

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

JON T. LOCKWOOD,	)	
	)	
Appellant,	)	Case No. 07R-1028
	)	
v.	)	DECISION AND ORDER DISMISSING
	)	APPEAL AFTER SHOW CAUSE
CASS 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 Jon T. Lockwood ("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.

Jon T. Lockwood was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared by telephone as legal counsel for the Cass 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 on October 10, 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).
4. Whenever any owner of real or personal property applies to the county board of equalization for a reduction in the taxable value of any such property the owner shall be deemed to have waived notice of the increase in the taxable value of such property which is found undervalued by the county board of equalization notwithstanding the

provisions of any other statutes to the contrary. Neb. Rev. Stat. §77-1506.01 (Revised Reissue 2003).

#### **IV. ANALYSIS**

The Cass County Board of Equalization, after hearing the Taxpayer's protest, had increased the taxable value of the protested property. (E1:1). The Taxpayer testified that because the Cass County Board of Equalization had increased taxable value of the subject property that the applicable filing date was October 15, 2007.

The filing date for appeals arising under section 77-1504 of Nebraska Statutes is October 15 if the County Board of Equalization has not extended the period for hearing protests. Neb. Rev. Stat. §77-1504 (Cum. Supp. 2006). If section 77-1504 of Nebraska Statutes is applicable the Taxpayer's appeal was timely filed.

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).

A county board of equalization may increase the taxable value without notice to the owner as provided in section 77-1504 of Nebraska Statutes if a protest of taxable value as determined by the county assessor is filed pursuant to section 77-1502 of Nebraska Statutes. Neb. Rev. Stat. §77-1506.01 (Reissue 2003). The evidence in this case is that the Taxpayer

protested taxable value as determined by the county assessor and on hearing the protest that the county board increased taxable value as allowed by law. The Commission concludes that the Taxpayer's appeal arose under the provisions of 77-1502 and 77-1510 of Nebraska Statutes and that the applicable filing deadline 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 Cass County Treasurer, and the Cass 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 18, 2007.

**Signed and Sealed.** December 18, 2007.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, Commissioner

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Robert W. Hotz, Commissioner

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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.**