

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

NEBCO, INC.,	)	
	)	
Appellant,	)	CASE NO. 06C-330
	)	
vs.	)	FINDINGS AND ORDER DISMISSING
	)	APPEAL FOR WANT OF JURISDICTION
SARPY COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"). 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 2, 2006, pursuant to an Order to Show Cause and Notice of Telephonic Hearing (Jurisdiction) issued October 16, 2006. Commissioners Lore, Hans, and Warnes were present. Commissioner Warnes presided at the hearing.

Shannon Doering, Legal Counsel for NebCo, Inc. ("the Taxpayer") appeared, by teleconference, at the hearing. The Sarpy County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Ms. Nicole O'Keefe. The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

**I.  
FINDINGS**

The Commission finds and determines that:

## PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of certain commercial real property described in the appeal as Lots 4 & 5, Chalco Valley Business Park, Refer 11211962, Sarpy County Nebraska (“the subject property”).
2. The Taxpayer’s Appeal was filed in person in the Commission’s office on August 25, 2006.
3. An Order to Show Cause and Notice of Telephonic Hearing (Jurisdiction) was issued by the Commission on October 16, 2006, directing the Taxpayer to show why its appeal should not be dismissed for want of jurisdiction.

## II. CONCLUSIONS OF LAW

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. § 77-5016(3) (2005 Supp.).
2. 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 905 (2000).
3. The Commission obtains jurisdiction over an appeal when the appeal, 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 and

the filing fee is timely received and thereafter paid. Neb. Rev. Stat. 77-77-5013 (2004 Cum. Supp).

4. Appeals from County Board of Equalization decisions made pursuant to section 77-1502 must be filed on or before August 24 of each year. Neb. Rev. Stat. 77-1510 (2005 Supp.).
5. An appeal is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission on or before the filing deadline. Neb. Rev. Stat. 77-5013 (2004 Cum. Supp.).

### III. ANALYSIS

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer when the appeal was not timely filed. The Taxpayer argued that the Commission should have jurisdiction because an appeal that is hand delivered to the Commission's office on August 25, 2006, would likely have arrived at the same time or before an appeal mailed to the Commission's office with a postmark showing it was mailed on August 24, 2006. The Commission cannot hear an appeal that was not filed in accordance with the statutory requirements. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 905 (2000). The Commission must order dismissal of the appeal.

**IV.  
ORDER**

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

1. The Appeal of NebCo. Inc, concerning the valuation of Lots 4 & 5, Chalco Valley Business Park, Refer 11211962, Sarpy County Nebraska is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (2005 Supp.).
3. Each party is to bear its own costs in this matter.
4. This decision shall only be applicable to tax year 2006.

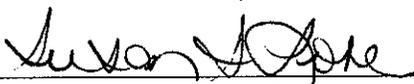
**IT IS SO ORDERED.**

Dated: November 6, 2006.



**SEAL**

  
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William C. Warnes, Commissioner

  
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Susan S. Lore, Commissioner

  
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Robert L. Hans, Commissioner