

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

PATRICIA M. SMITH,	)	
	)	
Appellant,	)	Case No. 09R 278
	)	
v.	)	DECISION AND ORDER
	)	DISMISSING FOR WANT OF
DOUGLAS COUNTY BOARD OF	)	JURISDICTION
EQUALIZATION,	)	(Filing Defect)
	)	(Payment of Filing Fee)
Appellee.	)	

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) why the appeal by Patricia M. Smith ("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 Wickersham and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. Commissioner Salmon was absent. The appeal was heard by a quorum of a panel of the Commission.

Patricia M. Smith 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 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 timely deliver the filing fee.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. An appeal mailed on September 10, 2009 and was received on September 10, 2009. (Case File).
2. An appeal was mailed to the Commission on September 10, 2009 and was received by the Commission on September 14, 2009. (Case File).
3. The filing fee specified by section 77-5013 (3) of Nebraska Statutes was received on November 17, 2009. (Case File).
4. The envelope in which the filing fee was delivered is postmarked November 16, 2009. (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.

### **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. The required filing fee is \$25.00 unless the appeal is by a county assessor acting in his or her official capacity or a county board of equalization acting in its official capacity. Neb. Rev Stat. §77-5013 (Cum. Supp. 2008).
3. The filing fee 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. (Supp. 2009).
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 Taxpayer testified that the check making payment of the filing fee was not enclosed with the appeal and that the check was mailed at a later date. Section 77-5013 requires timely delivery of the filing fee and payment. The filing fee was not delivered timely and the Commission cannot waive the statutory requirement. The 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 278 is dismissed.
2. Each party is to bear its own costs in this proceeding.

**Signed and Sealed** January 28, 2010.

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Robert W. Hotz, Commissioner

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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.**