

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

REPUBLIC BANK, INC,)	
)	
Appellant,)	Case No. 10P 002
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
LINCOLN COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	(Untimely Filing)
Appellee.)	

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) to determine if the appeal by Republic Bank, Inc. ("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 April 8, 2011. 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 proceeding. Commissioner Salmon was excused. Commissioner Hotz was present. The proceeding was heard by a quorum of a panel of the Commission.

Tim. W. Thompson participated in the hearing by telephone as legal counsel for the Taxpayer.

Joe W. Wright, a Deputy County Attorney for Lincoln County, Nebraska, participated in the hearing by telephone as legal counsel for the Lincoln County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard argument.

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 (Reissue 2009). 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. On September 19, 2007, Marquette Equipment Finance, LLC leased various items of property to Midwest Renewable Energy Inc. (E1:1-14).
2. On December 21, 2007 Marquette Equipment Finance, LLC assigned its interest in the leased property to Midwest Renewable Energy Inc. of September 19, 2007 to Republic Bank, Inc.. (E1:15).
3. On April 30, 2010, Marquette Equipment Finance, LLC filed a Nebraska Personal Property Return showing zero taxable value. (Exhibit to affidavit of Julie Stenger in Case File).
4. On May 6, 2010, the Assessor changed value as reported by Marquette Equipment Finance, LLC from zero to \$4,905,838. (E2:6).
5. On June 4, 2010, Marquette Equipment Finance, LLC protested the assessor's valuation

- of property with a value determined by the county assessor of \$3,393,317. (E2:24).
6. The Nebraska Boiler Model NB 500D-70 had a taxable value as determined by the County Assessor for tax year 2010 of \$1,389,754. (E2:6).
 7. The Barr-Rosin Inc. Feed Type Ring Drying System had a taxable value as determined by the County Assessor for tax year 2010 of \$2,003,563. (E2:6).
 8. The total taxable value of the Nebraska Boiler Model NB 500D-70 and the Barr-Rosin Inc. Feed Type Ring Drying System as determined by the county assessor was \$3,393,317 (\$1,389,754 + \$2,003,563 = \$3,393,317).
 9. Marquette Equipment Finance, LLC as the protestor asserted that taxable value of the personal property subject to protest was \$1,030,000.00. (E2:24).
 10. The interest of Republic Bank, Inc., in the Nebraska Boiler Model NB 500D-70 and the Barr-Rosin Inc. Feed Type Ring Drying System is derived from an assignment of an interest in the lease described in Exhibit 1 at pages 1-14. (E1:15).
 11. The County Board decided the protest on July 19, 2010. (E2:1).
 12. The appeal captioned above with the required filing fee and documentation was received on August 23, 2010. (Case File).
 13. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked August 20, 2010. (Case File).
 14. August 20, 2010 is more than 30 days after July 19, 2010.

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 (Reissue 2009).
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(2) (Reissue 2009).
 3. The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on July 25 of each year. Neb. Rev. Stat. §77-1502(1) (Reissue 2009).
 4. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. Neb. Rev. Stat. §77-1502(1) (Reissue 2009).
 5. 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. Neb. Rev. Stat. §77-1510 (Reissue 2009).
 6. The county assessor is required to change the reported valuation of any item of taxable tangible personal property listed on the return to conform valuation to net book value. Neb. Rev. Stat. §77-1233.04(1) (Reissue 2009).
 7. Any valuation added to a personal property return or added through the filing of a

- personal property return, after May 1 and on or before July 31 of the year the property is required to be reported, shall be subject to a penalty of ten percent of the tax due on the value added. Neb. Rev. Stat. §77-1233.04(3) (Reissue 2009).
8. For purposes of section 77-1233.04 the county assessor is required to give notice to the taxpayer, on a form prescribed by the Tax Commissioner, of the action taken, the penalty, and the rate of interest. The notice shall also state the taxpayer's appeal rights and the appeal procedures. Neb. Rev. Stat. §77-1233.06(1) (Reissue 2009).
 9. The taxpayer may appeal the action of the county assessor, either as to the valuation or the penalties imposed, to the county board of equalization within thirty days after the date of the county assessor's notice. Neb. Rev. Stat. §77-1233.06(2) (Reissue 2009).
 10. Upon ten days' notice to the taxpayer, the county board of equalization shall set a date for hearing the appeal of the taxpayer and make its determination within thirty days after the date of hearing. Neb. Rev. Stat. §77-1233.06(4) (Reissue 2009).
 11. An appeal may be filed with the Tax Equalization and Review Commission within 30 days after the decision of the county board of equalization. Neb. Rev. Stat. §77-1233.06(4). (Reissue 2009).
 12. 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).
 13. A statute is ambiguous when the language used cannot be adequately understood either from the plain meaning of the statute or when considered in *pari materia* with any related

statutes. *Unisys Corp. v. Nebraska Life & Health Ins. Guar. Assn.*, 267 Neb. 158, 673 N.W.2d 15 (2004).

IV. ANALYSIS

The Taxpayer argues that rules of the Nebraska Supreme Court concerning service of process in civil actions as promulgated pursuant to section 25-534 of Nebraska Statutes are applicable. The Court's rules are applicable to filings in the several courts of Nebraska. The Commission is not a Court and section 25-534 is therefore not applicable to it. The Taxpayer's argument is without merit.

The Taxpayer contends that the provisions of section 77-1510 of Nebraska Statutes determine the filing deadline for its appeal. The section noted provides for appeals of actions pursuant to section 77-1502. Neb. Rev. Stat. §77-1510 (Reissue 2009). Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 signed and filed on or before June 30 are considered pursuant to section 77-1502. Neb. Rev. Stat. §77-1502(1) (Reissue 2009). Marquette Equipment Finance, LLC filed a Nebraska Personal Property Return on April 30, 2010. (Exhibit to affidavit of Julie Stenger in Case File). The return was filed to report taxable tangible personal property. *Id.* Value of the undescrbed property reported on the Nebraska Personal Property Return filed by Marquette Equipment Finance LLC was \$0. *Id.* The value protested by Marquette Equipment Finance, LLC was \$3,393,317. (E2:1). Clearly Marquette Equipment Finance, LLC was not protesting the return filed on April 30, 2010.

On May 6, 2010, the County Assessor determined that personal property held by Marquette Equipment Finance, LLC had a taxable value of \$4,905,838 as opposed to \$0, the reported value. (E2:6). The taxable value of the Nebraska Boiler Model NB 500D-70 and the Barr-Rosin Inc. Feed Type Ring Drying System was determined by the County Assessor to be \$3,393,317 ($\$1,389,754 + \$2,003,563 = \$3,393,317$). A taxable value of \$3,393,317 was protested by Marquette Equipment Finance, LLC. (E2:1). Clearly the protest did not relate to the filing made pursuant to section 77-1229 on April 30. The filing of the protest was not made pursuant to section 77-1502.

Section 77-1233.04 requires a county assessor to change the reported valuation of any item of taxable tangible personal property listed on the return to conform valuation to net book value. Neb. Rev. Stat. §77-1233.04(1) (Reissue 2009). Whatever the basis for her determination, the county assessor made a determination that property reported with a \$0 value had a value of \$4,170,149. (E2:6). After making that determination the county assessor notified the Taxpayer and a protest was filed. Notice of the county assessor's determination is required by section 77-1233.06 of Nebraska Statutes. Section 77-1233.06 of Nebraska Statutes allows a protest to be filed within 30 days of the assessor's notice. A protest was filed and heard by the County Board. The Clerk gave notice of the County Board's decision. To this point in the sequence of actions and events, the provisions of section 77-1233.06 had been complied with by the parties. The form on which the County Assessor gave notice of the change in value noted that it was authorized by section 77-1233.06. (E5:2). Section 77-1233.06 allows the filing of an appeal from a decision of the County Board within thirty days of the decision. The appeal in this case was filed more than 30 days after the County Board's decision.

It is true that two statutory paths appear in statute for the reporting and valuation of taxable tangible personal property. One is the self reporting accomplished pursuant to section 77-1229 and the other is the county assessor's determinations pursuant to section 77-1233.04. It is also true that each of the statutory paths for reporting and the valuation of taxable tangible personal property has its own procedural requirements including protest and appeal from the County Board decisions. A protest based on the self reporting provided for in section 77-1229 may be protested to the County Board pursuant to section 77-1502, and the County Board's decision may be appealed pursuant to section 77-1510. On the other hand, county assessor determinations provided for in section 77-1233.04 have procedures for protest and appeal of County Board decisions as found in section 77-1233.06.

The facts show that the Taxpayer self reported what it considered the taxable value of various items of personal property to be for the year 2010 by filing pursuant to section 77-1229. The county assessor thereafter determined, pursuant to section 77-1233.04, that the personal property reported by the Taxpayer had a taxable value exceeding the reported value. The provisions of section 77-1233.06 are applicable to this appeal. The appeal was not timely filed and must be dismissed.

The Taxpayer argues that instructions contained on the appeal form and other material promulgated by the Commission are misleading. The instructions on the appeal form caution filers that the filing deadline for appeals varies with the subject and type of decision, action, order, or determination being appealed. (E8:2). The instructions also state that it is the filer's responsibility to review the statutes and to determine whether an appeal may be made to the commission and to determine the applicable filing deadline. (E8:2). The instructions also note

that the deadline for filing various appeals is 30 days after the date of the decision being appealed from. (E8:2). Even if the Commission's form is unclear, there are several cautions that were ignored by the Taxpayer. In addition, the Taxpayer has not shown how even an incorrect instruction would affect the result in this appeal. The Taxpayer's position seems to be that misleading instructions from the Commission will trump the provisions of statute. The Commission has only the authority granted to it by statute and may not enlarge or detract from that authority. *See, Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000). The Commission has been unable to find any grant of authority allowing it to vary from the provisions of statute.

**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. 10P 003 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed May 25, 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.