

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

GREG A. RENNER,)	
)	
Appellant,)	Case No. 09P 003
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
LINCOLN COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Greg A. Renner ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. 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 January 28, 2010, pursuant to an Order to Show Cause (Filing Defect) issued January 15, 2010. Commissioners Wickersham and Salmon were present. Commissioner Warnes was absent. Commissioner Hotz was excused. The appeal was heard by a quorum of a panel of the Commission.

Greg A. Renner participated in the hearing by telephone. No one appeared as legal counsel for the Taxpayer.

Joe W. Wright a Deputy County Attorney for Lincoln County participated in the hearing by telephone on behalf of the Lincoln County Board of Equalization ("the County Board").

The Commission took statutory notice and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008). The final decision and order of the Commission in this case is as

follows.

**I.
ISSUES**

Whether the appeal should be dismissed for failure to timely file required documentation.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. An appeal was received on September 30, 2009. (Case File)

APPLICABLE LAW

1. The commission has the power and duty to hear and determine appeals of:
 - (1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;
 - (2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;
 - (3) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;
 - (4) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining adjusted valuation pursuant to section 79-1016;

- (5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;
- (6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;
- (7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;
- (8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3,188;
- (9) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, made under section 77-1330;
- (10) Any other decision of any county board of equalization;
- (11) Any other decision of the Property Tax Administrator made before July 1, 2007, and decisions made by the Tax Commissioner regarding property valuation, exemption, or taxation made on or after July 1, 2007;
- (12) Decisions of the Tax Commissioner pursuant to section 77-3520; and
- (13) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions. Neb. Rev. Stat. §77-5007 (Supp. 2007).

2. If a taxpayer fails or refuses to file a personal property tax return, the assessor shall, on behalf of the taxpayer, file a personal property return which shall list and value all of the taxpayer's taxable tangible personal property at net book value. Neb. Rev. Stat. §77-

1233.04 (Cum. Supp. 2008).

3. If the county assessor files a personal property tax return for a taxpayer pursuant to section 77-1233.06 the county assessor is required to notify the taxpayer on a form prescribed by the Tax Commissioner, of the action taken, the penalty, and the rate of interest. Neb. Rev. Stat. §77-1233.06 (Cum. Supp. 2008).
4. The taxpayer may appeal the action of the county assessor, either as to the valuation or the penalties imposed, to the county board of equalization within thirty days after the date of the notice. Neb. Rev. Stat. §77-1233.06 (Cum. Supp. 2008).
5. The county board's decision on an appeal pursuant to section 77-1233.06(2) may be appealed to the Commission within thirty days after the decision. Neb. Rev. Stat. 77-1233.06(4) (Cum. Supp. 2008).
6. Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

IV. ANALYSIS

The Lincoln County Assessor filed a taxable tangible personal property tax return on behalf of the Taxpayer. The Lincoln County Assessor gave notice of her action to the Taxpayer. The Taxpayer did not appeal to the County Board. There is no decision of the County Board from which an appeal may be taken. Jurisdiction over appeals of actions of the County Assessor

is held by the County Board as provided by statute. The Commission does not have jurisdiction over appeals from the actions of the County Assessor.

**V.
CONCLUSIONS OF LAW**

1. The Commission does not have subject matter jurisdiction in this appeal.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 09P 003 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed February 24, 2010.

Nancy J. Salmon, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.