

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

RML Investments Inc.,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 19C 0510

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 28, 2019. RML Investments Inc. (the Taxpayer) appeared telephonically through its President, Ronn Winquest. Paul Vaughan, Deputy Dodge County Attorney, appeared telephonically on behalf of the Dodge County Board of Equalization (the County Board). The Commission took notice of its case files, received evidence, and heard argument regarding its jurisdiction 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 § 77-1502 may be appealed to the Commission in accordance with § 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 § 77-1502.² 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.³

¹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

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

III. ANALYSIS

On September 12, 2019, the Commission received an envelope postmarked September 10, 2019, containing an appeal of a determination of the County Board, a completed and signed appeal form, and a check in the amount of \$25 for filing fees. The County Board did not adopt a resolution extending the deadline for hearing protests for tax year 2019, so the filing deadline for appeals of County Board actions taken pursuant to Neb. Rev. Stat. §77-1502 was August 26, 2019.⁴

Ronn Winquest testified on behalf of the Taxpayer. According to his testimony, he received a blue postcard from the Dodge County Assessor (the Assessor), with notice of the 2019 assessed value of the subject property at \$910,121, and advising him of his protest rights. This card stated that a protest must be filed by July 1, 2019.⁵ The Taxpayer filed a protest. When Winquest met with a referee to discuss the value of the property, the referee advised him that the Assessor had recommended a lower value than previously noticed, at \$867,914. The County Board adopted this recommendation and issued a decision to that effect on July 30, 2019.

The Taxpayer was dissatisfied with the County Board's decision, and Winquest reviewed the Commission's appeal form. That appeal form states, in part:

If you received a notice of valuation change from the county assessor and were required to file a protest on or before June 30 then an appeal from a decision on the protest, must be filed on or before August 24, unless the protest hearing deadline has been extended.⁶

Because the Taxpayer had received the postcard stating that his protest needed to be filed by July 1, he concluded that the deadlines in this paragraph did not apply to him. The next section on the Commission's appeal form includes the following language:

If a County Board of Equalization made an initial determination that property is undervalued or overvalued, it proposed a value and sent notice of that value. An appeal of

⁴ Since August 24, 2019 was a Saturday, the appeal filing deadline was extended by statute to Monday, August 26, 2019. See Neb. Rev. Stat. § 49-1203 (Reissue 2010).

⁵ Since June 30, 2019 was a Sunday, the protest filing deadline was extended by statute to Monday, July 1, 2019. See Neb. Rev. Stat. § 49-1203 (Reissue 2010).

⁶ Appeal form filing instructions, paragraph 7. The official appeal form maintained by this Commission has two sides; the filing instructions begin on page one (the front page) and continue onto page 2 (the back page). The appeal form submitted by the Taxpayer and contained in the case file includes only the first or front page, where information about the appellant and the property is filled in. The full form is available and can be reviewed at the Commission's website, www.terc.nebraska.gov. As noted above, since August 24, 2019 was a Saturday, the appeal filing deadline was extended by statute to Monday, August 26, 2019. See Neb. Rev. Stat. § 49-1203 (Reissue 2010).

a Board's decision on a protest of that value must be filed on or before October 15, unless the protest hearing deadline has been extended.⁷

Because his protest had been due on July 1 rather than June 30, and because the referee had advised him of a recommended change to the assessed value of his property, the Taxpayer concluded that the October 15 deadline applied to the appeal.

As noted above, if the deadline for filing any tax valuation protest or appeal falls on a weekend or legal holiday, the deadline is extended to the next business day.⁸ For this reason, in tax year 2019, the statutory protest deadline of June 30⁹ and the statutory appeal deadline of August 24¹⁰ were extended to July 1 and August 26, respectively. This information is noted on the Commission's appeal form: "If a filing deadline falls on a weekend or state or nationally observed holiday, the filing deadline is extended to the next business day."¹¹

In the broader picture, the August 24 deadline and the October 15 deadline relate to separate statutory procedures for the assessment of real property. When a taxpayer disagrees with the assessed value determined by the county assessor, he or she initiates a protest proceeding by filing a protest with the county; appeals from protests following this statutory track are due by August 24 or September 10.¹² However, after March 19 and until July 25 or August 10, when a county assessor independently determines that a parcel of real property has been overvalued or undervalued, the assessor shall make a report to the county board.¹³ If the county board adjusts the value, notice of the change is sent to the property owner and the property owner has the right to protest the new value to the county board.¹⁴ Appeals from protests following this statutory track are due by October 15 or October 30.¹⁵

It is clear from the testimony of Winquest that the Taxpayer initiated the review process by filing a protest of the assessed value of the Taxpayer's property. The referee's recommendation

⁷ Appeal form filing instructions, paragraph 7. Actions of the County Board pursuant to Neb. Rev. Stat. § 77-1504 may be appealed to the Commission on or before October 15, or on or before October 30 if the county has adopted a resolution to extend the protest hearing deadline.

⁸ Neb. Rev. Stat. § 49-1203 (Reissue 2010).

⁹ See Neb. Rev. Stat. § 77-1502(1) (Reissue 2018).

¹⁰ See Neb. Rev. Stat. § 77-1510 (Reissue 2018).

¹¹ The form also contains, in bold capital letters, the following statement: **IT IS YOUR RESPONSIBILITY TO REVIEW THE STATUTES TO DETERMINE WHETHER AN APPEAL MAY BE MADE TO THE COMMISSION AND TO DETERMINE THE APPLICABLE FILING DEADLINE.**

¹² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-1315.01 (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-1504 (Reissue 2018).

¹⁵ *Id.*

(or the Assessor's recommendation) that the assessed value of the Taxpayer's property be reduced in the course of the protest process did not transform a taxpayer-initiated protest under § 77-1502 into an assessor-initiated process under §§ 77-1315.01 and 77-1504. The applicable deadline was August 26, 2019, and the Taxpayer's appeal was not filed until the postmark date of September 10, 2019. The appeal was not filed by the statutory deadline, and it should be dismissed.

IV. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. § 77-5018 (Reissue 2018), this decision, if no appeal is filed, shall be certified within thirty days to the Dodge County Treasurer, and the officer charged with preparing the tax list for Dodge County as follows:

Gail Bargstadt
Dodge County Treasurer
PO Box 999
Fremont, NE 68026

Debbie Churchill
Dodge County Assessor
435 N. Park, Room 202
Fremont, NE 68025

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

SIGNED AND SEALED: November 5, 2019

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner