

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Boes Family Limited Partner,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16C 0372

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on March 28, 2017. Myriel S. Hiner-Boes appeared by telephone on behalf of the Boes Family Limited Partner (the Taxpayer) Shakil A. Malik, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Commission received evidence and heard argument regarding the jurisdiction of the Commission to hear this appeal.

II. STANDARD OF REVIEW

The Commission obtains jurisdiction over an appeal when the appeal is timely filed, the filing fee is timely received and thereafter paid, and 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.¹ Any action of the County Board pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Commission on or before August 24 or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² Parties cannot confer subject matter jurisdiction on a

¹ See, Neb. Rev. Stat. 77-5013 (2016 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On September 14, 2016, the Commission received an envelope from the Taxpayer postmarked September 12, 2016. Inside the envelope was a letter from Myriel S. Boes stating that she wished to “challenge [the] assessment” of the property located at 420 North 48th Street, Omaha, NE. The envelope did not include an appeal form or the \$25.00 filing fee required for the Commission to take jurisdiction over an appeal or petition.⁴ It did include a copy of the “Notification of Board Action” from the Douglas County Board of Equalization dated August 9, 2016.

While it appears the Taxpayer intended to appeal the action of the Douglas County Board of Equalization, the Commission does not have jurisdiction to hear such an appeal. As stated before, the Commission obtains jurisdiction of an appeal from the action of a county board of equalization only if: 1) the Commission has the power or authority to hear the appeal, 2) the appeal is timely filed, 3) the filing fee is timely received and paid, and 4) a copy of the decision order, determination or action appealed from is timely filed.⁵

The deadline for filing the filing fee for tax year 2016 was on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁶ The Douglas County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2016 was September 10, 2016. Since September 10 was a Saturday, the deadline was extended until September 12, 2016. A filing fee 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 by law for filing the appeal.⁷ The envelope did not contain filing

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Neb. Rev. Stat. 77-5013(1) (2016 Cum. Supp.).

⁵ Neb. Rev. Stat. 77-5013(1) (2016 Cum. Supp.).

⁶ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁷ Neb. Rev. Stat. 77-5013(2) (2016 Cum. Supp.).

fees. (Case File). Therefore, the Commission determines that the appeal was not timely filed and the Commission has no jurisdiction over the above captioned matter.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato
1819 Farnam Stre. Ste H09 Civic Center
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
Omaha, NE 68183

as required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED April 7, 2017

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner