

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

SFI LTD. PARTNERSHIP II,)	
)	
Appellant,)	Case No. 07C-135
)	
v.)	DECISION AND ORDER DISMISSING
)	APPEAL AFTER SHOW CAUSE
SARPY COUNTY BOARD OF)	HEARING
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on November 26, 2007, pursuant to an Order To show Cause (Jurisdiction Untimely Filing) issued to SFI Ltd. Partnership II ("the Taxpayer") by the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska. Commissioners Wickersham, Warnes, Salmon, and Hotz were present. Commissioner Wickersham presided at the hearing.

D. David Slosburg, Vice President, Inwood, Inc., General Partner of the Taxpayer appeared by telephone. Jeffrey A. Silver appeared by telephone as legal counsel for the Taxpayer.

Nicole L. O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska, appeared by telephone as legal counsel for the Sarpy County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

Whether the appeal in this case was timely filed.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The appeal in this case was initially filed with the Commission on August 28, 2007 (Case File).

**III.
APPLICABLE LAW**

1. The commission has jurisdiction when an appeal is timely filed and other conditions imposed by statute are met. Neb. Rev. Stat. §77-5013 (Cum supp. 2006).
2. An appeal is timely received if placed in the United States mail, postage prepaid, with a legible postmark, for delivery to the commission, or received by the commission on or before the date specified for filing. Neb. Rev. Stat. §77-5013 (Cum supp. 2006).
3. Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for protests under section 77-1502. Neb. Rev. Stat. §77-1510 (Cum. Supp. 2006).

IV. ANALYSIS

If a Taxpayer's appeal arises by virtue of the provisions of section 77-1502 and 77-1510 of Nebraska Statutes the applicable filing date was August 24, 2007. Appeals arise under section 77-1502 of Nebraska Statutes if notice of a proposed value is given by the County Assessor on or before June 1, that value is protested to the County Board of Equalization, and the relief if any granted on the protest is not satisfactory. Neb. Rev. Stat. §§77-1502 and 77-1510 (Cum. Supp. 2006). The testimony of a representative of the Taxpayer established that the appeal in this case arose under section 77-1502 and 77-1510 of Nebraska Statutes. Likewise Exhibit 1 shows that the value protested was the value determined by the County Assessor. The applicable filing date was August 24, 2007, as provided in section 77-1510 of Nebraska Statutes.

The Taxpayer's representative testified that multiple dates appearing on Exhibit 1 was confusing, and because of the confusion the filing deadline was missed. A number of dates do appear on Exhibit 1, the County Board's final determination on the Taxpayer's protest. A date of 7/20/2007 appears in the upper left hand corner of the document. No explanation for the appearance of that date on the document is in evidence. A date of 7/11/2007 appears after the words "Hearing Date:." The Taxpayer's representative testified that a hearing on its protest actually occurred on July 23, 2007. A date stamp indicates that Exhibit 1 was received by someone on July 30, 2007. The Taxpayer's representative testified that Exhibit 1 was received by the Taxpayer on July 30 and date stamped. A date of August 2 appears in Exhibit 1. The sentence in which the date appears makes it clear that the county clerk was required to give notice of the County Board's decision by that date. Finally a date of July 23, 2007, appears on

Exhibit 1 after the words “Board Action Date:.” The only date on Exhibit 1 for which an explanation is not provided by the context in which the date is stated or within the knowledge of the Taxpayer is the date 7/20/2007. The unexplained date is without context, is prior to the date of the county board's decision and the date Exhibit 1 was received by the Taxpayer. Even if some significance is attached to the date of 7/20/2007 simply because it appears on Exhibit 1 whatever that significance might be is negated by the clear notice that the county board made its decision on July 23, 2007.

If Taxpayer's appeal arises by virtue of the provisions of section 77-1502 and 77-1510 of Nebraska Statutes the applicable filing date was August 24, 2007. Appeals arise under section 77-1502 of Nebraska Statutes if notice of a proposed value is given by the County Assessor on or before June 1, that value is protested to the County Board of Equalization, and the relief if any granted on the protest is not satisfactory. Neb. Rev. Stat. §§77-1502 and 77-1510 (Cum. Supp. 2006). The evidence in this appeal is that it arose pursuant to the provisions of section 77-1502 and 77-1510 of Nebraska Statutes. The applicable filing date as provided in section 77-1510 of Nebraska Statutes was August 24, 2007.

The Commission has only that authority granted to it by statute. *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000). The statutes governing timely filing of appeals with the Commission do not provide for late filing in the circumstances found in this appeal. The appeal was not timely filed and must be dismissed.

**V.
CONCLUSIONS OF LAW**

1. The Commission does not have subject matter jurisdiction in this appeal because the appeal was not timely filed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal is dismissed.
2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Each party is to bear its own costs in this proceeding.
4. This order is effective for purposes of appeal on December 19, 2007.

Signed and Sealed. December 19, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.