

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

JOHN S. HENRY,	)	
	)	
Appellant,	)	Case No. 09R 667
	)	
v.	)	DECISION AND ORDER
	)	DISMISSING FOR WANT OF
DOUGLAS COUNTY BOARD OF	)	JURISDICTION
EQUALIZATION,	)	(Filing Defect)
	)	
Appellee.	)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by John S. Henry ("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, pursuant to an Order to Show Cause (Filing Defect) issued December 31, 2009. Commissioners Hotz and Warnes were present. Commissioner Salmon was excused. Commissioner Wickersham was absent. The appeal was heard by a quorum of a panel of the Commission.

John S. Henry was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, was present 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 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. The appeal was postmarked on September 10, 2009. (Case File).
4. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File).
5. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
6. Douglas County has adopted a resolution extending the date for hearing protests pursuant to Section 77-1502 of Nebraska Statutes.

## **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.
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 .
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**

This appeal did not include an order of final determination. There was a timely filing of the documents that the Tax Equalization and Review Commission did receive. The Taxpayer testified that he thought the instructions on the County Board's final determination were confusing and he thought that by sending all of the documents received from the County Board, that he had complied with sending the required documents. He did not realize that the final

decision was not included in the materials sent. Neb. Rev. Stat. §77-5013(1)(d) is a statutory requirement that a copy of the final decision must be submitted with the appeal. Since the final decision was not included in the appeal, 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. 09R 667 is dismissed.
2. Each party is to bear its own costs in this proceeding.

**Signed and Sealed** January 25, 2010.

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Robert W. Hotz, Commissioner

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William C. Warnes, Commissioner