

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

TONIA L. KRUCKENBERG ,	)	
	)	
Appellant,	)	Case No. 09R 817
	)	
v.	)	DECISION AND ORDER
	)	DISMISSING FOR WANT OF
BOX BUTTE 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 Tonia L. Kruckenberg ("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 11:00 a.m., pursuant to an Order to Show Cause (Filing Defect) issued on January 13, 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.

Tonia L. Kruckenberg appeared, by telephone, at the hearing for the Taxpayer. The Taxpayer was not represented by legal counsel.

Dennis King, Attorney, appeared, by telephone, as legal counsel for the Box Butte 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 December 28, 2009. (Case File).
2. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked August 25, 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. Douglas 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. 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 evidence showed that the Taxpayer's appeal arrived at the Commission on December 28, 2009. Neb. Rev. Stat. §77-1510 (Supp. 2005). would require an appeal taken under Neb. Rev. Stat. §77-1502 to be filed on or before August 24<sup>th</sup>. However, if the Taxpayer did not receive a notice of valuation (NOV) then the deadline for filing is extended to December 31<sup>st</sup>. The Taxpayer testified that she did not receive the NOV despite the fact that she received the tax statement from the County, which alerted her to a valuation change to her property. She further

testified that her property consisted of a mobile home located on her father's land. The Taxpayer and her father shared the same mailing address. Her testimony was that she had relocated to Montana in August of 2008 and later relocated to Kansas City in July, 2009. She testified that she had requested the U.S. Postal Service to forward her mail. If mail did arrive for her at the subject property, her father would pick it up and mail it to her current address. The Taxpayer testified that while living in Montana she had a roommate with whom she shared the lockbox to which her mail was delivered.

The County Assessor testified that she mailed the NOV to the Taxpayer by properly addressing the letter, putting the required postage on it and mailing it at a U.S. Postal facility.

The Commission finds that there was a presumption of receipt by the Taxpayer of the NOV and that the Taxpayer did not rebut this presumption by her own relevant evidence. *Waite Lumber Co., Inc. v. Carpenter*, 205 Neb. 860, 290 N.W.2d 655 (1980). The Commission finds that it does not have jurisdiction of this appeal due to the untimely filing of the Taxpayer's 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 817 is dismissed.
2. Each party is to bear its own costs in this proceeding.

**Signed and Sealed** February 2, 2010.

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Robert W. Hotz, Commissioner

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William C. Warnes, Commissioner