

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

MOMSEN REAL ESTATE & PROPERTY,))	
)	
Appellant,)	Case No. 09C 482
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DOUGLAS 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 Momsen Real Estate & Property ("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 20, 2010 at 1:30 p.m., pursuant to an Order to Show Cause (Filing Defect) issued on December 31, 2009.

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.

Karl E. Momsen was present by telephone at the hearing for the Taxpayer. William Stockdale appeared, by telephone, as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, was present by telephone as legal counsel for the Douglas 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 September 16, 2009. (Case File).
2. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked September 14, 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. 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 he read the instructions on the back of the appeal form, item number five, to mean that he had until October 15, 2009 to file his appeal. The instructions referred to by the Taxpayer are for the process of the County Board valuing property that is under or over valued, for which there are different filing deadlines. Neb. Rev. Stat. §77-1504 (Cum. Supp. 2008). The Taxpayer also testified that he received the determination of the County board on August 7, 2009 and the County Board order states that an appeal must be filed on or before September 10, 2009. The Taxpayer testified that he had undergone medical treatment and this complicated his attention to the detail of filing the appeal. Neb. Rev. Stat. §77-1502 requires the filing of a valuation appeal by September 10th. (Supp. 2009). This was a valuation appeal to be

distinguished from an appeal under §77-1504 which would have allowed for a filing date of October 15th. The Tax Equalization and Review commission does not have jurisdiction.

**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. 09C 482 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 28, 2010.

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner