

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

GLENN H. RUFF,	)	
	)	
Appellant,	)	Case No. 08R 521
	)	
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) to determine whether the appeal by Glenn H. Ruff ("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 November 24, 2008, pursuant to an Order to Show Cause (Filing Defect) issued November 5, 2008. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was excused from participation by the presiding hearing officer. A panel of three commissioners was created pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07).

Glenn H. Ruff 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").

All parties appeared by telephone.

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 should be dismissed for failure to timely file the appeal.

**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 12, 2008. (Case File).
3. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked September 11, 2008. (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.
5. 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. 2006).
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. “Any report, claim, tax return, tax valuation, equalization, or exemption protest, tax form, petition, appeal, statement, or any payment required or authorized to be filed or made to the Commission, which is: (1) transmitted through the United States Mail; (2) mailed but not received by the Commission; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was deposited in the United States mail on or before the date for filing or paying.” Neb. Rev. Stat. §49-1201 (Reissue 2004).
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**

The appeal, filing fee, and documentation was received on September 12, 2008, in an envelope that had a cancellation mark of September 11, 2008. The Taxpayer's testimony was that he deposited the envelope containing the Appeal at the Post Office in the afternoon of September 10, 2008. The Taxpayer offered no other evidence that the appeal was timely filed.

#### **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. 08R 521 is dismissed.
2. Each party is to bear its own costs in this proceeding.

**Signed and Sealed** December 15, 2008.

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Nancy J. Salmon, Commissioner

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Robert W. Hotz, Commissioner

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William C. Warnes, Commissioner

SEAL