

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Valmont Industries, Inc.
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17C 0569 & 17C 0570

**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 December 21, 2017. Frederick D. Stehlik appeared at the hearing as legal counsel for Valmont Industries, Inc. (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 its jurisdiction to hear these appeals.

II. STANDARD OF REVIEW

Neb. Rev. Stat. §77-5013 provides that the Commission obtains jurisdiction over an appeal when the appeal form 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. “Timely filed,” in this context, means “if placed in the United States mail, postage prepaid ... on or before the date specified by law for filing the appeal or petition.”¹ Any action of the County Board pursuant to Neb. Rev. Stat. §77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 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

¹ Neb. Rev. Stat. §77-5013(2) (2016 Cum. Supp.).

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

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

III. ANALYSIS

The purpose of the hearing conducted on December 21, 2017, was to resolve two issues: whether the appeals were timely filed, and whether the person who signed the appeal forms was authorized to do so by law or by the Commission's rules.

The Douglas County Board adopted a resolution extending the deadline for hearing protests for tax year 2017 (Case File), so the filing deadline for tax year 2017 was Monday, September 11, 2017.⁴ On September 22, 2017, the Commission received an envelope containing appeals of two determinations of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009) (Case File). The envelope was postmarked September 19, 2017. Other markings on the envelope showed a previous postmark of August 29, 2017, as well as a stamped statement, "Return to sender – \$1.40 additional postage required for delivery. This agency refused mail with insufficient postage."

The plain language of Neb. Rev. Stat. §77-5013 requires that the appeal materials be placed in the mail, *postage prepaid*, prior to the filing deadline. The Nebraska Supreme Court has noted that "§ 77-5013(2) focuses only on whether the appeal was properly placed in the mail *with sufficient postage* and a legible postmark for delivery to TERC before the filing deadline."⁵ (emphasis added). The Commission's administrative rules contain the same requirement: "An Appeal/Petition is deemed to have been filed when [the materials] are mailed to the Commission at its office in Lincoln, Nebraska, by United States Mail, *postage prepaid*."⁶ (emphasis added). In this case, the appeal materials were mailed on August 29, 2017, without sufficient postage, and were refused for that reason; state agencies cannot be expected to pay additional postage to take delivery of mailings. The materials were not mailed with adequate postage until September 19, 2017, after the deadline for filing timely appeals. The appeals were not timely filed.

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

⁴ If a filing deadline is on a weekend or state or federally recognized holiday, the next business day becomes the filing deadline. Neb. Rev. Stat. §49-1203 (Reissue 2010).

⁵ *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705 at 709, 829 N.W.2d 652 at 656 (2013).

⁶ 442 Nebraska Administrative Code (NAC), Ch. 5 §001.07 (6/11).

Each appeal form was signed by Barbara Ricken in the capacity of “Authorized Agent.” The evidence produced at the hearing includes an affidavit in which Ms. Ricken averred that she is employed by Grant Thornton LLP. She does not assert that she is a licensed attorney, director, officer, or full-time employee of the Taxpayer. The rules of the Commission state, in relevant part, “An Appeal Form or Petition must be signed by a party, legal counsel for a party, or a person authorized by law or these rules.”⁷ When a party to an appeal is a corporation, it may sign an appeal or petition through a director, an officer, a full-time salaried employee, or another individual authorized by law or the governing documents of the corporation.⁸ In this case, the Taxpayer relies upon a Limited Power of Attorney document granting Grant Thornton, LLP, certain powers to act on the Taxpayer’s behalf. The authorized acts enumerated in the document do not include the power to sign a property tax appeal on the Taxpayer’s behalf, and the document states, in bold type, “No other acts, including representation in a court or other public forum, are authorized.” The person who signed the appeal form was not authorized to do so by law or by the Commission’s rules.

For the reasons described above, the Commission does not have jurisdiction to hear the above captioned appeals.

IV. CONCLUSION

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

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeals are 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:

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

⁷ 442 NAC Ch. 5 §001.04 (6/11).

⁸ 442 NAC Ch. 5 §001.05D (6/11).

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: March 15, 2018

Seal

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner