

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

JUDITH L. TIMM,)	
)	
Appellant,)	Case No. 07R-1027
)	
v.)	DECISION AND ORDER DISMISSING
)	APPEAL AFTER SHOW CAUSE
DOUGLAS COUNTY BOARD OF)	HEARING
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on November 26, 2007, pursuant to an Order To show Cause (Jurisdiction Untimely Filing) issued to Judith L. Timm ("the Taxpayer") 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. Commissioners Wickersham, Warnes, Salmon, and Hotz were present. Commissioner Wickersham presided at the hearing.

Judith L. Timm was present at the hearing . No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, appeared by telephone as legal counsel for the Douglas County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

Whether the appeal in this case was timely filed.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The appeal in this case was mailed to the Commission on October 7, 2007 and received by the Commission on October 9, 2007. (Case File).
2. The Douglas County Board of Equalization, by resolution, has extended the time for consideration of protests filed in the year 2007. (Case File).

**III.
APPLICABLE LAW**

1. The Commission has jurisdiction when an appeal is timely filed and other conditions imposed by statute are met. Neb. Rev. Stat. §77-5013 (Cum supp. 2006).
2. An appeal is 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 for filing. Neb. Rev. Stat. §77-5013 (Cum supp. 2006).
3. Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for protests under section 77-1502. Neb. Rev. Stat. §77-1510 (Cum. Supp. 2006).

IV. ANALYSIS

The Taxpayer testified that it was her belief that the appeal was timely filed as it was mailed on October 9, 2007. The filing date for appeals arising under section 77-1504 of Nebraska Statutes is October 30 if the County Board of Equalization has extended the period for hearing protests. Neb. Rev. Stat. §77-1504 (Cum. Supp. 2006). The filing date for appeals arising under section 77-1502 of Nebraska Statutes is September 10 if the County Board of Equalization has extended the period for hearing protests. Neb. Rev. Stat. 77-1510 (Cum. Supp. 2006). Appeals arise under section 77-1504 of Nebraska Statutes if a County Board of Equalization makes an initial determination that a parcel is undervalued or overvalued and gives notice of its proposed value, the value proposed by the County Board of Equalization is protested, and the relief if any granted on the protest is not satisfactory. Neb. Rev. Stat. §77-1504 (Cum. Supp. 2006). Appeals arise under section 77-1502 of Nebraska Statutes if notice of a proposed value is given by the County Assessor on or before June 1, that value if protested to the County Board of Equalization, and the relief if any granted on the protest is not satisfactory. Neb. Rev. Stat. §§77-1502 and 77-1510 (Cum. Supp. 2006).

The evidence in this appeal is that the protest was filed based on a value proposed by the County Assessor and that the appeal arose from a decision of the County Board of Equalization pursuant to section 77-1502 of Nebraska Statutes. The Douglas County Board of Equalization has extended the period for its consideration of protests. The applicable filing date was September 10, 2007.

The Commission has only that authority granted to it by statute. *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000). The statutes governing timely filing of appeals with the Commission do not provide for late filing in the circumstances found in this 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 because the appeal was not timely filed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal is dismissed.
2. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Each party is to bear its own costs in this proceeding.

4. This order is effective for purposes of appeal on December 3, 2007.

Signed and Sealed. December 3, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.