

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

CSG SYSTEMS, INC.,)	
)	
Appellant,)	CASE NOS. 06P-001,
)	06P-002, and 06P-003
vs.)	
)	
DOUGLAS COUNTY BOARD OF)	FINDINGS AND ORDER REVERSING
EQUALIZATION,)	THE DECISIONS OF THE DOUGLAS
)	COUNTY BOARD OF EQUALIZATION
Appellee.)	

The above-captioned cases have been submitted to the Tax Equalization and Review Commission (“Commission”) without a hearing.

Norman H. Wright has appeared as legal counsel for CSG Systems, Inc. (“the Taxpayer”).

Kim B. Hawekotte, a Deputy County Attorney for Douglas County, has appeared as legal Counsel for the Douglas County Board of Equalization, (“County Board”).

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.
ISSUES**

Whether the net book value of taxable personal property listed for taxation in the year 2002 should be modified based on information provided to the Assessor during the tax year 2005.

Whether a refund of taxes paid upon a reduction in value may only be obtained upon a claim for refund.

II. FINDINGS

The Commission finds and determines that:

1. On or before December 22, 2005, the Taxpayer filed amendments to its lists of taxable personal property for the tax year 2002 with the Douglas County Assessor.
2. The Taxpayer on or before December 31, 2005, based on the amendments submitted to the Douglas County Assessor, filed with the Douglas County Treasurer a request (“claim”) for refund of tax for the tax year 2002.
3. The Douglas County Assessor refused verification of the proposed amendments for the tax year 2002.
4. The Taxpayer filed appeals of the County Assessor’s denial with the County Board.
5. The County Board affirmed the County Assessor’s denial of the Taxpayer’s proposed amendments.
6. The Taxpayer timely filed appeals of the County Board’s denial to the Commission.
7. The Taxpayer and the County Board, by stipulation and motion, have submitted the appeals to the Commission for consideration without a hearing.
8. The Taxpayer and the County Board have entered into and submitted a stipulation of facts and submitted exhibits.
9. The Taxpayer has submitted a brief and written argument.
10. The net book values in evidence are as follows:

Case No 06P-001

	Taxpayer Filing 2002	Taxpayer Amended 2005	County Assessor	County Board
Item 83527-07-B	\$3,017,521	\$2,945,699	\$3,017,521	\$3,017,521

Case No 06P-002

	Taxpayer Filing 2002	Taxpayer Amended 2005	County Assessor	County Board
Item 83526-07-B	\$5,682,505	\$5,384,502	\$5,682,505	\$5,682,505

Case No 06P-003

	Taxpayer Filing 2002	Taxpayer Amended 2005	County Assessor	County Board
Item 83519-07-B	\$1,937,867	\$1,903,277	\$1,937,867	\$1,937,867

**III.
APPLICABLE 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 Commission's rules and regulations or Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2006).
2. "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result... Statutory language is to be given its plain and ordinary meaning . . ."
Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist., 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996).

IV. ANALYSIS

The subject property in the above captioned appeals is personal property reported for taxation in tax year 2002. The Taxpayer has paid the resulting tax. In 2005, the Taxpayer determined that its 2002 personal property tax filings were erroneous for various reasons.

The Commission for reasons stated in its order of November 14, 2006, determined that it had jurisdiction over the Taxpayer's appeals by virtue of the provisions of Neb. Rev. Stat. §77-1233.04 (Reissue 2003). The Commission's order of November 14, 2006, did not determine whether the statute of limitations contained in Neb. Rev. Stat. §77-1734.01 (Reissue 2003) or the limitation contained in Neb. Rev. Stat. §77-1233.04 (Reissue 2003) is applicable to the Taxpayer's proposed amendments to its 2002 personal property tax schedules.

As noted above the Commission has determined that Section 77-1233.04 of the Nebraska Statutes is applicable to the Taxpayer's claim. Neb. Rev. Stat. §77-1233.04 (6) (Reissue 2003) allows a property owner with a properly corrected personal property tax return, to file a request for a refund within three years after the date the tax was due. The County Board's argument that the two year statute of limitations contained in Neb. Rev. Stat. §77-1734.01 (Reissue 2003), is applicable is not persuasive as it would render the requirement that a request for refund be filed within three years after the date the tax was due, as set forth in Neb. Rev. Stat. §77-1233 (6) (Reissue 2003), a nullity. The provision of 77-1233.04 (Reissue 2003), being relied on by the County, reads that "the taxpayer *may* (emphasis added) request a refund or credit of the tax in the manner prescribed in section 77-1734.01." The statute does not by its terms require use of Section 77-1734.01 of Nebraska Statutes to obtain a refund. The reference to Section 77-

1734.01 of Nebraska Statutes contained in Neb. Rev. Stat. 77-1233.04(6) (Reissue 2003) can best be construed as a directive of the procedure to be followed for the processing of a claim if a claim is filed. Filing a claim may be the only method for obtaining a refund if the County Assessor approves the proposed adjustment. However, an alternate process exists if the County Assessor and the County Board of Equalization reject a requested change in valuation followed by an appeal to the Commission.

When the Commission enters an order determining taxable value or in this case net book value, it is required to certify that decision to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final such officers shall correct their records accordingly. Neb. Rev. Stat. 77-5018 (Cum. Supp. 2006). Within 30 days of the entry of a final nonappealable order the county assessor is required to determine the amount of a refund due the person entitled to a refund, certify that amount to the county treasurer, and send a copy of the certification to the person entitled to the refund. Neb. Rev. Stat. 77-1736.06 (Reissue 2003). The refund is then paid from available funds. Id.

The Taxpayer's proposed amendments to its personal property schedules for the tax year 2002 were timely filed. The County Assessor denied the adjustments proposed by the Taxpayer, the County Board denied the Taxpayer's appeals of the County Assessor's determinations and the Taxpayer appealed to the Commission as permitted by law. Neb. Rev. Stat. §77-1233.06(2) (Reissue 2003).

The Parties have stipulated that net book value for the tax year 2002 of each item of the subject property is as follows: for item 83527-07-B, \$2,945,699; for item 83526-07-B, \$5,384,502; and for item 83519-07-B, \$1,903,277.

**V.
CONCLUSION OF LAW**

The Commission has exclusive subject matter jurisdiction over the above captioned appeal. Neb. Rev. Stat. §77-5013 (Cum. Supp. 2006)

The Douglas County Board of Equalization's denials of the changes of net book value requested by the Taxpayer were arbitrary or unreasonable and must be reversed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization are reversed.
2. Net book value or actual taxable value of the subject property for the tax year 2002 is:

Case No 06P-001

Item 83527-07-B \$2,945,699

Case No 06P-002

Item 83526-07-B \$5,384,502

Case No 06P-003

Item 83519-07-B \$1,903,277.

3. 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).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2002.
7. This order is effective for purposes of appeal June 7, 2007.

Signed and Sealed. June 7, 2007.

Wm. R. Wickersham, Commissioner

William C. Warnes, Commissioner

Susan S. Lore, Commissioner

Ruth A. Sorensen, Commissioner

SEAL

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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.