

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

MID-STATES INVESTMENTS, LLC,)	
)	
Appellant,)	Case No. 09R 810
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DAWSON COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	(Untimely Filing)
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Mid-States Investments, LLC ("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 11, 2010, pursuant to an Order to Show Cause (Filing Defect) issued December 30, 2009. Commissioners Wickersham, and Salmon were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

Greg A. Renner, Member of Mid-States Investments, LLC, was present, by telephone. No one appeared as legal counsel for the Taxpayer.

Kurt R. McBride, a Deputy County Attorney for Dawson County, Nebraska, was present, by telephone, as legal counsel for the Dawson 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 requirements of section 77-5013 of Nebraska Statutes have been met conferring jurisdiction on the Commission.

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. The appeal captioned above with the required filing fee and documentation was received on September 30, 2009. (Case File).
3. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked September 28, 2009. (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.

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.
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

The Taxpayer's member testified that the appeal form, with documentation and the filing fee was delivered to the Commission on September 30 because he had been advised by a person in the Dawson County Assessor's office that the filing date was October 16, 2009. The deadlines for appeals to the Commission are set by statute. The filing deadlines cannot be changed by the parties.

Instructions on the appeal form filed on behalf of the Taxpayer advise persons using the form to read all instructions including those on the reverse side of the page. Instructions on the reverse side of the appeal form clearly state the applicable filing deadlines.

The appeal was not timely filed and must be dismissed

**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 810 dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 15, 2010.

Nancy J. Salmon, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.