

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

Steve's Body and Paint Inc.,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee.

Case No: 18C 0121

**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 January 15, 2019. Steve Kalkowski, President, appeared telephonically on behalf of Steve's Body and Paint Inc. (the Taxpayer). Randy Fair, Keith County Attorney, appeared telephonically on behalf of the Keith County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and heard argument regarding its jurisdiction to hear this appeal.

**II. STANDARD OF REVIEW**

The Commission obtains jurisdiction over a petition when the petition 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.<sup>1</sup> Any action of a county board pursuant to Neb. Rev. Stat. §77-1502 may be appealed to the 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.<sup>2</sup> Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. §77-5013 on or before December 31 of each

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<sup>1</sup> Neb. Rev. Stat. §77-5013 (Reissue 2018).

<sup>2</sup> Neb. Rev. Stat. §77-1510 (Reissue 2018).

year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in §§77-1501 to 77-1510.<sup>3</sup> 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.<sup>4</sup>

### III. ANALYSIS

On September 27, 2018, the Commission received a petition in an envelope postmarked September 25, 2018. In addition to the Commission's standard appeal form, the envelope contained the required filing fee. The appeal form indicated that the Taxpayer had not "discovered" a valuation increase until after the protest hearing deadline. Because the documents and fee were received after the August 24 deadline for filing appeals in Custer County,<sup>5</sup> the Commission has jurisdiction to hear the petition only if a failure to give notice prevented the timely filing of a protest or appeal.

On or before June 1, each county assessor is required to notify the owner of record of every item of real property which has been assessed at a value different than in the previous year. Such notice is to be given by first-class mail addressed to the owner's last-known address.<sup>6</sup> Mr. Kalkowski testified that he received change-of-valuation notices for several other parcels, but not Parcel ID 000120300 (the Subject Property). He also testified that, after recent changes in postal service procedures, mail delivery to the Subject Property had been unreliable. Renae Zink, Keith County Assessor (the County Assessor), testified that change-of-valuation notices were printed at a central office in Lincoln, Nebraska, and then mailed to her office, where they were cross-checked for correctness and mailed individually to affected property owners. Her office maintained records of both the receipt and the mailing of the change-of-valuation notices. She testified that these records indicated that the change-of-valuation notice for the Subject Property was received from the printer in Lincoln and was sent to the post office for mailing to the Taxpayer.

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<sup>3</sup> Neb. Rev. Stat. §77-1507.01 (Reissue 2018).

<sup>4</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>5</sup> Custer County did not extend the protest hearing deadline under Neb. Rev. Stat. §77-1502. See Case File.

<sup>6</sup> Neb. Rev. Stat. §77-1315 (Reissue 2018).

Based on the evidence presented at the hearing, we find that the County Assessor met the statutory requirements for providing notice of the valuation change to the Taxpayer. This is true regardless of whether the mailing was subsequently mishandled by the postal service or by the Taxpayer.

Because the County Assessor met the statutory requirements for giving notice of the valuation change to the Taxpayer, a failure to give notice did not prevent the timely filing of a protest or appeal. Accordingly, the Commission does not have jurisdiction over the petition filed by the Taxpayer, and the petition must be dismissed.

#### **IV. CONCLUSION**

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

#### **ORDER**

#### **IT IS THEREFORE ORDERED THAT:**

1. The above captioned petition is dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Keith County Treasurer, and the officer charged with preparing the tax list for Keith County as follows:

Rena Zink  
Keith County Assessor  
511 N Spruce, Rm 200  
Ogallala, NE 69153

Ronda Johnson  
Keith County Treasurer  
511 N Spruce St., Room 103  
Ogallala, NE 69153

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

**SIGNED AND SEALED: January 16, 2019**

Seal

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner