

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

MICHAEL J. POEPEL,	)	
	)	
Appellant,	)	CASE NO. 05R-222
	)	
vs.	)	
	)	FINDINGS AND FINAL ORDER
DOUGLAS COUNTY BOARD OF	)	DISMISSING APPEAL
EQUALIZATION,	)	FOR WANT OF JURISDICTION
	)	
Appellee.	)	
	)	

**SUMMARY**

Michael J. Poepsel ("the Taxpayer") protested the Douglas County Assessor's ("the Assessor's") proposed 2005 assessed value for the Taxpayer's residential real property to the Douglas County Board of Equalization ("the Board"). The Board denied the Taxpayer's protest. The Taxpayer filed his appeal of the Board's decision on August 29, 2005.

**I.  
ISSUE**

The issue before the Commission is whether the Commission has subject matter jurisdiction over the Taxpayer's appeal.

**II.  
STATEMENT OF THE CASE**

The Taxpayer owns a tract of land legally described as Lot 5, Block 2, Leawood Addition, in the City of Omaha, Douglas County, Nebraska. The Assessor proposed valuing the Taxpayer's

residential real property in the amount of \$390,500 as of the January 1, 2005 assessment date. (E1:1). The Taxpayer protested that determination of value to the Board, which denied the protest. (E1:1). The Form 422 indicated that the Board took final action on the Taxpayer's protest on July 29, 2005, but that the notification date was July 22, 2005, one week before the purported date of the final decision. (E1:1).

The Taxpayer thought he had 30-days from the date of final decision within which to appeal the Board's decision. The Taxpayer accordingly mailed his appeal of the Board's decision on August 26, 2005. The Commission's legal counsel upon receipt of the documents contacted the Taxpayer regarding the apparent lack of timeliness. The Taxpayer explained his late filing and requested a hearing. The Commission then served a Notice in Lieu of Summons on the Board which the Board answered. The Commission also issued an Order for a Show Cause Hearing and Notice of Hearing setting the matter for a hearing on the question of subject matter jurisdiction and served copies of the documents on each of the Parties.

The Commission called the matter for hearing on December 23, 2005, pursuant to the Order and Notice. The Taxpayer participated in the hearing by telephone call from Omaha, Nebraska. The Board participated in the hearing by telephone call through Christine A. Lustgarten, Chief Deputy, Civil

Division, Douglas County Attorney's Office from Omaha, Nebraska. Commissioners Hans, Lore, Reynolds and Wickersham heard the matter. Commissioner Reynolds served as the presiding officer.

**III.  
APPLICABLE LAW**

Jurisdiction is the inherent power or authority to decide a case. *Riley v. State*, 244 Neb. 250, 255, 506 N.W.2d 45, 48 (1993). There is no presumption that the Commission has jurisdiction. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504 - 505, 583 N. W. 2D 353, 356 - 357 (1998).

**IV.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer didn't know that the deadline for filing his appeal was August 24, 2005.
2. The Taxpayer mailed his appeal to the Commission on August 26, 2005.

**V.  
ANALYSIS**

The right to appeal is purely statutory. Unless the statute provides for an appeal from the decision of a quasi-judicial

tribunal, such right does not exist. *Gage County Bd. of Equalization v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 750, 752, 619 N.W.2d 451, 453 (2000). The Commission can only acquire jurisdiction over appeals from Board action under §77-1502 if an appeal is filed on or before August 24. Neb. Rev. Stat. §77-1510 (Supp. 2005) See also Neb. Rev. Stat. §77-1510 (2004 Cum. Supp.). If the appeal is postmarked by the filing deadline, the appeal is deemed timely filed. Neb. Rev. Stat. §49-1201 (Reissue 2004).

The Commission, in order to acquire subject matter jurisdiction, must receive the Taxpayer's appeal in a timely manner. "To acquire jurisdiction over the subject matter of the action, there must be strict compliance with the time requirements of the statute granting the appeal." *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 99, 620 N.W.2d 90, 99 (2000). There is no presumption that the Commission has jurisdiction in an appeal. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998). The absence of subject matter jurisdiction may be raised at any time by any party or by the court or tribunal *sua sponte*. *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 752, 635 N.W.2d 112, 118 (2001), citing *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000). "The fact is

that lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has statutory authority to resolve it. The parties' understanding or intentions are irrelevant to the issue of whether the Commission had jurisdiction, since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence." *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998).

The Taxpayer here contends that the Commission should exercise jurisdiction over the Taxpayer's appeal due to misunderstanding or mistake. The Commission, however, has no authority to hear or decide appeals which fail to comply with the appeal period set forth in statute even under the circumstances outlined by the Taxpayer. The Commission is in fact prohibited from exercising subject matter jurisdiction in a late-filed appeal even when it is responsible for that late filing, since the Commission lacks equity powers concerning filing deadlines. *Creighton St. Joseph Regional Hospital v. Tax Equalization and Review Commission*, 260 Neb. 905, 921, 620 N.W.2d 90, 102 (2000).

## **VI. CONCLUSIONS OF LAW**

1. The Commission lacks jurisdiction to hear and decide this appeal, which must accordingly be dismissed as a matter of

law. See, e.g., *Jacobson v. Jacobson*, 10 Neb.App. 622, 624, 635 N.W.2d 272, 275 (2001).

2. Furthermore, since the deadline for filing appeals to the Commission for tax year 2005 has passed, this appeal must be dismissed with prejudice.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Taxpayer's appeal is dismissed with prejudice.
2. The Taxpayer's residential real property legally described as Lot 5, Block 2, Leawood Addition, City of Omaha, Douglas County, Nebraska, more commonly known as 10815 Shirley Street, must therefore be valued as follows for tax year 2005 as determined by the Board:

Land	\$ 44,100
Improvements	\$318,200
Total	\$362,300
3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Supp. 2005).
5. This decision shall only be applicable to tax year 2005.

6. Each Party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

Dated this 23<sup>rd</sup> day of December, 2005.

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*Robert L. Hans, Commissioner*

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*Susan S. Lore, Commissioner*

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*Mark P. Reynolds, Vice-Chair*

**SEAL**

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*Wm. R. Wickersham, Chair*

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**