

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

DOUG B. RATH,	)	
	)	
Appellant,	)	Case No. 09R 619
	)	
v.	)	DECISION AND ORDER
	)	DISMISSING FOR WANT OF
LANCASTER COUNTY BOARD OF	)	JURISDICTION
EQUALIZATION,	)	(Filing Defect)
	)	
Appellee.	)	

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) why the appeal by Doug B. Rath ("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, pursuant to an Order to Show Cause (Filing Defect) issued 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.

Doug B. Rath appeared, by telephone, at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew, a Deputy County Attorney for Lancaster County, Nebraska, appeared, by telephone, as legal counsel for the Lancaster 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 should be dismissed for failure to include an order of final determination.

## **II. FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. An appeal was received on September 11, 2009. (Case File).
3. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File).
4. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
5. Lancaster County has 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. The documentation required by Section 77-5013 of Nebraska Statutes 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. (Cum. Supp. 2008).
3. 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).
4. 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 his appeal, although timely filed in all other respects and arriving at the Commission on September 11, 2009, did not have a copy of the County Board's final decision. Further testimony by the Taxpayer was that he interpreted a letter sent by the Commission's legal counsel advising him of his deficiency of untimely filing, as allowing an additional 30 days in which to provide the required document. The Commission in its review of the letter sent by the Tax Equalization and Review Commission legal counsel to the Taxpayer of November 18, 2009, interprets the letter as advising that a Show Cause Hearing could be

requested within 30 days. The Taxpayer subsequently sent in the County Board's final decision to the Commission on December 17, 2009. The Commission finds that the Taxpayer did not file a timely appeal with all of the required documentation under Neb. Rev. Stat. §77-5013 (Cum. Supp. 2004). The commission does not have jurisdiction due to the failure of the Taxpayer to timely file a copy of the final decision Neb. Rev. Stat. §77-5013(1)(d) (Cum. Supp. 2004).

**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-619 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