

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

Circo Enterprises 9 LLC,
Appellant,

Case Nos. 22C 0865 & 22C 0866

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Douglas County Board of
Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 12, 2022 at 1:00 PM. Steven Davidson (for the Taxpayer) appeared telephonically. Jennifer 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.¹ 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

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

adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² 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.³ 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.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. FINDINGS OF FACT

On September 14, 2022, the Commission received, via inter-agency mail from the Nebraska Department of Revenue, an envelope that was originally hand-delivered to Taxpayer Assistance on September 9, 2022. That envelope contained two appeal forms, two county board decisions, and the appropriate filing fees. However, the statutory deadline for receipt or postmark of appeals from Douglas County was September 12, 2022.

IV. ANALYSIS

The Taxpayer's attorney submitted an affidavit acknowledging that its courier had mistakenly delivered the appeal materials to the Taxpayer Assistance counter of the Nebraska Department of Revenue, a different agency in the same building as the Commission⁶. The Taxpayer argues that an individual at the Taxpayer Assistance counter accepted the appeal materials without comment, did not inform the Taxpayer's courier that the Taxpayer Assistance counter was not the Commission, and instead forwarded the materials on to

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

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

⁴ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

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

⁶ The building in question is the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. However, the Taxpayer Assistance is on a different floor than the Commission's offices.

the Commission. The Taxpayer argues that this situation has all the same hallmarks as the ‘mailbox rule’.

The mailbox rule is codified in the Commission’s statutes as Neb. Rev. Stat. § 77-5013(2) and states in its entirety:

A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, 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 the filing of an appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

The Taxpayer argues that because the appeal materials were timely delivered to a government agency, the Department of Revenue, that had an internal and reliable procedure to ensure that the appeal materials were delivered to the Commission, the Commission should exercise its discretion and apply the mailbox rule and deem the appeals timely filed. We disagree.

Because the Commission’s mailbox rule is codified in statute, our analysis begins there. “[The Commission] gives statutory language its plain and ordinary meaning and will not look beyond the statute to determine the legislative intent when the words are plain, direct, and unambiguous.”⁷ Here, Neb. Rev. Stat. § 77-5013(2) clearly specifies that, in order for a taxpayer to benefit from the mailbox rule, the appeal materials must be “placed in the United States mail.” The statute does not provide the same benefit when a taxpayer mistakenly delivers appeal materials to a different government agency, and we decline to read that situation into the statute.⁸ Further, the Taxpayer does not demonstrate that the Taxpayer Assistance counter,

⁷ *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 766, 896 N.W.2d 887, 898 (2017).

⁸ The more general presumption of mailing found in Neb. Rev. Stat. §49-1201 (Reissue 2021) also requires appeal materials to be transmitted through “the United States mail.”

Department of Revenue, or any other Nebraska governmental agency has any affirmative duty to forward items to another agency.

It is the Taxpayer's duty to ensure that appeals to the Commission are timely filed. The fact that the Taxpayer's courier delivered the appeal materials to a different agency within the same building as the Commission is not relevant. Neb. Rev. Stat. § 77-5013(1) states:

The commission obtains exclusive jurisdiction over an appeal or petition when: (a) The commission has the power or authority to hear the appeal or petition; (b) An appeal or petition is timely filed; (c) The filing fee, if applicable, is timely received and thereafter paid; and (d) In the case of an appeal, 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.⁹

The only situation in which the Commission has authority to hear an appeal received after the filing deadline, is if the Commission receives the appeal materials via the United States mail, and the envelope shows a legible postmark bearing a date on or before the filing deadline¹⁰.

Because the Taxpayer failed to timely deliver the appeal materials to the Commission, or place the appeal materials in the United States mail prior to the filing deadline, the appeals must be considered untimely, and the Commission lacks statutory authority to hear the merits of untimely appeals.

V. CONCLUSION

⁹ Neb. Rev. Stat. § 77-5013(1) (Supp. 2020).

¹⁰ Neb. Rev. Stat. § 77-5013(2) (Supp. 2020).

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

THEREFORE IT IS ORDERED:

1. The above captioned appeals are 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: November 4, 2022

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner