

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

CMB Holdings LLC,  
Appellant,

v.

Douglas County Board of  
Equalization,  
Appellee.

Case No. 22C 0787

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on November 22, 2022 at 3:00 PM. Catherine Bloom appeared telephonically on behalf of CMB Holdings LLC (the Taxpayer). 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. APPLICABLE LAW**

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> 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

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

Neb. Rev. Stat. § 77-1502.<sup>2</sup> An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.<sup>3</sup> If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction. When an 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. FINDINGS OF FACT

On September 12, 2022, the Commission received an appeal form and a copy of a decision of the Douglas County Board of Equalization. A check made out to the Douglas County Board of Equalization was also among the appeal materials. Additionally, the appeal form reflected Catherine Bloom as the owner of the parcel, rather than CMB Holdings LLC.

Legal Counsel for the Commission attempted to contact Bloom by telephone on September 12, 2022, and left a voice message informing Bloom of the error on the check and appeal form. Legal Counsel sent a letter to Bloom on September 16, 2022, again informing her of the discrepancies and her right to request a hearing regarding the Commission's jurisdiction to hear the merits of her appeal.

On November 2, 2022, the Commission received a letter from Bloom postmarked October 31, 2022, containing a check for the required filing fee<sup>6</sup>, along with an updated appeal form reflecting Bloom as a Member of CMB Holdings LLC. The Commission construed this request as a request for a hearing to determine whether the Commission has authority to hear the appeal on the merits.

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<sup>2</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>3</sup> See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<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> Check #1195, See Appeal Form/Receipt in Case File

#### IV. 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>7</sup>

The deadline for filing the filing fee for tax year 2022 was on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.<sup>8</sup> The Douglas County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2022 was September 12, 2022<sup>9</sup>.

A filing fee is timely received 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.<sup>10</sup> The initial receipt of appeal materials on September 12, 2022, did not contain a filing fee as the enclosed check was made out to the Douglas County Board of Equalization, rather than the Tax Equalization and Review Commission. The envelope containing the correct filing fee was postmarked October 31, 2022, and received by the Commission on November 2, 2022.

As the required filing fee was not timely received, and as the receipt of the required filing fee is a jurisdictional requirement before the Commission may hear the merits of an appeal, the Commission determines that the appeal was not timely filed.

#### V. CONCLUSION

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

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<sup>7</sup> Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

<sup>8</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>9</sup> As September 10, 2022, fell on a non-business day, the deadline to file an appeal for decisions of the Douglas County Board was extended to September 12, 2022.

<sup>10</sup> Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

**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 H02  
Omaha, NE 68183

Diane Battiato  
Douglas County Assessor  
1819 Farnam St, Ste H09 and  
4th Floor  
Omaha, NE 68183

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

**SIGNED AND SEALED:** December 13, 2022



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Steven A. Keetle, Commissioner

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James D. Kuhn, Commissioner