

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

Pamela F. Buchholz,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19P 0003

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on October 28, 2019. Mark Buchholz, husband of Pamela F. Buchholz (collectively, the Taxpayer) appeared telephonically. Jennifer D. Chrystal-Clark, 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, 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 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>1</sup> Any person otherwise having a right to appeal may petition the Commission on or before December 31 of each 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.<sup>2</sup> The failure of a county board of equalization to act on a protest constitutes a denial of the protest.<sup>3</sup> Any action of the County Board pursuant to §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

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

<sup>2</sup> Neb. Rev. Stat. §77-1507.01 (Reissue 2018).

<sup>3</sup> *Sumner & Co. v. Colfax Cty.*, 14 Neb. 524, 16 N.W. 756 (1883), at 525-526. See *Darnall Ranch v. Banner Cty. Bd. of Equal.*, 280 Neb. 655, 789 N.W.2d 26 (2010) for discussion of this rule as applied to appeals before the Commission.

hearing protests under Neb. Rev. Stat. §77-1502.<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

The County Board adopted a resolution extending the deadline for hearing protests,<sup>6</sup> so the filing deadline for tax year 2019 was September 10, 2019. On September 23, 2019, the Commission received an envelope postmarked September 20, 2019, containing a signed appeal form and a money order in the amount of \$25 for filing fees. The envelope did not contain a copy of a determination by the County Board, but the appeal form stated, “we sent in our original protest to the Assessor’s office but never heard back from them, when I called recently they told me they never received anything.”<sup>7</sup>

As noted above, a County Board’s failure to act on a protest is deemed to be a denial of the protest, and a party may file a petition with the Commission if failure to give notice prevents timely filing of an appeal. It follows that, if the County Board either acted or failed to act on a properly filed protest, but failed to give notice of its action to the Taxpayer, the Taxpayer’s September 23 filing could constitute a valid petition.

At the hearing, Mark Buchholz testified that he filed a protest sometime in April, May, or June 2019. He did not keep copies of the form he used to file the protest or any of the documents he submitted. Through counsel, the County Board made the representation that it had no record of such a protest being filed.

We find that the Taxpayer did not present sufficient evidence to prove that it properly filed a protest with the County Board. The Taxpayer did not present any documentary evidence to support the assertion that it filed a protest, and Buchholz’s testimony was very imprecise as to the date of the alleged filing. Moreover, Buchholz testified that he filed the protest in April, May, or June. Protests cannot be filed prior to completion of the assessment roll,<sup>8</sup> and state law permits

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<sup>4</sup> Neb. Rev. Stat. §77-1510 (Reissue 2018).

<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> Case file.

<sup>7</sup> Case file.

<sup>8</sup> Neb. Rev. Stat. §77-1502(1) (Reissue 2018).

county assessors until June 1 to complete the roll.<sup>9</sup> Even when viewed in the light most favorable to the Taxpayer, the evidence does not establish that a protest was filed within the required time frame.

The appeal was not filed by the statutory deadline, and the Taxpayer has not established that a failure to give notice prevented timely filing of the appeal. The appeal 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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

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

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

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

**SIGNED AND SEALED:** November 4, 2019

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>9</sup> Neb. Rev. Stat. §77-1315 (Reissue 2018).