

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

DANNY L. PITTMAN SARPY COUNTY)	
ASSESSOR,)	
)	
Appellant,)	
)	
v.)	
)	Case Nos 06SV-003, 06SV-004,
SARPY COUNTY BOARD OF)	06SV-005, 006SV-006, and 06SV-007
EQUALIZATION)	
)	DECISION AND ORDER REVERSING
and)	THE DECISIONS OF THE SARPY
)	COUNTY BOARD OF EQUALIZATION
ROBERT L. ROTH,)	AND DISMISSING FOR WANT OF
)	JURISDICTION
Appellees.)	
)	

The above-captioned cases were called for a hearing on an Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Appellee) entered by the Tax Equalization and Review Commission (“Commission”) on May 14, 2007. 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, on May 23, 2007. Commissioners Wickersham, Lore, and Sorensen were present. Commissioner Wickersham presided at the hearing.

Danny L. Pittman, (“County Assessor”) was present at the hearing. William J. Bianco appeared as legal counsel for the County Assessor.

Tamra L. W. Madsen appeared as legal counsel for Robert L. Roth (“Taxpayer”).

No one appeared on behalf of the Sarpy County Board of Equalization (“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 the captioned consolidated cases is as follows.

I.
FINDINGS OF FACT

The Commission finds and determines that:

1. Applications for special valuation were filed by the Taxpayer on or before June 19, 2006. (E6:3-7).
2. The County Assessor disapproved the Taxpayer's applications for special valuation on June 19, 2006. (E6:3-7).
3. The County Assessor mailed notice of disapproval on or before June 20, 2006.
4. The Taxpayer appealed the County Assessor's disapprovals on July 28, 2006. (6:1).
5. On August 22, 2006, the County Board overturned the County Assessor's disapprovals of the Taxpayer's applications for special valuation. (E1-5).
6. The County Board gave notice of its decisions on August 25, 2006. (E:8).
7. The County Assessor appealed the County Board's decisions.

II.
APPLICABLE LAW

1. On or before June 30 an applicant may request use of special valuation under section 77-1344 of Nebraska Statutes. Neb. Rev. Stat. §77-1345 (Cum. Supp 2006).

2. On or before July 15 a county assessor must approve or deny an application for use of special valuation. Neb. Rev. Stat. §77-1345.01 (Cum. Supp. 2006).
3. If a county assessor denies an application for use of special valuation a written protest of the denial of the application must be filed within thirty days after the mailing of the denial. Neb. Rev. Stat. §77-1345.01 (Cum. Supp. 2006).
4. If the board, agency or person which made a decision, order, or determination or took an action that is appealed to the Commission lacked subject matter jurisdiction, then the Commission cannot acquire subject matter jurisdiction. See, *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998), *Bartlett v. Dawes County Bd. of Equalization* 259 Neb. 954, 613 N.W.2d 810 (2000), *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 810 (2000), *Falotico v. Grant County Bd. of Equal.*, 262 Neb. 292 (2001).
5. Absent direct proof of actual deposit with an authorized U.S. Postal Service official or in an authorized depository, proof of a course of individual or office practice that letters which are properly addressed and stamped are placed in a certain receptacle from which an authorized individual invariably collects and places all outgoing mail in a regular U.S. mail depository and that such procedure was actually followed on the date of the alleged mailing creates an inference that a letter properly addressed with sufficient postage attached and deposited in such receptacle was regularly transmitted and presents a question for the trier of fact to decide. *Houska v. City of Wahoo*, 235 Neb. 635, 641, 456 N.W.2d 750, 754 (1990).

6. A letter mailed in a system other than the United States mail may be deemed reliable enough to be entitled to the same presumption given a letter properly addressed, stamped, and mailed through the U.S. Mail. *Sherrod v. Department of Correctional Services*, 251 Neb. 355, 557 N.W.2d 634 (1997).
7. If the presumption of receipt of mail arises, it may be rebutted by any relevant evidence and positive testimony that a letter was not received simply raises a question of fact to be decided by the trier of fact. Even where the evidence of proper addressing and mailing is sufficient to raise the presumption of receipt and shift the burden of proof on the issue to the opposing party, the presumption is still rebuttable and the factual issue of whether mail was received is for the trier of fact. *Waite Lumber Co., Inc. v. Carpenter*, 205 Neb. 860, 290 N.W.2d 655 (1980).

III. ANALYSIS

The County Assessor disapproved the Taxpayer's special value applications on June 19, 2006. The evidence is that notice of disapproval of the Taxpayer's applications for use of special valuation were mailed to the Taxpayer on June 19 or June 20, 2006. Protests of the County Assessor's actions were required to be filed within 30 days of mailing. Neb. Rev. Stat. §77-1345.01 (Cum. Supp. 2006). The latest date on which protests could have been filed based on a mailing date of June 20, 2006 was July 20, 2006. Protests of the County Assessors disapprovals were not filed until July 28, 2006.

While the notices of disapproval were not placed directly into the U.S. mail, they were placed in a system designed to result in a timely transmittal through the U.S. mail. The notices

were not returned to the County Assessor and there is no evidence that the mailing system used by the County Assessor was unreliable. A presumption of receipt of the notices by the Taxpayer was raised by the evidence and was not rebutted. Argument that the notices should have been mailed to the Taxpayer in care of another person were heard. While the statutes do not specify to whom the County Assessor is required to mail notice of disapproval, a requirement that notice be sent to an applicant in care of another person rather than directly to an owner and applicant, in this case the Taxpayer, will not be read into the statute.

**IV
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties in the above captioned appeals.
2. The County Board did not have jurisdiction to consider the protests filed by the Taxpayer.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board overturning the County Assessor's disapproval of applications for use of special valuation for the tax year 2006 are vacated and reversed.
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. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2006.
6. This order is effective for purposes of appeal June 5, 2007.

Signed and Sealed. June 5, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Ruth A. Sorensen, 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 CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.