in the name of the record owner.27

In Reed, the county assessor was permitted to notify the corporate owner through its registered agent. While section 77-1504 requires the county board of equalization to give notice to the "owner or agent"28

25. NEB. REV. STAT. § 77-1315 (1986).
27. Id. at 141-42, 256 N.W.2d at 865.
and section 77-1315 requires the county assessor to give notice to the "record owner," the court permits notice to be given an owner or agent under either section. But how does an owner designate an agent for purposes of notification? Neither the county assessor nor the county board of equalization have a system by which they are notified when such an agent is designated.

The county assessor is to mail the notice of an increase to the last-known address of the owner. What is the last-known address? To update the assessment rolls, the county assessor is required to examine the records of the register of deeds, county clerk, county judge, and clerk of the district court. Based on this requirement, tax officials should search all county records to learn the address of the property owner or agent. Reed supports this conclusion. In Reed, the court suggested that if the registered agent had amended the articles of incorporation to reflect his new address, the new address would be the "last-known" address. Amended articles of incorporation are filed with the county clerk but not with the county assessor.

In addition, taxpayers are able to change their last-known addresses by talking with the county assessor. In Reed, the taxpayer's last-known address was changed when the taxpayer talked with an employee of the county assessor's office and gave his address. While this may be done, practitioners should not advise taxpayers to change their address by merely talking with the county assessor. The risk to the taxpayer is too great. First, how will the taxpayer prove he or she changed the address? Second, if the county assessor mails the notice to a taxpayer at an address found in the county records, the notice complies with the statutory requirements. Since such notice has no defect, it is not void even though it may not be received.

The county assessor is required to give notice to the owner before filing the assessment roll with the county clerk. The assessment roll must be filed on or before April 1. In Reed, the owner raised the issue of whether timely notice was given by the county assessor when the notice was mailed on time but was not received by the owner until after April 1. The court determined that the date of mailing and not the date of receipt determines when notice is given.

However, a taxpayer has thirty days from the date the notice is mailed by the county assessor to file a protest. If the notice is delayed in the mail, the effective time for filing a protest is reduced. Furthermore, a delayed notice may jeopardize a taxpayer's success on appeal because all appealable issues must be raised in the protest to the county board before they can be appealed. Thus, when a taxpayer's effective time to file a sufficient protest is reduced, his chance of suc-

31. See infra notes 35-40 and accompanying text.
cess on appeal is also reduced. Therefore, address on the notice is critical. A county assessor should develop a consistent procedure for taxpayers to appoint agents and change addresses of record.

A county board of equalization is without jurisdiction to raise a property assessment until both it and the county assessor have complied with the statutory notice requirements. However, property owners will waive a defect in any notice if they file a timely protest. Subsequent withdrawal of the protest will not affect the waiver. If the owners receive notice, they are not prejudiced by the defect. Yet, practically, they may be prejudiced because they have inadequate time to prepare their protest.

Due process in property tax appeals begins with notice to the property owners or their agents. Without an adequate procedure for changing an address of record or appointing an agent, notice may not be received in sufficient time to allow taxpayers to file an adequate protest. While statutory notice is given—practical due process is not.

B. Protest

To raise the issue of overvaluation and protect their rights to appeal, property owners should file a timely protest with the county board of equalization. If they do not file the protest they will suffer two consequences. First, they may not attack the assessment because an assessment based on overvaluation is not void—and hence is not subject to a collateral attack. Second, because the district court is restricted to considering questions raised before the county board of equalization, they may not have protected the issues for subsequent appeal.

At the hearing, the county board of equalization is directed to “prepare a separate report as to each action taken by it with respect to equalization,” including “the names of witnesses whose testimony was heard . . . , a summary of their testimony, and a statement by the board of the basis upon which it took action.” While the board has authority to administer oaths and compel attendance of witness and the production of records, there is no requirement that a bill of exceptions be prepared. The report of the County Board of Equalization may fail to

33. Id. at 428, 67 N.W.2d at 498.
34. Reed v. County of Hall, 199 Neb. 134, 142, 256 N.W.2d 861, 865 (1977).
36. NEB. REV. STAT. § 77-1511 (1986); Gordman Properties Co. v. Board of Equalization of Hall County, 225 Neb. 169, 174, 403 N.W.2d 336, 370 (1987)("[T]he court is without power to adjudicate any other issue in that proceeding.")
PROPERTY TAX APPEALS

show all issues raised orally by a taxpayer.\(^{38}\)

Cautious practitioners should preserve issues for appeal by identifying those issues in the protest. An alternative would be to do so in written exhibits presented at the hearing and an insistence on such being a part of the transcript. The protest is well suited for this purpose because it is "a written statement of the reason or reasons why the requested reduction in assessment should be made."\(^{39}\) Generally, these reasons should raise two issues with the county board of equalization: (1) the actual value of the taxpayer's property; and (2) the lack of uniformity and proportionality in valuation.\(^{40}\) To establish issues which were not specifically identified in the protest, consideration should be given to filing written exhibits with the county board of equalization during the hearing.

In Gordman Properties Co. v. Board of Equalization of Hall County,\(^{41}\) the supreme court found that the district court was without power to adjudicate the question of uniformity and proportionality of a 1983 valuation. The property owner had failed to present that issue before the county board of equalization:

Gordman filed its protest with the county board of equalization and alleged: "Current valuation of $1,762,500 is above actual Market. $1,200,000 represents the Fair Market Value of this property based on current appraisals." The board of equalization rejected Gordman's protest, and Gordman appealed to the district court. See Neb. Rev. Stat. § 77-1510 (Reissue 1981). In its "Petition on Appeal," Gordman claimed: "The value of [Gordman's] property has not been fairly and proportionally equalized with all of the property resulting in a discriminatory, unjust and unfair assessment," and "The assessment of said real estate is grossly excessive and is a result of arbitrary and unlawful action."\(^{42}\)

However, in his 1984 protest the property owner did raise both issues by claiming:

1. The protested valuation, as determined by the County Assessor, is in excess of "actual value" of the real estate and improvements, as defined by R.R.S. 77-112.

2. The protested valuation was determined by the County Assessor in a manner and amount which is unjust, disproportionate and unequal when compared with the actual value of other property within the county.

8. The fair market value of irrigated and dryland agricultural crop land for the year 1984 was uniformly under valued by the Hall County Assessor re-

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42. Id. at 171, 403 N.W.2d at 368.
sulting in irrigated and dryland agricultural farmland being uniformly valued at substantially less of its actual value-fair market value.

9. The application of different methods for determining the values of agricultural land and all building improvements resulted in an assessment which was not uniform and proportionate.\textsuperscript{43} However, property owners may not change issues when appealing to the district court. In \textit{Chief Industries, Inc. v. Hamilton County Board of Equalization},\textsuperscript{44} the property owner initially sought a value reduction to $1,206,093. After the introduction of evidence at the district court, Chief was allowed to amend its request for value reduction to $737,808. The county board of equalization claimed Chief changed issues when it was allowed to amend the dollar amount of relief sought. The Nebraska Supreme Court found there was no change in issues—only a change in economic relief. The court has provided these examples (in addition to \textit{Gordman Properties}) of a prohibited change in issue. First, in \textit{Nebraska Telephone Co. v. Hall County},\textsuperscript{45} the taxpayer argued before the board of equalization that the valuation was excessive because it was based on capitalization of gross receipts. However, before the district court, the taxpayer argued the pole value multipliers were incorrect because of an erroneous pole count. Second, in \textit{Reichenbach Land & Loan Co. v. Butler County}\textsuperscript{46} the taxpayer argued for the first time to the district court that the value of bank stock and shares was not assessable at all. Third, in \textit{Reimers v. Merrick County} \textsuperscript{47}, the taxpayer argued before the board of equalization that the property was acquired after the assessment date. However, before the district court, he argued the assessment statute was unconstitutional.

While the court in \textit{Chief Industries} did not find the property owner was raising a new issue, the court's discussion shows the importance of developing the issues at the county board of equalization. If property owners are not adequately represented when they file their protests and appear before the county board, they may foreclose any chance of success on appeal.

What are these separate issues which the taxpayer must develop before the county board of equalization? In \textit{Nebraska Telephone}, the taxpayer raised the issue of valuation at both the county board of equalization and at the district court. Yet, the district court held a new issue was raised on appeal when the taxpayer changed the underlying reason for the excessive value to an erroneous description of the property. Should an erroneous description be a separate issue apart from valuation? Does such a separation make sense when accurate

\textsuperscript{43} \textit{Id.} at 171-72, 403 N.W.2d at 368-69.
\textsuperscript{44} 228 Neb. 275, 422 N.W.2d 324 (1988).
\textsuperscript{45} 75 Neb. 405, 106 N.W. 471 (1906).
\textsuperscript{46} 105 Neb. 209, 179 N.W. 1015 (1920).
\textsuperscript{47} 82 Neb. 639, 118 N.W. 113 (1908).
property descriptions are critical to the very issue of valuation? For instance, erroneous descriptions may include mismeasuring a building, miscounting acres, or misclassifying the type or condition of a building. If property is erroneously described, the county assessor’s valuation, regardless of whether it is based on replacement cost, income capitalization, or comparable sales, cannot represent actual value. However, while valuation may be viewed as a single issue by the taxpayer, the court may be willing to divide that issue into components. If it does, the taxpayer is forced to hire counsel prior to the hearing of the county board of equalization in order to be certain all issues are preserved for appeal.

When a taxpayer appeals to the district court, the district court acts as a trial court. The district court determines anew all issues raised before the county board of equalization. Since the district court acts as the trial court, it should not be restricted as to the issues it may hear. It should be given the first opportunity to pass on a question. When the district court is restricted as to the issues it hears, “An appeal . . . is similar to a bald man’s trip to a barbershop; it affords an opportunity for conversation but accomplishes little.” The Nebraska Legislature should amend the statute to allow the district court to hear new issues, and to authorize the district court, in its discretion, to remand new issues to the county board of equalization for its consideration and determination.

The Nebraska Supreme Court has approved the restriction on the district court which prevents it from hearing new issues because a taxpayer might raise a nonmeritorious question before the county board of equalization and present a different and meritorious one to the district court. By doing so, the court noted the taxpayer may have his assessment overturned and escape taxation altogether. This problem can be solved by authorizing the district court in its discretion to remand new issues to the county board of equalization for decision. It should not be solved by denying the taxpayer a right to develop all issues. In order to seek judicial relief to right a wrong, taxpayers are compelled, practically, to retain expert advice long before they contemplate judicial action. It is not unreasonable to expect a taxpayer to first appeal to the county board of equalization. But, to go a step further and require the taxpayer to utter the magic words of the ap-

49. State v. Ledingham, 217 Neb. 135, 138, 347 N.W.2d 865, 867 (1984)(“[I]t occurs to us the trial court must be given the first opportunity to pass upon the question . . . . [T]o deny the trial court the opportunity to pass upon the matter, is not an appropriate way to conduct either trial courts or appellate courts.”)
praiser and attorney to the county board of equalization or forever be barred from the judicial system would appear to be an unneeded and drastic requirement. Adoption of this recommended change would not give the taxpayer any unfair advantage. It still would leave the taxpayer on less than a level playing field because even if the issues are litigated in the district court, the taxpayer has a significant burden. To appreciate the significance of the taxpayer's burden, study the issues which follow.

C. Issues for Appeal

The Nebraska Constitution states:

The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct. Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, except that the Legislature may provide for a different method of taxing motor vehicles ... 52

The Nebraska Legislature has directed, with certain exceptions, that "all tangible property and real property in this state ... be subject to taxation and ... valued at its actual value." 53 These two provisions provide the foundation for the issues which are raised in a protest or on appeal.

1. Actual Value

Actual value means exactly the same as market value or fair market value. 54 It is determined by using professionally accepted mass appraisal techniques, including, but not limited to: "(1) Comparison with sales of property of known or recognized value, taking into account location, zoning, and current functional use; (2) Earning capacity of the property; (3) Reproduction cost less depreciation." 55 Neither the county assessor nor the county board of equalization is required to take into account all professional appraisal techniques. 56 No limitations are placed on the elements that may be considered or on the methods that may be applied in determining actual value. 57 There is,

52. NEB. CONST. art. VIII, § 1.
53. NEB. REV. STAT. § 77-201 (Supp. 1989).
55. NEB. REV. STAT. § 77-112 (Supp. 1989).

The Legislature has attempted to define "actual value" for purposes of taxation by application of a formula "where applicable." Section 77-112, R.R.S. 1943. While the items of the formula are all related to value,
then, no precise yardstick for determining actual value with complete accuracy. It is largely a matter of opinion, an opinion left to the discretion and judgment of the county board of equalization.\textsuperscript{58}

Practitioners should consider two lines of cases when raising a valuation issue; the first is \textit{Lexington Building Co. v. Board of Equalization of Dawson County}.\textsuperscript{59}

\begin{quote}
The burden of persuasion imposed on the complaining taxpayer is \textit{not met by showing a mere difference of opinion} unless it is established by clear and convincing evidence that the valuation placed upon \ldots \textit{[the taxpayer's] property when compared with valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment}.\textsuperscript{60}
\end{quote}


There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action, which presumption remains until there is competent evidence to the contrary. \textit{Such presumption disappears when there is competent evidence on appeal to the contrary}, and from that point on the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon the evidence, with the burden of showing such valuation to be unreasonable resting upon the appellant on appeal from the action of the board.\textsuperscript{62}

The standard set by \textit{Lexington Building Co.} requires taxpayers to prove value is both grossly excessive and systematically manipulated.

\begin{itemize}
\item those which are factors in determining value are by no means the only factors which enter into the valuation of property for taxation. As this court said in \textit{Richards v. Board of Equalization}, 178 Neb. 537, 134 N.W.2d 56: "For purposes of taxation, the terms actual value, market value, and fair market value mean exactly the same thing. Many elements enter into a determination of actual value, some of which are set out in the statute."
\item We suspect that the legislative attempt to define value for purposes of taxation has distorted the relationships of many elements of value, and has intermixed methods of measuring value with elements and factors entering into any proper determination of value. The term "fair market value," while it is an intangible concept, has had a definite and well understood legal meaning over a very long period of years. The attempt to define that concept of value as being readily ascertainable by means of a formula "where applicable" has added to the misunderstanding.
\end{itemize}

\textit{County of Gage v. State Bd. of Equalization, 185 Neb. 749, 751, 178 N.W.2d 759, 761-62} (1970) (citations omitted). In 1989, the Legislature revised \textsc{Neb. Rev. Stat.} \textsection 77-112 (Supp. 1989). In so doing, it attempted to separate methods of measuring values from factors entering into a proper determination of value. Actual value, however, remains a matter of opinion.

\begin{itemize}
\item \textit{186 Neb. 821, 187 N.W.2d 94} (1971).
\item \textit{Id. at 822, 187 N.W.2d at 96} (citations omitted and emphasis added).
\item \textit{212 Neb. 847, 326 N.W.2d 670} (1982).
\item \textit{Id. at 851, 326 N.W.2d at 672} (citations omitted and emphasis added).
\end{itemize}
As a practical matter, to meet their burden of proof under such a standard, taxpayers must prove malfeasance in office by the taxing officials. Such proof is difficult, if not impossible. Alternatively, the standard of *Hastings Building Co.* requires taxpayers to produce competent contrary evidence in order to open the reasonableness of the valuation for decision by the appeals court based on the facts. Even so, the burden of proof remains on the taxpayer to show the valuation chosen by the county board of equalization is unreasonable, and it is unreasonable only if the taxpayer shows “by clear and convincing evidence that the board’s determination as to actual value is incorrect and invalid.”

The court in *Gordman Properties Co. v. Board of Equalization of Hall County* said “a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation.” The statutory standard is actual value. Actual value is not, however, defined by statute. Rather, as the courts have acknowledged, no precise yardstick for measuring actual value exists. The taxpayer will find that a challenge based on the issue of actual value is difficult to successfully litigate, as is shown by *Spencer Holiday House, Inc. v. Board of Equalization of Gage County.*

In *Spencer Holiday House,* the valuation determined by the county assessor, the county’s expert witness, and the taxpayer’s expert witness were as follows:

<table>
<thead>
<tr>
<th>Percentage Above/(Below)</th>
<th>Valuation</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Assessor</td>
<td>$585,370</td>
</tr>
<tr>
<td>County Expert</td>
<td>$660,000</td>
</tr>
<tr>
<td>Taxpayer Expert</td>
<td>$425,800</td>
</tr>
</tbody>
</table>

While the values showed a substantial range, the court found the differences in value were attributable to mere differences of opinion. It held the taxpayer failed to meet its burden to show the valuation of the county was “incorrect or invalid, and, therefore, unreasonable.”

If the court was applying the “competent evidence” test of *Hastings Building Co.*, the taxpayer was required to present competent evidence contrary to the county assessor’s valuation. If the taxpayer

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64. 225 Neb. 169, 403 N.W.2d 366 (1987).
65. Id. at 179, 403 N.W.2d at 373.
67. Id. at 612, 371 N.W.2d at 289.
had presented such evidence, the reasonableness of the valuation would have become a factual issue to be weighed. In the alternative, the court may have applied the standard of *Lexington Building Co. Inc.*, requiring the taxpayer to prove the valuation was excessive and systematically manipulated. Regardless of which standard was applied, the standard was an onerous one for the taxpayer to meet. The court held the taxpayer did not carry his burden of proving the valuation of the county assessor was unreasonable, even though the values ranged fifty-five percent from the lowest to the highest.

2. **Equalization**

Recently the taxpayer has been more successful by litigating the equalization issue.\(^6\) The courts are, at least, willing to weigh the evidence and to decide the issue of equalization.

The taxpayer has the burden of proving “the value of the taxpayer's property has not been fairly and proportionately equalized with all other property, resulting in a discriminatory, unjust, and unfair assessment.”\(^69\) This is often referred to by the courts as the rule of uniformity. It applies to both the rate of taxation and the valuation of property for tax-raising purposes.\(^70\) “The key requirement is that the evidence establish an actual disparity in assessment which indicates the principle of uniformity has been violated, and not a mere difference of opinion as to valuation.”\(^71\) Perhaps the best example of the principle of equalization is stated in *Kearney Convention Center,*

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\(^6\) In *Spencer Holiday House,* the appellant raised the issue of equalization in addition to the issue of actual value. The appellant argued that the county was systematically undervaluing farmland so that property classifications were not uniform and proportionate. The court dismissed this argument, stating, "There is no evidence that the assessed value for Spencer was excessive or that there was an disproportionate assessment of Spencer's property within its classification as a motel and commercial property." *Id.* at 609, 371 N.W.2d at 287.

Because actual value was an issue, the court refused to discuss equalization. In the recent cases which have been decided on the equalization, actual value has not been raised on appeal to the Nebraska Supreme Court. *See* Equitable Life Assurance Soc'y v. Lincoln County Bd. of Equalization, 229 Neb. 60, 425 N.W.2d 320 (1988); Chief Indus., Inc. v. Hamilton County Bd. of Equalization, 228 Neb. 275, 422 N.W.2d 324 (1988); Fremont Plaza, Inc. v. Dodge County Bd. of Equalization, 225 Neb. 303, 405 N.W.2d 555 (1987); Gordman Prop. Co. v. Board of Equalization of Hall County, 225 Neb. 169, 403 N.W.2d 336 (1987); *Kearney Convention Center,* Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 344 N.W.2d 620 (1984).


\(^71\) Fremont Plaza, Inc. v. Dodge County Bd. of Equalization, 225 Neb. 303, 313, 405 N.W.2d 555, 562 (1987).
Inc. v. Buffalo County Board of Equalization: 

[T]he right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. 

The purpose of equalization is to bring the actual value from different parts of a taxing district to the same relative standard. That way, no one of the parts will pay a disproportionate part of the tax. Equalization is achieved by assesssing property at the same percentage of actual value although that percentage may be less than 100 percent. While property may be reasonably classified for tax purposes and different methods used to value these classes, the values between these classes must be correlated so that the results reached are uniform and proportionate. This correlation shows equalization has been accomplished. Historically correlation is shown by sales assessment ratios, but other methods may be used.

In Box Butte County v. State Board of Equalization, the State Board of Equalization found sales were a poor indicator of actual value for farmland and used an income capitalization approach (manual) to equalize the farmland. The sales assessment ratio was used for all other property. Because two methods were used to equalize, the State Board of Equalization was required to correlate the two methods. The State Board of Equalization did so by comparing values for farmland and other property which were reached using these two different methods with values determined in recent reappraisals. The court found the changes made by the State Board of Equalization brought farmland values into uniformity with other property values in counties that had undergone recent reappraisals. Because these counties had high sales assessment ratios for other property and were at or near 120 percent of the manual values for farmland, the State Board of Equalization adjusted other property downward to achieve uniformity with farmland.

73. Id. at 304, 344 N.W.2d at 628 (citations omitted).
78. Id.
When either the State Board of Equalization or the county board of equalization equalizes property values, it applies a correlated value to equalize between classes of property. If values are challenged within a single class of property in a single county, the court does not consider equalization to be the issue. Rather, the court treats the case as raising the issue of "actual value."\textsuperscript{79} The taxpayer will find it difficult to meet the burden of proof that successful litigation of the valuation issue requires.\textsuperscript{80} Although individual taxpayers are generally unsuccessful when they appeal an actual value issue to the courts, they have been successful if their appeal is based on the equalization issue as evidenced by a series of recent cases beginning with\textit{Kearney Convention Center, Inc. v. Buffalo County Board of Equalization}.

Thus, with equalization as the issue, taxpayers who can point to systematic disparities in valuing different classes within a county or between different counties,\textsuperscript{82} can meet the required showing of a discriminatory, unjust, and unfair assessment.\textsuperscript{83} Equalization by class or subclass and the problems that are associated with it are discussed more fully in Part III(A).

When either the equalization or actual valuation issue is successfully litigated by the taxpayer, his assessed valuation is reduced. However, the cost of appealing these issues may be prohibitive for the homeowner or owner of smaller commercial property. These taxpayers bear the burden of a disproportionate tax.\textsuperscript{84} Changing the appeal

\textsuperscript{79.} See supra note 68. See also Great Western v. State Bd. of Equalization, 206 Neb. 721, 295 N.W.2d 686 (1980).

\textsuperscript{80.} See supra notes 59-68 and accompanying text.


\textsuperscript{82.} Equitable Life Assurance Soc'y v. Lincoln County Bd. of Equalization, 229 Neb. 60, 63, 425 N.W.2d 320, 322 (1988).

\textsuperscript{83.} See supra note 69.

\textsuperscript{84.} Equitable Life Assurance Soc'y v. Lincoln County Bd. of Equalization, 229 Neb. 60, 425 N.W.2d 320 (1988).

From a review of equalization cases by this court, it becomes abundantly clear that where it becomes necessary to lower the assessed value of a large commercial property to equalize it with agricultural land, it is the homeowner and the owner of smaller commercial property who bear a disproportionate tax. As will be seen later in this opinion, the cost of appealing a disproportionate assessment is prohibitive for the homeowner and owner of smaller commercial property. They will continue to suffer until the inequity is addressed by county boards of equalization or the Legislature.
procedures may lessen the cost of appealing for these taxpayers and help eliminate disproportionate taxes.\textsuperscript{85}

D. Appeal to District Court

While the county board of equalization may notify either the owner or his agent before raising an assessment,\textsuperscript{86} only the owner-taxpayer may file an appeal from the action of the county board of equalization. In \textit{Alphomega, Inc. v. Colfax County Board of Equalization},\textsuperscript{87} plaintiff filed a protest with the county board of equalization alleging his property was overvalued. The county board dismissed the protest on its merits. On appeal, the district court dismissed the action because the record failed to establish that the plaintiff owned the property in question and was the taxpayer.

Appeal from the action of the county board of equalization on a protest must be filed with the district court within forty-five days after adjournment of the board. Since the county board of equalization may meet to review protests for not less than three days but no more than sixty days beginning April 1 and ending May 31 of each year, it could adjourn as early as April 3.\textsuperscript{88} However, the Legislature amended the statute in 1986 to designate May 31 as the board's adjournment date for purpose of perfecting an appeal to district court.\textsuperscript{89} Thus, the taxpayer should no longer miss an appeal date because of an early adjournment of the county board of equalization.\textsuperscript{90}

In counting the forty-five-day appeal period, the adjournment day is excluded, but the last day of the forty-five-day period is included in the count except if it is a Saturday, Sunday, or a day during which the offices of the court may be legally closed. If the exception applies, the period runs until the end of the next day on which the court offices are open.\textsuperscript{91}

Before its amendment in 1986, the statute provided that appeals be taken from an action of the county board of equalization in the same manner as appeals were taken from the county board in the allowance

\textit{Id.} at 62, 425 N.W.2d at 321.

\textsuperscript{85} See \textit{supra} notes 48-51 and accompanying text.

\textsuperscript{86} See \textit{supra} notes 22-29 and accompanying text.

\textsuperscript{87} 227 Neb. 529, 418 N.W.2d 570 (1988).


\textsuperscript{91} NEB. REV. STAT. § 25-2221 (Cum. Supp. 1988); Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 100, 225 N.W.2d 855, 858 (1975) (court noted that appeal period begins to run the day the board makes its decision. This is in conflict with NEB. REV. STAT. § 25-2221 (Cum. Supp. 1988). Because the court did not discuss this section, it is presumed that the court did not precisely word its opinion and that a conflict does not exist.)
of a claim against the county. Such an appeal was perfected by filing a notice of appeal with the county clerk and executing a bond to the county. While a transcript was required to be filed with the district court, the appellant was to pay the fee for the transcript within thirty days of the board's order and the county clerk had the responsibility of filing the transcript. In 1986, the statute was amended. Appeal was "filed for purposes of granting jurisdiction with the filing of the petition in district court." An appeal was no longer perfected by filing a notice of appeal. In 1989, the statute was again amended. Appeal is now perfected upon filing a petition, praecipe for summons and bond in the district court, and a request for a transcript with the county clerk.

The appeal to district court is an equity action tried de novo. While the court determines "all issues raised before the county board" anew, it must affirm the decision of the county board "unless evidence . . . [establishes] the action of the board was unreasonable or arbitrary," or "that the property of the appellant is assessed too low." However, by appealing to district court, taxpayers open themselves to possible cross-appeal by the county to increase value. This possibility poses an additional litigation risk for the taxpayer. Should the county be given a chance to further increase value? Does the right of cross-appeal serve a valid purpose or does it merely terrorize the taxpayer?

E. Review by State Board of Equalization and Assessment

Historically the State Board of Equalization and Assessment has not dealt with issues of individual assessments. The State Board of Equalization and Assessment was, initially, granted authority to correct individual assessments to aid in the enforcement of mandatory reappraisals. While the authority was removed in 1986, it was restored again in 1987 without the limitation or condition precedent of a change in an appraisal value. The State Board of Equalization and Assessment has not dealt with issues of individual assessments. The State Board of Equalization and Assessment was, initially, granted authority to correct individual assessments to aid in the enforcement of mandatory reappraisals. While the authority was removed in 1986, it was restored again in 1987 without the limitation or condition precedent of a change in an appraisal value. The State Board of Equalization and Assessment has not dealt with issues of individual assessments. 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93. Id. at 325, 259 N.W.2d at 272.
94. Id. at 325-27, 259 N.W.2d at 272.
Assessment, however, remains reluctant to review individual assessments. Given the State Board of Equalization and Assessment’s reluctance and the requirement that the Tax Commissioner must recommend the review, taxpayers cannot easily seek a review of their individual assessments with the State Board of Equalization and Assessment. 102

III. VALUATION AND EQUALIZATION—BY CLASS OR SUBCLASS

As noted above, the power to make individual valuations and assessments lies with the county assessor, subject to change by the county board of equalization, the State Board of Equalization and Assessment, and the courts. However, it is the county board of equalization and the State Board of Equalization and Assessment which have the power to equalize values between classes or subclasses of property. Although many of the appeal procedures and issues are the same as when appealing valuation and equalization of individual properties, some unique problems arise. Before those problems can be discussed, a brief overview of the equalization between classes or subclasses of property is necessary.

Upon completion of equalization of assessments of individual parcels of lands and improvements and of assessments of personal property of individuals, but no later than June 15 of each year, the county board of equalization may raise or lower the value of any class or subclass by a percentage. 103 The board’s action is appealable to the district court. 104 The appeal must be filed within forty-five days after the board’s adjournment, but the board’s adjournment for purposes of appeal is deemed to be May 31. 105 Because the board is not required to take action before June 15, taxpayers have thirty days, not forty-five days, to perfect their appeal to the district court.

If the taxpayer does appeal the equalization made by the county board, the board can cross-appeal to increase value. 106 As with the appeal of a valuation by the county board, the district court determines anew “all questions raised before the county board which relate

104. Neb. Rev. Stat. § 77-1506.03 (1988) provided that any person aggrieved by the percentage increase or decrease made by the county board of equalization in a class or a subclass value had a right to appeal under § 77-1510. This provision was repealed by 1988 Neb. Laws, L.B. 1207, § 12. However, an appeal right should continue to exist under Neb. Rev. Stat. § 77-1510 (Supp. 1989) since it provides for appeals to be taken “from any action of the county board of equalization.”
106. Id.
to the liability of the property to assessment, or the amount thereof.”107 However, an equalization by the county board will be affirmed unless the evidence establishes that the board was unreasonable, arbitrary, or the property was assessed too low.108

The State Board of Equalization and Assessment is to give county officials ten days’ notice of a hearing if it proposes to increase or decrease valuations of a class or subclass of property.109 However, the notice may be corrected once mailed so long as the hearing date is not changed.110 For instance, the amount of the proposed increase or decrease may be changed.

The abstracts of the assessment rolls are forwarded to the State Board of Equalization and Assessment on or before July 1.111 The State Board of Equalization and Assessment reviews the abstracts, examines the valuation of all property valued by the state, and equalizes such values.112 To equalize the values, it has the power to increase and decrease the actual value of a class or subclass of any county.113 The county and its subdivisions are bound by the State Board of Equalization and Assessment’s equalized values.114

Once the State Board of Equalization and Assessment determines that an increase or decrease in the valuation of a class or subclass is necessary, it must give county officials at least ten days’ notice to appear and show cause why the adjustment should not be made.115 The State Board of Equalization and Assessment may direct the Tax Commissioner to hold a hearing on the matter of equalization or it may hold the hearing itself. If it directs the Tax Commissioner to hold the hearing, then it must issue notice of the Tax Commissioner’s recommendation at least five days before the hearing by the State Board.116 The State Board’s order is required to be certified to the county assessor, county clerk, and chairperson of the county board August 15 of each year.117 Finally, any person, county, or municipality affected by the decision of State Board of Equalization and Assessment may appeal to the Supreme Court of Nebraska.118 However, a notice of inten-

107. NEB. REV. STAT. § 77-1511 (1986).
108. Id.
114. NEB. REV. STAT. § 77-1338 (1986).
117. Id.
tion to seek judicial review must be filed within ten days of the final decision by the State Board of Equalization and Assessment.119

A. Classes and Subclasses

For purposes of equalization, property is divided into classes and subclasses.120 But classes are not consistently or uniformly defined. This may lead to lack of uniformity and create inequities.

Classes and subclasses are defined for the county board of equalization by the Tax Commissioner.121 The Tax Commissioner has defined ten classes of real estate and six classes of personal property.122 The real estate classes are as follows: (1) agricultural land; (2) agricultural improvements including dwellings; (3) residential land; (4) residential improvements; (5) industrial and commercial land; (6) industrial and commercial improvements; (7) special use lands; (8) special use improvements; (9) non-producing, mineral interests, whether or not separated from the surface estate; and (10) producing mineral interests.123 Each class is further divided into subclasses.

The State Board of Equalization and Assessment, on the other hand, is not limited to the Tax Commissioner's definition of classes and subclasses. In 1979, the State Board of Equalization and Assessment used the following classes: (1) irrigated farmland; (2) dryland farmland; (3) pasture; (4) meadow and range; and (5) all other property. The class "all other property" included urban real property, rural improvements, suburban homesites, improvements on leased land, and commercial and industrial property.124 However, in 1986, the State Board of Equalization and Assessment was presented sales assessment ratios developed by the Nebraska Department of Revenue for the following classes: (1) residential, improved; (2) unimproved; (3) commercial, improved; (4) unimproved; (5) agricultural, improved; and (6) agricultural, unimproved.125

Clearly, the classes used by the county boards of equalization and the State Board of Equalization and Assessment are not consistently or uniformly defined and, in addition, are often valued by using different methods.126 Yet, equalization demands that values between

119. Id.
123. Id.
126. See supra note 124.
classes be correlated so that the results reached are uniform and proportionate.

In *Great Western v. State Board of Equalization*,\(^\text{127}\) the taxpayer protested that increasing the value of his sugar beet refinery by the same percentage as urban residential property created an inequity. The court concluded that the use of an urban residential sales assessment ratio to support a raise in the valuation of business and commercial property was proper because of the high degree of correlation between the ratios of the two classes of property. In *Konicek v. Buffalo County Board of Equalization*\(^\text{128}\) different methods were used to value improved and unimproved farmland, but no correlation was shown.\(^\text{129}\) Two classes of property were established between which equalization was not shown to have occurred.

If the county board of equalization and the State Board of Equalization and Assessment are to equalize between classes of property, classes must be consistently and uniformly defined. If they are not, how can the boards correlate the values between the classes? This is especially true where the county boards of equalization are limited to a certain classification schedule. Yet, when the State Board of Equalization and Assessment acts on a different classification standard in the same year, the same property values are being affected by two separate actions. Misclassification can easily cause a lack of uniformity and proportionality\(^\text{130}\)—a result exactly opposite from that which equalization is expected to achieve.

**B. Action by State Board of Equalization and Assessment**

1. **Review and Equalization by State Board of Equalization and Assessment**

The relationship and the distinction in powers of the State Board of Equalization and Assessment and the county board of equalization are set out in *S.S. Kresge Co. v. Jensen*\(^\text{131}\):

It is the function of the county board of equalization to determine the actual value of the property for taxation purposes. While the county board of equalization acts in a quasi-judicial capacity and its valuations are final as to individual taxpayers unless appealed from, such valuations are subject to the powers of the State Board of Equalization and Assessment, which powers have been described by this court as being purely incidental to a proper equalization of the assessment of the different counties of the state as returned to that body.\(^\text{132}\)

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2. 212 Neb. 648, 324 N.W.2d 815 (1982).
3. Id. at 650, 324 N.W.2d at 816.
5. 164 Neb. 833, 83 N.W.2d 569 (1957).
6. Id. at 839, 83 N.W.2d at 574 (citations omitted and emphasis added; cited with
While the county board of equalization functions to value and equalize property within the county, the State Board of Equalization and Assessment's primary duty is to achieve intercounty equalization.\textsuperscript{133}

It is fundamental that the Board has no power to readjust individual valuations within the county. It can only act to equalize the assessments between different counties in order to achieve the constitutional objective of uniform and proportionate valuations over the whole state. As we see it, the primary duty of the Board is to establish uniformity between the various counties.\textsuperscript{134}

However, in achieving intercounty equalization, the State Board of Equalization and Assessment may increase or decrease a class or subclass by different percentages. It may increase or decrease the same class or subclass in different counties by different percentages.\textsuperscript{135} In Box Butte County v. State Board of Equalization,\textsuperscript{136} the State Board of Equalization and Assessment directed that all agricultural land be equalized to the county which had the highest value for each class of agricultural land. At the same time, all other property was equalized to the average sales assessment ratio for urban real estate in eight counties having the highest ratios. While the valuation of individual parcels within a class or subclass was not adjusted by the State Board of Equalization and Assessment, the valuation of a class or subclass was adjusted to bring a low county into agreement with the highest county.

2. Hearing Before State Board of Equalization and Assessment

In discussing the purpose of the hearing before the State Board of Equalization and Assessment, the Nebraska Supreme Court stated in County of Howard v. State Board of Equalization\textsuperscript{137}:

The purpose of a statutory hearing is to afford the County an opportunity to offer evidence for the purpose of establishing that its returned valuations do in fact conform to law. The hearing is not for the purpose of affording the State Board an opportunity to demonstrate wherein the valuations returned by the county do not conform to the law.\textsuperscript{138}

Equalization is first done by the local county boards of equalization and then by the State Board of Equalization and Assessment as to all counties. If the county board of equalization and the State Board disa-
grief, the matter is appealed to the supreme court. "[A]s a practical
matter, the problem has been further complicated by the fact that the
state board, by statute, is subject to the requirements of the Adminis-
trative Procedures Act . . . . The county board of equalization is
not."139

C. Appeal from State Board of Equalization and Assessment

Appeal from the State Board of Equalization and Assessment is de
d novo on the record.140 The burden of proof is on the appellant to es-
tablish that the action of the State Board of Equalization and Assess-
ment was "erroneous, arbitrary and capricious."141 The appellant’s
burden is made more difficult because the State Board of Equalization
and Assessment has a wide latitude of judgment and discretion.142

The Nebraska Supreme Court has allowed the State Board of
Equalization and Assessment to adopt any reasonable method of pro-
cedure in equalizing the assessment of property between the various
counties. It does not require the State Board of Equalization and As-
essment to adhere to a strict and literal interpretation of the Admin-
istrative Procedures Act when equalizing the value of the counties.143
However, review by the Nebraska Supreme Court is limited to the rec-
cord. Thus, for an appellant to successfully appeal from the State
Board of Equalization, the record must show the order of the board
was unreasonable and arbitrary.144

D. Appeal—Standing

Because the equalization by either the county board of equalization
or the State Board of Equalization and Assessment only affects classes
and subclasses, rather than individual valuations, an individual tax-
payer may not always have the right of appeal.145 Section 77-510146
provides that a person who appeals from the State Board of Equaliza-

139. County of Gage v. State Bd. of Equalization, 185 Neb. 479, 752, 178 N.W.2d 759, 762
141. County of Sioux v. State Bd. of Equalization, 190 Neb. 198, 202, 207 N.W.2d 219,
221 (1973). See also Box Butte County v. State Bd. of Equalization, 206 Neb. 695,
709, 295 N.W.2d 670, 679 (1980).
142. See, e.g., Box Butte County v. State Bd. of Equalization, 206 Neb. 696, 709, 295
N.W.2d 670, 679 (1980); City of Omaha v. State Bd. of Equalization, 181 Neb. 734,
738, 159 N.W.2d 888, 891 (1968).
143. See, e.g., Box Butte County v. State Bd. of Equalization, 206 Neb. 696, 705, 295
N.W.2d 670, 677 (1980); County of Blaine v. State Bd. of Equalization, 180 Neb.
144. County of Blaine v. State Bd. of Equalization, 180 Neb. 471, 475, 143 N.W.2d 880,
145. See supra note 13 and accompanying text.
tion and Assessment must be affected by the decision. Section 77-1510, which controls appeals from the county board of equalization, contains no similar provision. It is, however, a general principle of law that only those who would derive a substantial benefit from modification or reversal of a judgment may appeal. Consequently, only those who are affected by the decision, regardless of whether the decision is that of the county board of equalization or of the State Board of Equalization and Assessment, may appeal.

In *DeCamp v. State Board of Equalization*, the Nebraska Supreme Court stated:

> We have held that a taxpayer in a county where property was not valued in accordance with the law was a “person affected” within the meaning of the statute. In making that determination, this court held: “It was evidently the intention of the Legislature to afford relief to any person, county, or municipality by a direct appeal from a final order of the Board which denied relief to one who had made a showing requiring the affirmative action of the Board.”

In *DeCamp*, the appellant was a taxpayer and the owner of property in several Nebraska counties. Hearings were held by the State Board of Equalization and Assessment for the purpose of taking evidence on August 1, 2, and 3, 1978, but the appellant did not personally appear. On August 4, 1978, the appellant wrote the State Board of Equalization and Assessment a letter. On August 7, 1978, the State Board of Equalization and Assessment entered its order to raise or lower the valuation of certain counties while leaving others unchanged.

The court found that the appellant had no standing to appeal the order of the State Board of Equalization and Assessment. First, while the court held that testimony before the State Board of Equalization and Assessment could have been either oral or written, it required the testimony to be presented at the time of the hearings. Second, the letter of the appellant was not a “showing requiring the affirmative action of the Board.”

