

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

NDR Corporation,  
Appellant,

v.

Howard County Board of Equalization,  
Appellee.

Case No: 19A 0212

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on January 15, 2020. NDR Corporation (the Taxpayer) appeared through David Inman, Vice President. Kathy Hirschman, Chairperson, appeared telephonically on behalf of the Howard 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 Commission has the authority to hear the appeal, 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.<sup>1</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>2</sup>

**III. ANALYSIS**

Neb. Rev. Stat. § 77-1309 is one of a series of statutes enacted in 2019 to allow for review of the valuation of real property destroyed by a natural disaster after the normal assessment date.<sup>3</sup> It provides that an action of a county board of equalization changing the assessed value of such property, or determining that no change is appropriate, can be appealed to the Commission

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

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

<sup>3</sup> 2019 Neb. Laws LB 512 had an operative date of May 31, 2019.

within thirty days after the decision of the county board. On October 15, 2019, the Commission received an envelope containing a copy of a determination of the County Board made on September 11, 2019,<sup>4</sup> pursuant to Neb. Rev. Stat. § 77-1309.<sup>5</sup> The envelope was postmarked October 11, 2019. It did not contain a copy of the Commission’s appeal form or any payment for a filing fee. On November 15, 2019, the Taxpayer filed a completed appeal form and submitted a check for the \$25 filing fee.

The primary issue addressed at the show cause hearing was whether the filing fee was “timely received.”<sup>6</sup> David Inman conceded that the Taxpayer did not include the filing fee with its initial filing, and the filing fee was not submitted until well after the statutory deadline. He testified that he read LB 512, the legislation which is now codified as Neb. Rev. Stat. §§ 77-1307 through 77-1309, but the legislation did not make mention of a required filing fee.

We acknowledge that neither LB 512 nor the codified statutes make reference to the filing fee. However, when the Legislature enacts a law affecting an area which is already the subject of other statutes, it is presumed that it did so with full knowledge of the preexisting legislation.<sup>7</sup> Statutes relating to the same subject, although enacted at different times, are in *pari materia* and should be construed together.<sup>8</sup> All statutes relating to the same subject are considered as parts of a homogenous system.<sup>9</sup> Neb. Rev. Stat. § 77-5013(3) provides that “The filing fee for *each appeal or petition filed with the commission* is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity” (*emphasis added*). The rules of statutory interpretation require us to consider these statutes as part of a homogenous system. The same rules require us to presume that the Legislature was aware of the general requirement of the \$25 filing fee, and that it would have excluded appeals under Neb. Rev. Stat. § 77-1309 from that requirement if that were its intention.

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<sup>4</sup> The determination states that the decision was made on September 10, 2019, but it was not signed by the Chairperson of the County Board until September 11, 2019. We assume for the purpose of this order that September 11, 2019, is the relevant date for determining the timeliness of the appeal.

<sup>5</sup> Neb. Rev. Stat. § 77-1309(4) (2019 Supp.)

<sup>6</sup> See Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

<sup>7</sup> *In re 2007 Administration of Appropriations of the Waters of the Niobrara River*, 283 Neb. 629, 820 N.W.2d 44 (2012).

<sup>8</sup> *Mahnke v. State*, 276 Neb. 57, 751 N.W.2d 635 (2008).

<sup>9</sup> *Caniglia v. Caniglia*, 285 Neb. 930, 830 N.W.2d 207 (2013).

Although the Taxpayer did submit a payment for the filing fee on November 15, 2019, the deadline for filing all of the required materials, including the filing fee, was October 11, 2019. This is a jurisdictional requirement.<sup>10</sup> Therefore, since the filing fee was not timely received the Commission does not have jurisdiction over the appeal.

#### IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal and the appeal must be dismissed.

#### **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 Howard County Treasurer, and the officer charged with preparing the tax list for Howard County as follows:

Jackie Synowski  
Howard County Treasurer  
612 Indian Ste 9  
St. Paul, NE 68873

Neal Dethlefs  
Howard County Assessor  
612 Indian St, # 10  
St. Paul, NE 68873

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

**SIGNED AND SEALED:** January 21, 2020

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>10</sup> Neb. Rev. Stat. §77-5013(1).