

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

ST. MONICA’S,)	
)	
Appellant,)	CASE NO. 05OP-001
)	
vs.)	FINDINGS AND ORDER DENYING
)	RELIEF ON PETITION
LANCASTER COUNTY BOARD OF)	(Jurisdiction)
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was has been submitted to the Tax Equalization and Review Commission. (“Commission”) without a hearing.

William E. Peters has appeared as legal counsel for St. Monica’s (“the Taxpayer”).

Michael E. Thew, a Deputy County Attorney for Lancaster County, has appeared as legal Counsel for the Lancaster County Board of Equalization, (“County Board”).

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

**I.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeal as Lots 13 through 16, Block 2, Wedgewood Manor, Lincoln, Lancaster County, Nebraska, (“the subject property”).
2. The Taxpayer and the County Board, by stipulation and motion, have submitted this matter for consideration without a hearing.

II. APPLICABLE LAW

1. Any person otherwise having the right to file an appeal with the Commission may petition the Commission for a determination of the taxable status of real property if a failure to give notice prevented timely filing of an appeal provided for in sections 77-202 to 77-202.25. Neb. Rev. Stat. 77-202.04(2) (Supp 2005).
2. Petitions pursuant to section 77-202.04(2) must be filed on or before December 31 of each year. Neb. Rev. Stat. 77-202.04(2) (Supp 2005).
3. The county clerk is required to mail notice of a County Board's decision granting or denying an application for exemption to the applicant and the county assessor. Neb. Rev. Stat. 77-202.04(1) (Supp 2005).
4. A presumption of receipt of mail arises on a showing of mailing properly addressed and stamped. *Baker v. St. Paul Fire and Marine Ins. Co.*, 240 Neb. 14, 480 N.W.2d 192 (1992).
5. A presumption of receipt after mailing may be rebutted. *Waite Lumber Co., Inc. v. Carpenter*, 205 Neb. 860, N.W.2d 655 (1980).
6. Denial of receipt alone, is not sufficient evidence to rebutte a presumption of receipt on proper mailing. *Sherrod v. State Department of Correctional Services*, 251 Neb. 355, 557 N.w.2d 634 (1997).
7. The absence of subject matter jurisdiction may be raised at any time by any party or by the Commission sua sponte. *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 635 N.W.2d 112(2001).

III. ANALYSIS

The evidence in this proceeding consists of the case file and affidavits submitted by the parties. The Taxpayer acquired the subject property on March 25, 2005, and promptly filed an application for exemption from taxation. The county assessor recommended denial of the application. Notice of the denial was mailed to the Taxpayer at 4600 Valley Road #250 Lincoln Ne 68510. The assessor's recommendation was forwarded to the County Board for its consideration. Notice of the assessor's recommendation and notice of the County Board's hearing date were received by the Taxpayer. The County Board denied the Taxpayer's application on May 24, 2005. The county clerk's office furnished a copy of the Form 451 indicating County Board action on the Taxpayer's application to the assessor's office on May 24, 2005. The county assessor's office immediately mailed a copy of its copy of the Form 451 to the Taxpayer at the address noted above. The Taxpayer's Director of Operations shows in her affidavit that the address used by the county was appropriate through October, 2005. A presumption of receipt of a copy of the Form 451 by the Taxpayer arises from the evidence. *Baker v. St. Paul Fire and Marine Ins. Co.*, 240 Neb. 14, 480 N.W.2d 192 (1992).

The affidavit of the Taxpayer's Director of Operations shows that she did not receive notice of the County Boards denial and that she was unable to find a copy of the denial in the Taxpayer's files. The affidavit of the Taxpayer's Director of Operations shows that the person primarily responsible for the exemption application left the Taxpayer's employment on August 5, 2005. There is no evidence that the Taxpayer's Director of Operations reviewed all incoming mail or that she would have been responsible for filing a notice of denial from the County Board.

The Taxpayer's evidence is insufficient to rebut the presumption of receipt arising from the County Board's evidence of mailing. *Sherrod v. State Department of Correctional Services*, 251 Neb. 355, 557 N.w.2d 634 (1997).

Although section 77-202.04(1) of Nebraska Statutes requires mailing of notice by the county clerk in fact notice was mailed by a person acting on behalf of the county. A failure to mail by the county clerk did not in this instance impede the Taxpayer's exercise of a right to appeal. The Taxpayer has not otherwise shown that it was prohibited from exercising its right to appeal the decision of the County Board by lack of required notice. Because the Taxpayer has not shown compliance with the requirements of section 77-202.04(2) of Nebraska Statutes, the Commission cannot reach the merits of the appeal.

IV. CONCLUSIONS OF LAW

1. The Commission does not have subject matter jurisdiction.

V. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Petition of St Monica's concerning the taxable status of Lots 13 through 16, Block 2, Wedgewood Manor, Lincoln, Lancaster County, Nebraska, is dismissed for want of jurisdiction.

2. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.
4. This decision shall only be applicable to tax year 2005.

IT IS SO ORDERED.

Dated December 14, 2006.

Wm. R. Wickersham, Commissioner

Robert L. Hans, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.