

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

DAVID D. WOODARD,)	
)	
Appellant,)	Case No. 10R 113
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
SARPY COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by David D. Woodard ("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 (Filing Defect) issued December 14, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

David D. Woodard appeared by telephone at the hearing. No one appeared as legal counsel for the Taxpayer.

Nicole L. O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska, appeared 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 file required documentation.

**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. An appeal was received on August 25, 2010. (Case File)
3. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File)
4. The envelope in which the documentation was delivered is postmarked August 24, 2010. (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.

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 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.
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 appeal submitted to the Commission arrived August 25, 2010 in an envelope postmarked August 24, 2010. (Case File) The appeal was considered timely filed except that there was no final decision included as required by Neb. Rev. Stat. §77- 5013 (1). The absence of the final decision prevents the Commission from acquiring jurisdiction of the appeal. The appeal of the Taxpayer is 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. 10R 113 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 19, 2011.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner