

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

UNITED GRAIN, INC.)	CASE NO. 96R-78
)	
Appellant,)	
)	
v.)	
)	
JEFFERSON COUNTY BOARD)	INTERIM
OF EQUALIZATION,)	FINDINGS AND ORDERS
)	(Motion for Default Judgment)
Appellee.)	

Filed February 27, 1997

Appearances:

For the Appellant: Joseph H. Murray, Esq.
Attorney at Law
P.O. Box 210
Bruning, NE 68322

For the Appellee: Linda A. Bauer, Esq.
Jefferson County Attorney
411 4th Street
Fairbury, NE 68352

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman:

SUMMARY OF DECISION

Taxpayer requested a default judgment since County failed to file an answer or otherwise plead within the thirty-day period allowed in the Notice in Lieu of Summons. Commission denies the request for a default judgment, since the Commission's rules and regulations were not in effect at the time of the default.

NATURE OF THE CASE

United Grain, Inc. ("Taxpayer") owns certain agricultural real property located in Jefferson County, Nebraska. Taxpayer filed an appeal on August 21, 1996. The Commission issued a Notice in Lieu of Summons to the Jefferson County Board of Equalization dated August 29, 1996. The Notice was served via United States Postal Service, with return receipt requested. County acknowledged receipt of the Notice on August 30, 1996. The Notice included the following warning:

"Unless you file an appropriate written response with the Nebraska Tax Equalization and Review Commission, in person or by United States Mail, postage prepaid, to the Commission, at P. O. Box 94732, Lincoln, Nebraska, 68509-4732, **WITHIN THIRTY DAYS** after service of this Notice in Lieu of Summons upon you, in answer to the Notice of Appeal, and serve a copy of same on Appellant, the Commission may enter Findings of Fact and Conclusions of Law against you, and an Order may be entered for the relief demanded in the Appeal."

No written response was received within the allotted thirty days. On October 2, 1996, however, two days after the deadline, County did file an Answer. Taxpayer filed a *Motion for Show Cause Hearing* on January 10, 1997, regarding the failure of the County to file its Answer within the allotted time. Appellant also filed a *Motion for Continuance*, and further requested that the decision on the show cause hearing be made prior to the hearing on the merits, if such a hearing were to be held. Both parties filed written arguments with the Commission, waived a hearing and submitted the matter. This matter now comes on for decision.

The Commission's decision on this matter is governed by Neb. Rev. Stat. §77-77-5018 (Reissue 1996). That statute requires:

"Every decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed upon request to each party or his or her attorney of record."

DUTIES OF THE PARTIES

On or before June 1, the county assessor shall, before filing the certificate for real property, notify the record owner of every item of real property which has been assessed at a value higher than in the previous year. Neb. Rev. Stat. §77-1311.02 (Reissue 1996). Protests by taxpayers regarding such increases in valuation must be filed with the County Board of Equalization between June 1 and July 1 of each year. Neb. Rev. Stat. §77-1502 (Reissue 1996). The county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county, except agricultural and horticultural land, so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (Reissue 1996). "Appeals may be taken from any action of the county board of equalization to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act. The appeal shall be filed within thirty days after adjournment of the board which, for actions taken pursuant to sections 77-1502 and 77-1504, shall be deemed to be July 25 of the year in which the action is taken." Neb. Rev. Stat. §77-1510 (Reissue 1996).

"The Appellee shall have thirty (30) days from receipt of the Notice of Appeal issued by the Commission within which to answer. The answer shall be deemed filed when received by the Commission at its Office in Lincoln." Title 442, Neb. Admin. Code, Chapter 5, §002. (Effective November 25, 1996).

FINDINGS OF FACT

The Commission, in determining the case, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. *See* Neb. Rev. Stat. §77-5016(3) (Reissue 1996). The Commission may, however, evaluate the evidence presented to it utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

For the purposes of this hearing, the Commission has taken judicial notice of its own records in this case, pursuant to Neb. Rev. Stat. §77-5017(5) (Reissue 1996). From the pleadings submitted the Commission finds and determines as follows:

- I. That Taxpayer owns certain agricultural real property in Jefferson County, Nebraska, which is subject to taxation.

- II. That Taxpayer timely filed an appeal with the Commission.
- III. That County failed to answer the Notice in Lieu of Summons within thirty days of receipt of that Notice.
- IV. That County filed its Answer on October 2, 1996, two days after the deadline imposed under the Rules of the Commission.
- V. That the Rules of the Commission did not become effective until November 25, 1996.

JURISDICTION

The jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996).

CONCLUSIONS OF LAW

The Commission is given broad authority in executing its duties. For example, Neb. Rev. Stat. §77-5017 (Reissue 1996), states that the Commission, in resolving a contested case, "may make such orders as are appropriate for resolving the dispute" The Commission is also specifically authorized to make informal disposition of any case by stipulation, agreed settlement, consent order, or default in Neb. Rev. Stat. §77-5015 (Reissue 1996). The Commission is also authorized to adopt and promulgate rules and regulations to carry out the Tax Equalization and Review Commission Act in Neb. Rev. Stat. §77-5021 (Reissue 1996).

The Commission has, in fact, adopted rules and regulations, which have been codified in Title 442, Nebraska Administrative Code. Copies of these regulations were provided to every county assessor, every county board of equalization, and every county attorney in the State of Nebraska. The issue of a default judgment is addressed in these rules. These regulations have the force and effect of law. *Val-Pak of Omaha v. Department of Revenue of the State of Nebraska*, 249 Neb. 776, 781, 545 N.W.2d 447, 450 (1996). However, these regulations were not effective until November 25, 1996. Since the regulations were not effective when County failed to answer, County cannot be penalized for violating those regulations. The Commission must, therefore, and hereby does conclude as a matter of law that a default judgment should not be issued for failure to timely answer a Notice in Lieu of Summons when

the rules and regulations of the Commission were not yet effective.

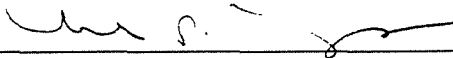
ORDER

IT IS, THEREFORE, ORDERED that:

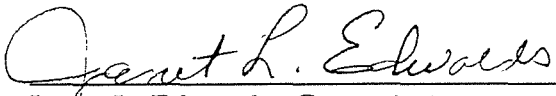
- I. The request for a default judgment is denied.
- II. This case should proceed to a hearing on the merits of Taxpayer's appeal, which hearing has been scheduled for the 25th day of March, 1997, at 1:00 o'clock p.m., or as soon thereafter as it may be heard.

IT IS SO ORDERED.

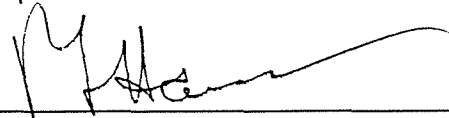
Dated this 27th day of February, 1996.



 Mark P. Reynolds, Chairman



 Janet L. Edwards, Commissioner



 Robert L. Hans, Commissioner

