

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

LARRY R. VIERREGGER, TRUSTEE,)	
VIERREGGER FAMILY TRUST,)	
)	Case No. 10C 300
Appellant,)	
)	DECISION AND ORDER
v.)	DISMISSING FOR WANT OF
)	JURISDICTION
DOUGLAS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Larry R. Vierregger, Trustee, Vierregger Family Trust ("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 7, 2011, pursuant to an Order to Show Cause (Jurisdiction) issued December 14, 2010.

Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Larry R. Vierregger, Trustee of Vierregger Family Trust, participated in the hearing by telephone. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, participated in the hearing 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. 2006). The final decision and order of the Commission in this case is as follows.

I. ISSUES

Whether the appeal was timely filed and whether required documentation 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 14, 2010. (Case File).
2. The envelope in which the appeal, filing fee, and documentation was delivered was postmarked September 13, 2010. (Case File).
3. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File)
4. Documentation of the decision, order, determination, or action appealed from specified by Section 77-5013 (3) of Nebraska Statutes was received as a part of Exhibit 1 on January 5, 2011.
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. 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. 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.
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.
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

Section 77-5013 of Nebraska Statutes requires that an appeal to the Commission be received or mailed, using the United States Postal Service, on or before dates specified in statute. The applicable filing or mailing date in this case is September 10, 2010. The appeal was received on September 14, 2010 in an envelope postmarked September 13, 2010. The Appeal was not timely mailed or received.

Section 77-5013 of Nebraska Statutes requires a timely filing of documentation showing the decision, action, order, or determination being appealed. Documentation is timely filed if it is received or mailed, using the United States Postal Service, on or before dates specified in statute. The applicable filing or mailing date in this case is September 10, 2010. A copy of the decision of the County Board was received by the Commission on January 5, 2011. No other documentation of the County Board's decision was furnished to the Commission.

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. 10C 300 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 26, 2011.

Robert W. Hotz, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.