

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

RONALD A. NEWINGHAM,)	
)	
Appellant,)	Case No. 09R 103
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
CASS COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	(Untimely Filing)
Appellee.)	

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) why the appeal by Ronald A. Newingham ("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 25, 2010 at 1:30 p.m., pursuant to an Order to Show Cause (Filing Defect) issued on January 6, 2010. Commissioners Hotz and Warnes were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was absent. Commissioner Salmon was excused. The appeal was heard by a quorum of a panel of the Commission.

Ronald A. Newingham appeared, by telephone, at the hearing. The Taxpayer was not represented by legal counsel.

Nathan Cox, Cass County Attorney, 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 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 was timely filed.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The appeal captioned above with the required filing fee and documentation was received on August 27, 2009. (Case File).
2. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked August 26, 2009. (Case File).
3. The appeal in this case was filed based on an action of the County Board pursuant to section 77-1502 of Nebraska Statutes.
4. Cass County has not adopted a resolution extending the date for hearing protests pursuant to Section 77-1502 of Nebraska Statutes.

**III.
APPLICABLE LAW**

1. The Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from is timely filed. Neb. Rev Stat. §77-5013 (Cum. Supp. 2008).
2. An appeal is deemed 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 by law for filing the appeal. Neb. Rev. Stat. §77-5013 (Cum. Supp. 2008).

3. Proof of mailing presents a presumption of receipt provided the evidence shows that the letter was properly addressed, stamped, and mailed. *Troy v Stalder Co. V. Continental Casualty Co.*, 206 Neb. 28, 290 N.W.2d 809 (1980). Upon proof of the mailing the issue can be rebutted and presents a question for the trier of fact to decide.
4. An appeal from an action of a county board of equalization pursuant to section 77-1502 of Nebraska Statutes must be filed on or before August 24, or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. (Supp. 2009).
5. 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 Taxpayer testified that he had telephoned the Cass County Courthouse and received advice that the filing of the appeal was not “time sensitive”. He was unsure of whom he had spoken with at the Cass County Courthouse regarding this matter. The Taxpayer testified that he did not read or pay attention to the backside of the appeal, which lists the mandatory filing dates for appeals, since there were no blanks to fill in. The Taxpayer testified that his appeal was postmarked August 26, 2009 and arrived at the Commission on August 27, 2009. This appeal is

a valuation appeal taken under Neb. Rev. Stat. §77-1502 and the filing deadline is August 24, 2009. Neb. Rev. Stat. §77-1510 (Supp. 2005). The Commission accepts appeals whose postmarks are on or before the day of filing. In this appeal, the Taxpayer's appeal was postmarked two days too late. The Commission finds that it does not have jurisdiction of the appeal due to the untimely filing of the appeal.

**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. 09R 103 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed February 2, 2010.

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner