

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

SYNDICATE BLOCK CO BP ALLIANCE,))	
)	
Petitioner,))	Case No. 09C 327
)	
v.))	ORDER DETERMINING THAT THE
)	COMMISSION HAS JURISDICTION
BOX BUTTE COUNTY BOARD OF))	OVER A PETITION
EQUALIZATION,))	
)	
Defendant.))	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Syndicate Block Co BP Alliance ("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 March 4, 2010, pursuant to an Order to Show Cause (Filing Defect) issued February 17, 2010. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was absent.

Edward E. Embree and Linda A. Terrill appeared by telephone as legal counsel for the Taxpayer.

Dennis D. King, Special County Attorney for Box Butte County, Nebraska, participated in the hearing by telephone as legal counsel for the Box Butte County Board of Equalization ("the County Board").

The Commission took statutory notice and received exhibits.

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. 2006). 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 2, 2009. (Case File).
2. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked August 31, 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. The applicable filing date for an appeal of the County Board's decision was August 24, 2009.
5. The parties stipulated that the County Board did not provide notice of its decision on or before August 2, 2009.
6. Notice of the County Board's decision was mailed on August 24. (Case File).
7. The Taxpayer was unable to make a timely filing of its appeal due to the failure of the County Board to give timely notice of its decision.

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. The County Clerk is required to mail a notice of the County Board's decision on a protest to the protestor on or before August 2. Neb. Rev. Stat. §77-1502 (Cum. Supp. 2008).
5. Any person having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013 on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510. Neb. Rev. Stat. §77-1507.01 (Cum. Supp. 2008).

**IV.
ANALYSIS**

The Taxpayer was unable to timely file an appeal with the Commission because the County Clerk for Box Butte County did not give notice of a decision of the County Board on the Taxpayer's protest. The appeal of the Taxpayer filed on September 2, 2009 should be deemed a petition filed pursuant to section 77-1507.01 of Nebraska Statutes. As a petition the filing of the Taxpayer is timely and the Commission has jurisdiction.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 09C 326 is deemed to be a petition filed pursuant to Section 77-1507.01 of Nebraska Statutes.
2. The caption of this file be reformed to reflect the status of the parties as Petitioner and Defendant.
3. A Notice of Petition be issued and the petition be heard as may be directed by further order of the Commission.
4. Each party is to bear its own costs in this proceeding.

Signed and Sealed March 10, 2010.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

Wm. R. Wickersham, Commissioner

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