

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

HENRY B. WILSON,)	CASE NO. 96R-141
)	
Appellant,)	
)	
v.)	
)	
SHERMAN COUNTY BOARD)	FINDINGS AND ORDERS
OF EQUALIZATION,)	(DEMURRER OVERRULED)
)	
Appellee.)	

Filed February 19, 1997

Appearances:

For the Appellant: Henry B. Wilson
RR 1, Box 75
Loup City, NE 68853

For the Appellee: Mark L. Eurek
Sherman County Board of Equalization
P. O. Box 621
Loup City, NE 68853

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman:

SUMMARY OF DECISION

County filed a Demurrer, alleging that Taxpayer filed his appeal to the Tax Equalization and Review Commission out of time, and that therefore the Commission lacked any jurisdiction to hear the case. The Commission overrules the Demurrer.

NATURE OF THE CASE

Henry B. Wilson ("Taxpayer") owns certain agricultural real property located in Sherman County, Nebraska. Taxpayer filed three separate appeals with the Tax Equalization and Review Commission ("Commission") on August 23, 1996. The Commission, as authorized by its rules and regulations, consolidated these cases for hearing. County filed a demurrer alleging that "The Nebraska Tax Equalization and Review Commission does not have jurisdiction to hear this appeal because the appeal was not timely filed. On the fact of the Appeal, the date the appeal was signed was August 21, 1996. The final action of County Board was July 17, 1996, also shown on the Appeal. Appellant was required under Neb. Rev. Stat. 77-5015 to file the appeal within 30 days after final action of the County Board of Equalization."

DUTIES OF THE PARTIES

On or before June 1, the county assessor shall, before filing the certificate for real property, notify the record owner of every item of real property which has been assessed at a value higher than in the previous year. Neb. Rev. Stat. §77-1311:02 (Reissue 1996). Protests by taxpayers regarding such increases in valuation must be filed with the County Board of Equalization between June 1 and July 1 of each year. Neb. Rev. Stat. §77-1502 (Reissue 1996). The county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county "except agricultural and horticultural land . . ." so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (Reissue 1996). "Appeals may be taken from any action of the county board of equalization to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act. The appeal shall be filed within thirty days after adjournment of the board which, for actions taken pursuant to sections 77-1502 and 77-1504, shall be deemed to be July 25 of the year in which the action is taken." Neb. Rev. Stat. §77-1510 (Reissue 1996).

FINDINGS OF FACT

The Commission, in determining the case, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. *See* Neb. Rev. Stat. §77-5016(3) (Reissue 1996). From the pleadings submitted the Commission finds and determines as follows:

- I. That Taxpayer owns certain agricultural real property in Sherman County, Nebraska, which is subject to taxation.
- II. That Taxpayer timely filed a written protest with the County.
- III. That County took final action on the protest on July 17, 1996.
- IV. That Taxpayer filed an appeal with the Commission on August 21, 1996.

JURISDICTION

The jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996).

CONCLUSIONS OF LAW

Neb. Rev. Stat. §77-1510 (1995 Supp.) states "Appeals may be taken from action of the county board of equalization to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act." However, this language was substantially changed upon the adoption of LB 1040 (94th Legislature, Second Session). The statute was amended to read "The appeal shall be filed within thirty days after adjournment of the board which, for actions taken pursuant to sections 77-1502 and 77-1504, shall be deemed to be July 25 of the year in which the action was taken." Neb. Rev. Stat. §77-1510 (Reissue 1996). LB 1040 was adopted with an emergency clause, and signed by the Governor of the State of Nebraska on March 19, 1996. It therefore became law on March 20, 1996.

As applied to this case, the deadline for filing an appeal with the Commission challenging a decision of a county board of equalization for action taken in 1996 was August 26, 1996. Taxpayer's appeal was, therefore, timely filed. The Commission must, therefore, and hereby does conclude as a matter of law that the demurrer filed by Sherman County must be overruled.

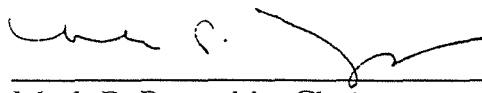
ORDER

IT IS, THEREFORE, ORDERED that:

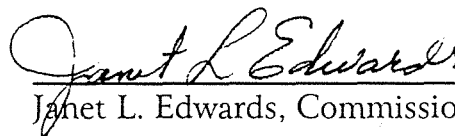
- I. The Demurrer is overruled.
- II. This case should be scheduled for a hearing on the merits as soon as it may be heard.

IT IS SO ORDERED.

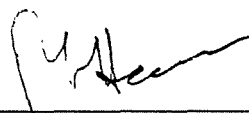
Dated this 19th day of February, 1996.



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner

