

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

American Hospitality Inc.,  
Appellant,

v.

Scotts Bluff County Board of Equalization,  
Appellee.

Case Nos: 18C 0353 & 18C 0354

**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 November 27, 2018; this hearing was continued and then resumed on January 7, 2019.<sup>1</sup> American Hospitality Inc. (the Taxpayer) appeared telephonically at the hearing before the Commission. Jessica M. Laughlin, Deputy Scotts Bluff County Attorney, appeared telephonically on behalf of the Scotts Bluff 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 these appeals.

**II. STANDARD OF REVIEW**

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.<sup>2</sup> Any action of the 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>3</sup> When an

---

<sup>1</sup> The hearing was initially scheduled to resume on December 19, 2018, but did not resume on that day due to a scheduling error.

<sup>2</sup> Neb. Rev. Stat. §77-5013 (2016 Cum. Supp.).

<sup>3</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

appellate tribunal is without jurisdiction to act, the appeal must be dismissed.<sup>4</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>5</sup>

### III. ANALYSIS

An appeal or petition to the Commission is timely filed 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 or petition.<sup>6</sup> On August 30, 2018, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502. The County Board did not adopt a resolution extending the deadline for hearing protests,<sup>7</sup> so the filing deadline for taxpayers in Scotts Bluff County for tax year 2018 was August 24, 2018. The envelope containing the appeal was postmarked August 28, 2018. Therefore, the Commission determines that the appeal was not timely filed.

The Taxpayer noted that the parties had, subsequent to the filing of the appeal, come to an agreement as to the taxable value of the parcels in question, and executed Confession of Judgment paperwork reflecting that agreement.<sup>8</sup> The Taxpayer urged the Commission to take jurisdiction over the matter and enter an order modifying the taxable value of the property based upon the Confession of Judgment. As noted above, however, the Commission's jurisdiction to hear appeals is statutory in origin; parties may not confer jurisdiction upon the Commission by acquiescence or consent. Because the appeal was not timely filed, the Commission does not have jurisdiction, and the parties' agreement cannot cure the jurisdictional defect. These appeals must be dismissed.

### IV. CONCLUSION

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

---

<sup>4</sup> *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

<sup>5</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>6</sup> Neb. Rev. Stat. §77-5013(2) (Cum. Supp. 2016).

<sup>7</sup> See Case File.

<sup>8</sup> See Case File.

**ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeals are 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 Scotts Bluff County Treasurer, and the officer charged with preparing the tax list for Scotts Bluff County as follows:

Amy Ramos  
Scotts Bluff County Assessor  
1825 10th St.  
Gering, NE 69341

Heather Hauschild  
Scotts Bluff County Treasurer  
1825 10th St.  
Gering, NE 69341

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

**SIGNED AND SEALED:** January 15, 2019

Seal

\_\_\_\_\_  
Robert W. Hotz, Commissioner

\_\_\_\_\_  
James D. Kuhn, Commissioner