In *Great Western Sugar Company v. State Board of Equalization*, Great Western appeared and testified before the State Board

147. **NEB. REV. STAT.** § 77-1510 (Supp. 1989).
150. *Id.* at 368, 278 N.W.2d at 621 (quoting Laflin v. State Bd. of Equalization, 156 Neb. 427, 430, 56 N.W.2d 469, 473 (1953) (emphasis added)).
152. *Id.* at 370, 278 N.W.2d at 622 (quoting Laflin v. State Bd. of Equalization, 156 Neb. 427, 430, 56 N.W.2d 469, 473 (1953)).
of Equalization and Assessment while it was still in session and before any formal order had been entered. Great Western was allowed to appeal from the order of the State Board of Equalization and Assessment.

While technically a taxpayer does have standing to appeal, realistically he does not. Consider the taxpayer's situation. A taxpayer generally wants to contest a percentage increase in a class only if the taxable value of his property exceeds its actual value after the percentage increase is applied. In this very situation, the courts have found the taxpayer has no ground for complaint. The taxpayer's remedy in the court's eyes was to protest the valuation of his property with the county board of equalization.154

For example, suppose a taxpayer is mailed her notice of property value increase from the county assessor on the last day possible, March 31. If she chooses to protest, she must file by April 30. The county board of equalization must act on her protest by May 31 and she must file her appeal to district court by July 15. During this entire period, she will not know how class and subclass equalization will affect her property. She will not know until August when the State Board of Equalization and Assessment certifies its order to the county officials.

A taxpayer cannot adequately protect her appeal rights in this situation. Although technically she has due process, practically she does not.

IV. OMITTED AND UNDERVALUED PROPERTY

In addition to the lack of practical due process afforded to taxpayers by the procedures for appealing valuation and equalization issues, the procedures for appealing the addition of omitted property and undervalued personal property also fail to provide taxpayers with practical due process.

A. Omitted, Undervalued, and Improved Property

The county assessor may add omitted property or undervalued personal property and cause all lands and improvements which have not been assessed in prior years to be assessed.155 The county board of equalization may also determine and equalize assessments of omitted or undervalued property.156 It is, however, the county assessor who

154. Id. at 723, 295 N.W.2d at 687. See also S.S. Kresge Co. v. Jensen, 164 Neb. 833, 840-41, 83 N.W.2d 569, 575 (1957); County of Howard v. State Bd. of Equalization, 158 Neb. 339, 349, 63 N.W.2d 441, 447 (1954).
has general supervision over and direction of the assessment of all property in his or her county.\textsuperscript{157} Therefore, the practitioner should anticipate that assessments for omitted, undervalued, or improved property will commence with the county assessor.

The taxpayer may appeal the action of the county assessor to the county board of equalization by filing an appeal with the county clerk within thirty days of the date the notice was mailed by the county assessor.\textsuperscript{158} After ten days' notice to the taxpayer, the county board sets a hearing date for the taxpayer's appeal.\textsuperscript{159} After the hearing, the county board of equalization has thirty days to render a decision,\textsuperscript{160} and the county clerk notifies the taxpayer of the county board's decision within seven days of the county board's determination.\textsuperscript{161} The taxpayer may then appeal the decision of the county board to the district court by filing, within forty-five days of the adjournment of the county board (which, for this purpose, is deemed to be May 31): (1) petition, praecipe for summons, and bond in the district court, and (2) request for transcript with the county clerk.\textsuperscript{162} The district court, without a jury, then determines anew "all questions raised before the county board which relate to the liability of the property to assessment or the amount thereof."\textsuperscript{163} However, the district court will affirm the decision of the county board unless the evidence establishes that the board was unreasonable, arbitrary, or the property was assessed too low.\textsuperscript{164}

The county board of equalization also has the power to add both omitted and undervalued personal and real property.\textsuperscript{165} The procedures and appellate time tables are the same as if the county assessor had initiated the addition.\textsuperscript{166} However, no notice to the owner or agent is required when the county board adds omitted or undervalued property.\textsuperscript{167}

\begin{itemize}
\item \textsuperscript{157} NEB. REV. STAT. § 77-410 (Cum. Supp. 1988); NEB. REV. STAT. § 77-1311 (1988).
\item \textsuperscript{158} NEB. REV. STAT. §§ 77-412(5), 77-1318 (Cum. Supp. 1988).
\item \textsuperscript{159} NEB. REV. STAT. §§ 77-412(6), 77-1318 (Cum. Supp. 1988).
\item \textsuperscript{160} Id.
\item \textsuperscript{161} Id.
\item \textsuperscript{162} NEB. REV. STAT. §§ 77-412(6), 77-1318 (Cum. Supp. 1988), § 77-1510 (Supp. 1989). The county may cross-appeal to increase value. NEB. REV. STAT. § 77-1510 (Supp. 1989).
\item \textsuperscript{163} NEB. REV. STAT. 77-412(6), 77-1318 (Cum. Supp. 1988); NEB. REV. STAT. § 77-1511 (1986).
\item \textsuperscript{164} Id.
\item \textsuperscript{165} NEB. REV. STAT. § 77-1507 (Cum. Supp. 1988).
\item \textsuperscript{166} NEB. REV. STAT. § 77-1510 (Supp. 1989). For additional details see appendix supra Table III.
\item \textsuperscript{167} NEB. REV. STAT. § 77-1507 (Cum. Supp. 1988).
\end{itemize}
B. Penalties

If the county assessor adds personal property "omitted from or not returned on the personal property return of any taxpayer," a penalty of fifty percent of the tax due will be added, plus interest on both the penalty and the tax. The penalty is reduced if the taxpayer voluntarily reports omitted personal property. No penalty is imposed if the county assessor changes the valuation of personal property reported by taxpayers on their returns. Because no penalty is imposed for undervaluing personal property, undervaluing must be distinguished from omitting personal property.

In Sealtest Central Division-Omaha of Kraftco Corp. v. Douglas County Board of Equalization, the county assessor and county board of equalization increased assessments and imposed a penalty for omitted property. The district court and the Nebraska Supreme Court set aside the additional assessments and penalty. The taxpayer had not itemized property on its personal property tax return. Rather, the taxpayer had listed property in a lump sum as "Furniture, Fixtures, Mach., Tools & Equip," as the county's own tax forms directed. Because the property was listed in bulk, all property within the classification was listed. The court stated, "In order to sustain an addition of property by tax assessors to a return as omitted property it must appear that specific items were added which were not assessed in the original assessment." The record did not indicate in this case that any specific property was omitted.

Penalties may also be imposed by the county assessor if real estate improvements are not voluntarily added by filing an information statement. Improvements for this purpose are defined as "any new structure or permanent fixtures adding to an existing structure."

C. Notice and Protest

Notice and protest rights of the property owner are confusing. The rights of the property owner change depending on the type of property, who makes the initial assessment, and whether the property is omitted, undervalued, or an omitted improvement.

Omitted and undervalued property may be added to the assessment rolls by either the county board or the county assessor, and unreported improvements to real estate may be added by the county.
assessor. However, if real property is added by the county board, notification of the owner is not required.

The Nebraska Supreme Court has stated that the Nebraska Constitution does not require that property owners be given notice or allowed to protest a tax on real property before it is assessed. Property owners are not denied due process because they have a right to a de novo hearing before the district court where they may present all available defenses or they may claim a refund. Thus, if the property owners are to have a right to notice and protest, the Nebraska Legislature must give them that right.

By failing to provide the real property owner with the right to notice in all cases when the addition of omitted real property or an increase in its valuation is being considered, the Legislature encourages disputes and unnecessary appeals.

D. Appeal from County Board of Equalization

The statute sets no specific time for the addition of omitted or undervalued property by the county board of equalization. The board may make additions at any time. Even so, property owners who wish to appeal this action of the county board of equalization may have some uncertainty as to the date by which they must perfect their appeal. For example, assume the board increases the value of certain real estate on September 1 and immediately adjourns. The property owners decide to appeal the action of the county board. To do so, they must file their petition within forty-five days of the board's adjournment. The board is deemed to adjourn on May 31. Based on these facts, by what date must the taxpayers perfect their appeals? At least two possible answers exist: (1) filing must be perfected by July 15 of the following year, giving the property owner 317 days in which to file (September 2 of the current year through July 15 of the

179. Id.
following year); or (2) filing must be perfected by October 16 of the current year, giving the property owner forty-five days in which to file (September 2 of the current year through October 16 of the current year).  

In 1987, the general statutory provision controlling appeals from the county board of equalization was amended. One amendment was to add May 31 as the board's deemed date of adjournment for appeal purposes. The Legislature intended to prevent the property owner from missing appeal dates by establishing a single date as the beginning of the appeal period. May 31 was chosen because the county board of equalization meets for at least three days beginning April 1 and ending no later than May 31 to hear valuation protests filed by individual property owners. The Legislature's choice of May 31 clearly ties to the valuation protest hearings. However, in making this amendment, the Legislature overlooked appeals on omitted and undervalued property. For these appeals, the amendment adds uncertainty and creates confusion. The taxpayer has no assurance as to whether the court will apply the deemed adjournment date to all appeals or limit its application to appeals from the county board of equalization on valuation protests.

V. LEVY AND APPEAL

The procedures for appealing taxes which have been levied differs from the procedures for appealing assessments. The county board of equalization levies taxes after the action of the State Board of Equalization and Assessment has been certified to the county clerk and, on or before September 15 of each year. The county board directs the county treasurer to notify taxpayers of the amount of taxes due.

It is not necessary for the taxpayer to appear before the county board of equalization either at the time the levy is made or prior thereto to protect his or her right of appeal to the district court. However, if taxpayers appeal the levy, they have the burden of proving the "levy is for an unlawful or unnecessary purpose, or in excess of the requirements of a county." Unlike previous appeal procedures, the action of the board of equalization is treated as a disallowed claim and is appealed under sec-

181. See generally Neb. Rev. Stat. § 25-2221 (Cum. Supp. 1988)(the period for filing is counted by excluding the day of adjournment. The last day for filing in the example is presumed not to be a Saturday, Sunday, or holiday).
186. Id.
Thus, instead of the customary forty-five days to perfect the appeal, the taxpayer has only twenty days. Instead of perfecting the appeal by filing a petition, the taxpayer perfects his appeal by filing a notice of appeal and posting a bond.

VI. EXEMPTION

Any organization or society seeking an exemption from Nebraska's property tax on any personal or real property must file an application with the county assessor before January 1 of the year for which the exemption is sought. The county assessor then examines the application and makes a recommendation to the county board of equalization before February 1. The county board of equalization hears information on such applications between February 1 and June 1 of each year. The county board is required to give the applicant ten days' notice of such hearing. After such hearing, the county board makes its decision and within ten days certifies its decision to the applicant, the county assessor, and the State Tax Commissioner. Persons denied an exemption by the county board may appeal de novo to the district court where the property is located within twenty days after certification.

On appeal, the exemption applicant has the burden of proof. However, note that the district court, which bases its decision on both law and equity, may reverse the county board of equalization even though it is not established that the board of equalization was "unreasonable or arbitrary." Yet in an appeal based on valuation and equalization, the appellant has a substantially greater burden of proof.

When appealing to the district court from the county board of equalization on valuation and equalization issues, the property owner must file his or her appeal within forty-five days after the board of equalization adjourns. The deemed adjournment date for this purpose is May 31. However, an organization appealing the denial of an ex-

190. NEB. REV. STAT. § 77-202.01 (1986). For additional details see appendix supra Table V.
191. Id.
192. NEB. REV. STAT. § 77-202.02 (1986).
193. Id.
194. Id.
195. NEB. REV. STAT. § 77-202.04 (1986). For additional details see appendix supra Table V.
197. See supra notes 59-69 and accompanying text.
emtion application must file a petition within twenty days after the
certification of the board's order.199

The Legislature should amend the appeal time for exemption ap-
application to correspond more closely with that for valuation and equal-
ization. First, since the board meets to hear exemption application
between February 1 and June 1, June 1 could be designated the
dehemed certification date. Second, the appeal period should begin the
later of June 1 or the actual certification day because in intervening
years, exemption application hearings are conducted by the board
outside of this standard period. Third, the twenty-day appeal period
should be extended to forty-five days to correspond with the valuation
hearing appeal period.

Except for the appeal time, the statute provides for the same ap-
peal procedure for exemption applications as it does for protests of
valuation and equalization.200 Therefore, the procedural questions
raised for such appeals are also applicable to exemption appeals. In
particular, the exemption applicant should be certain that all ques-
tions to be raised before the district court were raised before the
county board of equalization.201

VII. REFUNDS

A. Voluntary Payment

The right of a taxpayer to recover taxes, once paid, is limited. If a
taxpayer voluntarily pays a property tax, he or she may claim a refund
only if the constitution or statute permit.202 If a taxpayer pays a tax
before it becomes delinquent and can be enforced, the payment is gen-
erally voluntary. Merely protesting does not make a tax payment in-
voluntary; clerical error, mistake, or misunderstanding also do not
make a tax payment involuntary. Rather, there must be compulsion
or threat of seizure or sale of the property to make the payment
involuntary.203

There are three general situations in which a taxpayer who has
voluntarily paid a tax may claim a refund: (1) where the tax paid was
the result of a clerical error, misunderstanding, or honest mistake;
(2) where the tax paid was invalid; or (3) where the tax paid was the
result of an illegal assessment against exempt property.

200. Id. See also NEB. REV. STAT. § 77-1510 (Supp. 1989); NEB. REV. STAT. § 77-1511
(1988).
201. See supra note 36 and accompanying text.
B. Clerical Error, Misunderstanding, Honest Mistake, or Invalid Tax—Defined

1. Clerical Error

When the taxpayer bases his claim for a refund on clerical error, misunderstanding, or an honest mistake, he must file the claim with the county treasurer within two years of payment of the tax. If the county board disallows the claim, the county clerk mails notice of such action to the claimant, his agent, or attorney within five days of such action. Then the claimant may appeal to the district court of the same county in which the claim was filed by filing a notice of appeal, bond, and costs with the county clerk within twenty days after the county board’s decision.

In School District of Minatare v. County of Scottsbluff, the Nebraska Supreme Court sustained the county board’s refund to a taxpayer because of clerical error. The taxpayer had paid its personal property tax on November 29, 1968, and June 26, 1969. After July 26, 1969, the taxpayer filed a refund claim because of errors which outside auditors had discovered in its inventory records. Since a taxpayer has two years after a tax is paid to claim a refund based on clerical error, the claim was timely filed. The county board authorized the refund on November 13, 1969. The School District of Minatare, however, alleged the refund claim should have been barred because the tax was invalid and the taxpayer did not file its refund claim within thirty days after the tax was paid.

The question for the court to decide was whether the refund was based on a clerical error or an invalid tax. If the refund claim was due to clerical error, it was timely filed under section 77-1734.01. If it was based on an invalid tax, the refund claim was barred under section 77-1735.

Prior to 1957, section 77-1735 was the only applicable refund section. During that period the Nebraska Supreme Court decided Satterfield v. Britton, in which it barred a refund claim: "The law is settled in this state that where a person assessed, voluntarily and without compulsion, pays taxes, they cannot be recovered back in an action at
law unless there is some constitutional or statutory provision expressly or impliedly giving the taxpayer such right. The only statute applicable to this case is section 77-1923, Comp. St. 1929 (now section 77-1735, R.R.S. 1943), but it provides as a condition precedent to the maintaining of the action that a demand in writing must be made within 30 days after the payment of the taxes. Demand in this case was not made for more than three years after the taxes were voluntarily paid. This clearly was not a substantial compliance with the statute.  

When section 77-1734.01 was added in 1957 to permit a refund for clerical errors, it provided the taxpayer with new rights. "Although there may be constitutional problems as to differing limitation periods," clearly the Legislature felt liberalization of the refund statutes was needed.

In Minatare, the school district contended that clerical error referred only to "an error in the amount of tax paid, and not to an error in the amount or value of the property returned for assessment." The court interpreted the statute broadly based on legislative history. It refused to limit the term to an error made on the return, in the amount of the tax paid or in computing the value of property. Rather, clerical error was interpreted as meaning "to correct human error" made by taxing officials or any taxpayer.

The county assessor is also authorized to correct clerical errors in the tax list before the tax is paid. In Olson v. County of Dakota, the Nebraska Supreme Court held this provision did not permit the county assessor to "correct alleged errors in valuation." This provision should not be used to correct taxpayer errors. While the statutory language makes no reference to "whose" clerical errors the county assessor is to correct, the statute should be read in conjunction with section 77-1734.01. Because section 77-1734.01 permits taxpayers to claim refunds based on their errors, the taxpayer should assume the county assessor is limited to correcting only clerical errors of the taxing officials under section 77-519.

2. Misunderstanding and Honest Mistake

In 1977, section 77-1734.01(2) added "misunderstanding and honest mistake" to the Nebraska refund statutes. Although no cases have in-

212. Id. at 170, 78 N.W.2d at 882 (quoting Monteith v. Alpha High School Dist., 125 Neb. 665, 669-70, 251 N.W. 661, 663 (1933)).
215. Id.
216. NEB. REV. STAT. § 77-519 (1986).
218. Id. at 518, 398 N.W.2d at 729.
terpreted this amendment, its purpose can be understood by reviewing cases which preceded the amendment and reading the legislative history.

Consider the facts of Svoboda v. Hahn.220 The taxpayer, on February 5, 1965, filed an intangible tax return in accord with section 77-710.221 On April 30, 1965, the Tax Commissioner advised all county assessors that the Attorney General had ruled section 77-710 unconstitutional. On November 1, 1965, the taxpayer paid the full amount of tax shown on his earlier return. The facts were not clear as to whether or not the taxpayer had filed a timely refund claim.

In discussing the facts, the court noted the taxpayer had at least two remedies which he could have pursued: (1) section 77-1735 permitting a taxpayer to claim a refund thirty days after payment of an invalid tax;222 or (2) section 77-1734.01223 permitting the taxpayer to claim a refund nine months after payment of a tax paid as a result of clerical error (now two years). The facts of Svoboda reflect a misunderstanding or an honest mistake. Since the court inferred on those facts that a refund claim could be based on a clerical error, the statutory amendment in 1977 may have been unnecessary. On the other hand, this conclusion was based on dicta. Perhaps the Legislature did not want to rely on dicta.

In 1977, L.B. 245 added section 1734.01(2) and extended refunds to misunderstandings and honest mistakes. Senator Burrows explained the need for this amendment to the Revenue Committee with the following true story.

A taxpayer had paid property taxes on his mobile home to Gage County, his county of residence, rather than to Lancaster County where the mobile home was located. He discovered his error approximately a year later when the Lancaster County Sheriff came to collect taxes on the mobile home. He could not apply for a refund from Gage County because no clerical error had been made. The taxpayer received a refund of the tax he mistakenly paid to Gage County only after he filed a claim against the county in Small Claims Court.

While the taxpayer was able to sue the county to get back the tax he paid, Senator Burrows asked for the amendment because no practical refund method was available to the taxpayer. By amending section 77-1734.01, the Legislature provided such a practical method.

3. Invalid Tax

When a taxpayer seeks a refund because the tax paid was invalid

220. 196 Neb. 21, 241 N.W.2d 499 (1976).
221. NEB. REV. STAT. § 77-710 (Supp. 1963) (repealed 1967).
222. NEB. REV. STAT. § 77-1735 (Supp. 1989).
223. NEB. REV. STAT. § 77-1734.01 (Supp. 1989).
for any reason other than valuation, he must file a claim for a refund with the county treasurer within thirty days of the payment of the tax.\textsuperscript{224} If no refund is made within ninety days, the claimant may then sue the county treasurer.\textsuperscript{225} The county board of equalization must approve any refund based on an invalid tax.\textsuperscript{226} If the county board disallows the refund, the taxpayer may appeal to the district court by filing a notice of appeal and posting a bond with the county clerk within ten days of such decision by the county board.\textsuperscript{227}

An invalid tax includes a tax which is void, illegal, or unauthorized.\textsuperscript{228} A tax is void when "the person assessed was not subject to taxation, or because it was assessed for an unlawful purpose, or without compliance with provisions of law imposed."\textsuperscript{229} For instance, if the county assessor does not notify a landowner that his property is being assessed at a higher figure, the tax levied on that increase is void.\textsuperscript{230} Notice is mandatory. On the other hand, a tax is not invalid or void if it is based on overassessment.\textsuperscript{231} It is merely erroneous.\textsuperscript{232}

Tax refunds can be claimed because of clerical error, misunderstanding, honest mistake, or an invalid tax. A taxpayer cannot file a refund claim because of overassessment. He must protest the overvaluation.

C. Illegally Assessed Exempt Property

If a taxpayer seeks a refund claiming the tax paid was illegally assessed because the property was exempt under section 77-202, the taxpayer must file a claim for a refund with the county board within three years after payment of the tax.\textsuperscript{233} Upon disallowance by the county board, the county clerk must mail a notice to the claimant within five days of the county board's decision.\textsuperscript{234} The claimant may then appeal to the district court by filing a notice of appeal, bond, and costs with the county clerk within twenty days after the county board's decision.\textsuperscript{235}

\textsuperscript{224} NEB. REV. STAT. § 77-1735 (Supp. 1989).
\textsuperscript{225} Id.
\textsuperscript{228} See, e.g., Scudder v. County of Buffalo, 170 Neb. 293, 296-97, 102 N.W.2d 447, 450 (1960); Monteith v. Alpha High School Dist., 125 Neb. 665, 670, 251 N.W. 661, 663-64 (1933).
\textsuperscript{231} See Beshore v. Sidwell, 222 Neb. 441, 444, 434 N.W.2d 290, 292 (1986).
\textsuperscript{232} Scudder v. County of Buffalo, 170 Neb. 293, 295, 102 N.W.2d 447, 449 (1960).
\textsuperscript{233} NEB. REV. STAT. § 77-136.10 (1986).
\textsuperscript{235} Id. For additional details see appendix supra Table VI.
While illegal assessment is required for operation of this refund statute, illegal assessment must be based on the fact the property was "exempt under section 77-202." But does this language require the organization who owns the property to file an exemption application?

Section 77-202 enumerates the property which is exempt from tax as "[p]roperty owned and used exclusively for agricultural and horticultural societies; and property owned and used by educational, religious, charitable, or cemetery organizations and used exclusively for educational, religious, charitable, or cemetery purposes."236 When one of these organizations seeks a tax exemption for its property, it files an application for exemption with the county assessor, generally before January 1.237 If the organization fails to file a timely application, the property will be included on the tax rolls.238

In Indian Hills Community Church v. County Board of Equalization of Lancaster County, 239 the court had its "first opportunity . . . to address the question [of] whether property of a religious organization may be denied tax-exempt status as a result of the owner's failure to file an application for exemption."240 The court found that the application procedure was an integral part of the exemption process and that the exemption was not "automatic and uncontrolled by the procedural requirements of Sections 77-202.01 and 77-202.03."241

The court in Indian Hills reasonably focused on the procedures which are to be followed by an organization to obtain exemption for their property. Exemption is based on the use of property by these organizations and without these procedures the use cannot be determined. But has the Legislature provided exempt organizations who miss their filing date an alternative to seeking a refund under section 77-1736.10?242 As the appellant had not paid its tax in Indian Hills, this provision was not argued to the court.

Section 77-1736.10 was originally added in 1967 to provide relief for organizations which had paid taxes on their parsonages and teacherages. Subsequent litigation established that this type of property was tax exempt. Because tax had been paid, the organizations had no way of getting their money back.243 A similar situation is presented when an organization misses the filing date for an exemption application.

If an organization files a refund claim under section 77-1736.10,244

238. Id.; Indian Hills Community Church v. County Bd. of Lancaster County, 226 Neb. 510, 412 N.W.2d 459 (1987).
240. Id. at 517, 412 N.W.2d at 464.
241. Id. at 519, 412 N.W.2d at 465.
it must prove the exempt use of the property. Exemption will not be automatic and uncontrolled. The same information which the taxpayer must provide the county board if exemption is to be granted before tax is paid will now be presented to gain a refund of the tax after its payment.

VIII. CONCLUSION

The taxpayer is given due process by the property tax appeal procedures. However, the procedures do not provide a practical solution. Legislative action is needed to reduce the prohibitive cost of appealing for the homeowner and small commercial property owner. Costs are high, especially in light of the fact that a final decision can be years after the payment of the tax and refunds delayed for even more years, all without interest. Different notice requirements, protest rights, appeal times, and refund procedures lay a trap for the unwary taxpayer. The statutory provisions relating to notice, protest, appeal, and refund should be revised to provide consistency and uniformity. The cost of appealing a valuation or equalization issue should be reduced by amending the statute to permit the district court to either hear new issues on appeal or to remand such issues to the county board of equalization. If this is not done, taxpayers are, effectively, forced to retain legal counsel and valuation experts when initiating their protest before the county board of equalization to be certain all issues are raised.
IX. APPENDIX

A. Table I. Valuation and Equalization

A. Action Initiated by Taxpayer

1. Notice from County Assessor

County assessor shall notify the “record owner” before April 1 of each year if real property valuation is increased. Notice is by “first-class mail addressed to such owner’s last-known address.” Neb. Rev. Stat. § 77-1315 (1986).

2. Protest


3. Notice from County Board of Equalization—Preaction

County board of equalization must give “due notice” to the owner or agent at his or her last-known address if it is considering raising the valuation of “any tract, lot, or parcel of real estate or . . . items of personal property.” Neb. Rev. Stat. § 77-1504 (Supp. 1989).

4. Action


County board of equalization meets to review protests beginning April 1 and ending May 31 of each year. For each equalization it must prepare a separate report which includes the property affected, the recommendation of the county assessor, names of witnesses whose testimony was heard, summary of testimony, and statement by the board regarding the basis for its action. Neb. Rev. Stat. § 77-1502 (Cum. Supp. 1988).

5. Notice from County Board of Equalization—Postaction


6. Appeal

Appeal may be taken from any action of the county board of equalization by filing within forty-five days after adjournment of the board: (1) petition, praecipe for summons, and bond in the district court, and (2) request for transcript with the county clerk. Adjournment is deemed to be May 31 for this purpose. Neb. Rev. Stat. § 77-1510 (Supp. 1989).

District court, without a jury, determines anew "all questions raised before the county board which relate to the liability of the property to assessment, or the amount thereof." But the board's decision will be affirmed unless evidence establishes that the board was unreasonable or arbitrary or the property was assessed too low. NEB. REV. STAT. § 77-1511 (1986).

B. Action Initiated by Tax Commissioner

1. State Board of Equalization and Assessment—Review of Action by County Board of Equalization

The State Board of Equalization and Assessment, at the request of the Tax Commissioner, may direct the Tax Commissioner to conduct a hearing to review any changes in valuation of real and personal property made by the county board of equalization. NEB. REV. STAT. § 77-507.01 (Cum. Supp. 1988).

2. Notice to Counties from State Board of Equalization and Assessment—Prehearing

If the State Board of Equalization and Assessment directs the Tax Commissioner to conduct a hearing, it shall give to the county clerk, county assessor, and the chairperson of the county board at least ten days' notice for the legal representative of the county to appear and show cause why the valuation of the real or personal property of the county should not be corrected or adjusted. NEB. REV. STAT. § 77-507.01 (Cum. Supp. 1988).

3. Hearing

After the Tax Commissioner conducts the hearing, the State Board of Equalization and Assessment may meet to hear the recommendation of the Tax Commissioner and to hear testimony from any interested person relevant to the Tax Commissioner's recommendation. Notice of the Tax Commissioner's recommendation shall be "issued" five days before the meeting. The order of the Board shall be certified to the county assessor, county clerk, and chairperson of the county board on or before August 15. NEB. REV. STAT. § 77-509 (Cum. Supp. 1988).

4. Appeal

Any person, county, or municipality may appeal to the Nebraska Supreme Court from the decision of the State Board of Equalization and Assessment. NEB. REV. STAT. § 77-510 (Cum. Supp. 1988).

Notice of intention to obtain judicial review shall be filed within ten days from the order of the State Board of Equalization and Assessment. NEB. REV. STAT. § 77-510 (Cum. Supp. 1988).
B. Table II. Valuation and Equalization by Class and Subclass

A. Within County

1. Notice from County Board of Equalization
   If the county board of equalization intends to equalize valuations by raising or lowering the value of all of a class or subclass, it must take action before June 15 of each year. It must give notice in a newspaper of general circulation in the county ten days before final action is taken by the board, and by mailing a notice to nonresident real estate owners who have an address of record on file with the county assessor as of January 1. Neb. Rev. Stat. § 77-1506.02 (Supp. 1989).

2. Action

   Upon completion of the equalization of individual assessments of real or personal property, the County Board of Equalization may increase or decrease by a percentage the valuation of all of a class or subclass of property. Neb. Rev. Stat. § 77-1506.02 (Supp. 1989).

3. Appeal
   Appeal may be taken from any action of the county board of equalization by filing within forty-five days after adjournment of the board: (1) petition, praecipe for summons, and bond in the district court, and (2) request for transcript with the county clerk. Adjournment is deemed to be May 31 for this purpose. Neb. Rev. Stat. § 77-1510 (Cum. Supp. 1988).


   District Court, without a jury, determines anew “all questions raised before the county board which relate to the liability of the property to assessment, or the amount thereof.” However, the decision will be affirmed unless evidence establishes that the board was unreasonable, arbitrary, or the property was assessed too low. Neb. Rev. Stat. § 77-1511 (1986).

B. All Counties

1. State Board of Equalization and Assessment—Function
   County assessor shall furnish values as equalized and corrected by the county board of equalization to the State Board of Equalization and Assessment on or before July 1. Neb. Rev. Stat. § 77-1514 (Cum. Supp. 1988).
The State Board of Equalization and Assessment annually reviews values and equalizes all property within the state. It has the power to change the actual valuation of a class or subclass of real or personal property of any county or taxing district by a percentage. Neb. Rev. Stat. §§ 77-505, 77-506 (Cum. Supp. 1988). But in making such percentage adjustments, it must also equalize to the aggregate level of value of all taxable property in the state. Neb. Rev. Stat. § 77-506.01 (Supp. 1989).

2. Notice to Counties from State Board of Equalization and Assessment—Prehearing

If the State Board of Equalization and Assessment determines that an increase or decrease in valuation is necessary, it shall mail notice to the county clerk, county assessor, and the chairperson of the county board for the county to appear by its legal representative and show cause why adjustment should not be made. At least ten days’ notice shall be given to the county clerk, county assessor, and chairperson of the board. Neb. Rev. Stat. § 77-508 (Cum. Supp. 1988).

3. Hearing

The State Board of Equalization and Assessment may direct the Tax Commissioner to hold a hearing or may hold the hearing itself. If the Tax Commissioner is used, notice of the Tax Commissioner’s recommendation will be issued five days before the hearing. The State Board of Equalization and Assessment will meet to hear his recommendation and to hear testimony relevant to the Tax Commissioner’s recommendation from any interested person. The order of the State Board of Equalization and Assessment shall be certified to the county assessor, county clerk, and chairperson of the county board on or before August 15. Neb. Rev. Stat. § 77-509 (Cum. Supp. 1988).

4. Appeal

Any person, county, or municipality affected by the decision of the State Board of Equalization and Assessment may appeal to the Nebraska Supreme Court. Neb. Rev. Stat. § 77-510 (Cum. Supp. 1988).

C. Table III. Omitted and Undervalued Property

A. Personal Property Added by County Assessor

1. Notice from County Assessor
   County assessor shall send notice to the taxpayer at his last-known address by first-class mail if the county assessor adds omitted personal property or changes the value of reported personal property. 
   County Assessor may add omitted or undervalued personal property for the current and previous three years. 

2. Protest
   Within thirty days of the date the notice was mailed by the county assessor, the taxpayer must file with the county clerk his or her appeal to the county board of equalization. 

3. Notice by County Board of Equalization — Prehearing
   Upon ten days’ notice to the taxpayer, the county board of equalization shall set a date for hearing the appeal. 
   The county board of equalization may call before it any person, require the production of books, and administer oaths. 
   *NEB. Rev. Stat. § 77-1508 (1986).*

4. Hearing
   The county board of equalization shall make a decision within thirty days after the hearing date. 

5. Notice by County Board of Equalization — Posthearing
   Within seven days of the determination by the county board of equalization, the county clerk shall notify the taxpayer. 

6. Appeal
   Appeal de novo may be taken from the action of the county board of equalization by filing within forty-five days after adjournment of the board: (1) petition, praecipe for summons, and bond in the district court, and (2) request for transcript with the county clerk. 
   Adjournment is deemed to be May 31 for this purpose. 
   County may cross-appeal to increase value. 
   *NEB. Rev. Stat. § 77-1510 (Supp. 1989).*

   District Court, without a jury, determines anew “all questions raised before the county board which relate to the liability of the property to assessment, or the amount thereof.” However, the decision will be affirmed unless evidence establishes that the board was unreasonable or arbitrary or the property was assessed too low. 
B. Real and Personal Property Added by County Board

1. Action of County Assessor

2. Notice from County Board of Equalization — Preamtion
   The owner or his agent must be notified before the county board of equalization may add omitted or undervalued personal property. No notice is required to add omitted or undervalued real property. Neb. Rev. Stat. § 77-1507 (Cum. Supp. 1988).

3. Action

4. Notice from County Board of Equalization — Postaction
   N/A

5. Appeal
   Appeal may be taken from any action of the county board of equalization by filing within forty-five days after adjournment of the board: (1) petition, praecipe for summons, and bond in the district court, and (2) request for transcript with the county clerk. Adjournment is deemed to be May 31 for this purpose. Neb. Rev. Stat. § 77-1510 (Supp. 1989).
   The district court, without a jury, determines anew “all questions raised before the county board which relate to the liability of the property to assessment, or the amount thereof.” However, the decision will be affirmed unless evidence establishes that the board was unreasonable or arbitrary or the property was assessed too low. Neb. Rev. Stat. § 77-1511 (1986).

C. Omitted Lands and Improvements Added by County Assessor

1. Filing with County Assessor of Information Statement
   No improvement to real property to be made until information statement filed with county assessor. Neb. Rev. Stat. § 77-1318.01 (1986).
   If tax assessed by county assessor and information statement was not filed, penalty and interest may be charged. Neb. Rev. Stat. § 77-1318 (Cum. Supp. 1988).

2. Action by County Assessor
   Duty of county assessor to assess all lands and improvements that, for any reason, have not been assessed in prior years. Neb. Rev. Stat. § 77-1317 (1986).

3. Notice by County Assessor
   N/A
4. Protest

Appeal is to be in same manner as under section 77-412, NEB. REV. STAT. § 77-1318 (Cum. Supp. 1988). See Table III, Part A.
D. Table IV. Levy

1. Action of County Board of Equalization

After action of the State Board of Equalization and Assessment has been certified to the county clerk and, on or before September 15 of each year, the county board of equalization shall levy taxes for the year. NEB. REV. STAT. § 77-1601 (1986).

2. Notice from County Board of Equalization—Postaction

The county board of equalization directs the county treasurer to notify taxpayers of the amount of taxes due. NEB. REV. STAT. § 77-1701 (1986).

3. Appeal

Any taxpayer may appeal from the action of the county board of equalization in making the levy if the taxpayer feels the levy is unlawful or for an unnecessary purpose. NEB. REV. STAT. § 77-1606 (1986).

The taxpayer must file notice of appeal, post bond, and pay costs to the county clerk within twenty days after levy is made. NEB. REV. STAT. § 23-135 (Cum. Supp. 1988).
E. Table V. Exemption (Except for Motor Vehicles)

A. Mandatory Review by County Board of Equalization

1. Application

Any organization or society seeking tax exemption shall file with the county assessor before January 1:

- In years evenly divisible by four, an application.
- In intervening years, an affidavit that ownership and use of the exempted property has not changed.

NEB. REV. STAT. § 77-202.01 (1986); NEB. REV. STAT. § 77-202.03 (Supp. 1989).

Application for property acquired or converted to exempt use after January 1 is made with the county assessor on or before August 15. NEB. REV. STAT. § 77-202.03(4) (Supp. 1989). In any year, the county assessor or county board of equalization may review any exemption to determine if it is proper. NEB. REV. STAT. § 77-202.03(5) (Supp. 1989).

2. Notice of Hearing

The county board of equalization shall give ten days' notice of hearing to the applicant. NEB. REV. STAT. § 77-202.02 (1986).

Between February 1 and June 1, the board may hear information on exemptions. NEB. REV. STAT. § 77-202.02 (1986).

The county board of equalization shall consider the recommendation of the county assessor and any other information it may obtain. NEB. REV. STAT. § 77-202.02 (1986).

4. Notice of Decision

The county board of equalization certify the decision to the applicant, the county assessor, and the Tax Commissioner within ten days after it is made. NEB. REV. STAT. § 77-202.02 (1986).

5. Appeal

Persons denied exemption by the county board of equalization may appeal de novo to the district court where the property is located within twenty days after the certification of its decision. NEB. REV. STAT. § 77-202.04 (1986).

The district court makes its decision on the law and the equity and may reverse the action of the county board of equalization even though it is not established that the action of the board was unreasonable or arbitrary. NEB. REV. STAT. § 77-202.04 (1986).

The Tax Commissioner may intervene in the appeal. NEB. REV. STAT. § 77-202.04 (1986).

B. Discretionary Review by Tax Commissioner

1. Review by Tax Commissioner

The Tax Commissioner may review and reverse any exemption granted by the county board of equalization. Hearing must be held in the county where the exempt property is located. NEB. REV. STAT. § 77-202.06 (1986).
2. Notice of Hearing


3. Notice of Tax Commissioner Order

Within thirty days of hearing, the Tax Commissioner must certify the order to the applicant, the county assessor and the county board of equalization. Neb. Rev. Stat. § 77-202.06 (1986).

4. Appeal from Tax Commissioner Order

The applicant or the county may appeal by filing a petition in the district court of the county in which the property is located within thirty days after service of the order. Neb. Rev. Stat. §§ 77-202.07, 84-917 (Cum. Supp. 1988).
F. Table VI. Clerical Error, Misunderstanding, or Honest Mistake

A. Claim by Taxpayer for Refund

1. Claim
   A taxpayer must file a claim with the county treasurer within two years after payment of tax as a result of clerical error, misunderstanding, or honest mistake. 

2. Action by County Board

3. Notice
   Upon disallowance of the claim by the county board, the county clerk must mail within five days a written notice to the claimant, his agent, or his attorney. Neb. Rev. Stat. § 23-135 (Cum. Supp. 1988).

4. Appeal
   When a claim is disallowed in whole or in part, the claimant may appeal to the district court of the same county in which the claim was filed by filing a notice of appeal, bond, and costs with county clerk within twenty days after the decision of the board. Neb. Rev. Stat. § 23-135 (Cum. Supp. 1988). Although a taxpayer is not the claimant, he or she may still appeal within ten days the allowance of a claim. Appeal is taken to the district court of the same county by serving notice and posting bond with the county clerk. Neb. Rev. Stat. § 23-136 (1987).

B. Correction by County Assessor Prior to Payment

1. Action of County Assessor
   A county assessor may correct the tax list before the tax is paid in the case of clerical errors. Neb. Rev. Stat. § 77-519 (1986).

2. Approval by County Board of Equalization
   A county assessor, with the approval of the county board, may correct the tax list before the tax is paid in the case of erroneous assessments. Neb. Rev. Stat. § 77-519 (1986).
G. Table VII. Refund—Invalid Tax

A. General Rule
1. Claim
   If a taxpayer claims the tax he or she paid was invalid for any reason other than its valuation, he or she must file a claim with the county treasurer to whom the tax was paid within thirty days after payment. If refund is not made within ninety days, the claimant may sue the county treasurer. Neb. Rev. Stat. § 77-1735 (Supp. 1989).

2. Action by County Board

3. Appeal
   Any taxpayer may appeal to the district court of the same county where he filed his claim for refund by serving notice and posting bond with the county clerk within ten days. Neb. Rev. Stat. § 23-136 (1987).

B. Rule for Exempt Property
1. Claim
   If the taxpayer claims the tax paid was illegally assessed because the property was exempt under Neb. Rev. Stat. § 77-202 (Cum. Supp. 1988), the taxpayer must file a claim for refund with the county board within three years after payment of the tax. Neb. Rev. Stat. § 77-1736.10 (1986).

2. Notice

3. Appeal
   When a claim is disallowed in whole or in part, the claimant may appeal to the district court of the same county in which the refund claim was filed by filing notice of appeal, bond, and costs with county clerk within twenty days after the decision of the board. Neb. Rev. Stat. § 23-135 (Cum. Supp. 1988).

   Although a taxpayer is not the claimant, he or she may still appeal within ten days the allowance of a claim. Appeal is taken to the district court of the same county by serving notice and posting bond with the county clerk. Neb. Rev. Stat. § 23-136 (1987).