

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

TIMOTHY & JUDITH BENSON,)	
)	
Appellant,)	Case No. 10A 236
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
SARPY COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	(Untimely Filing)
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Timothy & Judith Benson ("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 23, 2010, pursuant to an Order to Show Cause (Filing Defect) issued October 27, 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 proceeding. Commissioner Hotz was excused. Commissioner Salmon was present. The proceeding was heard by a quorum of a panel of the Commission.

Timothy Benson participated in the hearing by telephone. No one appeared as legal counsel for the Taxpayer.

Nicole L. O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska, participated in the hearing by telephone, as legal counsel for the Sarpy 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 (Reissue 2009). 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. 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 August 26, 2010. (Case File).
3. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked August 25, 2010. (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

APPLICABLE LAW

1. The Commission obtains jurisdiction over an appeal when it 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.
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. 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 produced evidence that filing of the appeal was delayed by efforts to obtain referee notes from Sarpy County. 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). It is not necessary to file notes from a referee or others to complete an appeal filing. The Taxpayer received timely notice of the County Board's decision and could have timely filed the appeal. The Appeal was not timely filed and must be dismissed.

**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. 10A 236 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed December 1, 2010.

Nancy J. Salmon, 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.