

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kristen H. Malmstrom,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 19R 0403

**ORDER UPON RECONSIDERATION
FOR DISMISSAL WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on October 10, 2019. Kristen H. Malmstrom (the Taxpayer) appeared telephonically at the hearing before the Commission. Shane Strong, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection, the Commission took notice of its case file 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.

On October 15, 2019, the Commission issued an order finding that it had jurisdiction to hear the appeal. The matter was consolidated with the Taxpayer's appeal for tax year 2018, Case No. 18R 0073, and scheduled for a hearing on the merits on December 5, 2019. However, upon further review, we find that the decision issued October 15, 2019, was in error, and we now issue this order to correct that error.

II. STANDARD OF REVIEW

Before reaching the legal issues presented for review, it is the duty of an appellate tribunal to determine whether it has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties.¹ The absence of subject matter jurisdiction may be raised at any time by any party or by a tribunal sua sponte.² 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

¹ *Sutton v. Killham*, 285 Neb. 1, 825 N.W.2d 188 (2013).

² *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 635 N.W.2d 112 (2001).

the decision, order, determination, or action appealed from, is timely filed.³ 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 hearing protests under Neb. Rev. Stat. §77-1502.⁴ 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.⁵

III. ANALYSIS

In our previous order on the issue of jurisdiction in this case, we found as follows:

On September 9, 2019, the Commission received from the Taxpayer an envelope containing a determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502, and a check for \$25. The County Board adopted a resolution extending the deadline for hearing protests, so the filing deadline for Douglas County for tax year 2019 was September 10, 2019.⁶ The envelope containing the determination and the check was postmarked September 6, 2019, and was received by the Commission on September 9, 2019. [...] On September 17, 2019, the Commission received an envelope containing a completed, signed appeal form.⁷

We went on to examine the issue of whether the Taxpayer's failure to file a signed appeal form by the September 10 appeal deadline deprived the Commission of jurisdiction, and we concluded that it did not.

However, in concluding that we had jurisdiction to hear the appeal, we overlooked the fact that the determination of the County Board filed by the Taxpayer on September 9, 2019, did not relate to tax year 2019. What the Taxpayer filed was a copy of the County Board's 2018 determination on the same parcel, which is the subject matter of Case No. 18R 0073.⁸ Although our jurisdictional statute does not require use of the Commission's appeal form, the statute *does* require that a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, be filed before the deadline. Because this is a jurisdictional requirement, it cannot be cured after the deadline prescribed by statute.⁹

³ Neb. Rev. Stat. §77-5013 (Reissue 2018).

⁴ Neb. Rev. Stat. §77-1510 (Reissue 2018).

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

⁶ Douglas County Board of Equalization, Resolution No: 81, Adopted May 21, 2019.

⁷ Order Finding Jurisdiction, October 15, 2019, case file.

⁸ Case file.

⁹ See *Creighton*.

Accordingly, the Commission does not have jurisdiction to hear this appeal, and the appeal must be dismissed.

The parties should note that this decision has no bearing on the Taxpayer's pending appeal in Case No. 18R 0073, which remains scheduled for hearing on December 5, 2019.

IV. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The Order Finding Jurisdiction issued October 15, 2019, is reversed.
2. The above captioned appeal is dismissed with prejudice.
3. The Order for Single Commissioner Hearing and Notice issued October 18, 2019, is amended to pertain only to Case No. 18R 0073.
4. 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

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

SIGNED AND SEALED: November 4, 2019

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner