

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

MATTHEW T. MARKEY,)	
)	
Appellant,)	CASE NO. 06R-440
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	APPEAL FOR WANT OF JURISDICTION
DOUGLAS 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 21, 2006, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction Untimely filing) issued November 7, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Matthew T. Markey ("the Taxpayer") appeared, by teleconference, at the hearing. The Douglas County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Mr. James R. Thibodeau a Deputy County Attorney, for Douglas County, Nebraska. The Commission took statutory notice, received 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:

1. The Taxpayer is the owner of record of certain real property described in the appeal as Lot 9, Block 5, Grammercy Park, Omaha, Douglas County Nebraska("the subject property").
2. The Taxpayer's appeal was received by the Commission on August 31, 2006. (Case File)
3. The postmark on the mailing of the appeal was August 30, 2006. (Case File).
4. An Order to Show Cause and Notice of Hearing (Jurisdiction Untimely Filing) was issued by the Commission on November 7, 2006, directing the Taxpayer to show why his appeal should not be dismissed for want of jurisdiction.

II. 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 Commissions rules and regulations or Neb. Rev. Stat. §77-5016(3) (Supp 2005).
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 90 (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 (Cum. Supp 2004).

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 (Cum. Supp. 2004).
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 (Cum. Supp. 2004).

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 by the Taxpayer. The Taxpayer testified that the appeal was not timely filed because his effort at timely filing was either not received by the Commission or lost by the Commission. There is no evidence that a filing by the Taxpayer with the Commission was lost by the Commission. 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. CONCLUSION OF LAW

The Commission lacks jurisdiction over the Taxpayer's appeal.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Appeal of Matthew T. Markey concerning the taxable valuation of Lot 9, block 5, Grammercy Park, Omaha, Douglas County Nebraska is dismissed for want of jurisdiction.
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 (Reissue 2003).
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 22, 2006.



SEAL


Wm. R. Wickersham, Commissioner


Robert L. Hans, Commissioner


William C. Warnes, Commissioner

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 LW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.