

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

Cheema Investments LLC,
Appellant,

Case No. 23C 0524

v.

Dawes County Board of
Equalization,
Appellee.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on November 6, 2023 at 1:00 PM. Kuldip Singh appeared telephonically on behalf of Cheema Investments LLC (the Taxpayer). No one appeared on behalf of the Dawes 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 adopted a resolution to extend the deadline for hearing protests under

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

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

Singh testified he mistakenly omitted the filing fee from the initial mailing to the Commission and it was not his intention to deceive or wrongfully withhold the required fee. Singh also stated he did not receive his county board decision until August 23, 2023. When he did receive his decision, Singh testified he contacted the Commission and was informed his appeal materials must be received by the Commission, or postmarked on or before August 24, 2023, to be considered timely filed.

Singh argued Commission regulations allow the Commission to enter an order to cure filing defects and asks the Commission to enter such an order so that his case can move forward.

IV. ANALYSIS

On August 28, 2023, the Commission received an envelope, postmarked August 23, 2023, containing an appeal of the determination of the Dawes County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. The envelope did not contain the applicable \$85.00 filing fee. The deadline for filing the filing fee for tax year 2023 was on or before August 24 or on or before September 10

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).

if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁶ The Dawes County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year was August 24, 2023. 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.⁷ The envelope containing the required filing fee was postmarked September 26, 2023, and received by the Commission on September 28, 2023.

The Taxpayer raised a Commission regulation providing that the Commission may issue “an order requiring any defects in the execution of the appeal or petition to be cured within a reasonable time.”⁸ However, Nebraska law provides the Commission with exclusive jurisdiction to hear an appeal 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.

Only the requirements of this subsection shall be deemed jurisdictional.⁹

As the statute specifies, the timely receipt of the required filing fee is a jurisdictional requirement. While Commission regulations contemplate correction of non-jurisdictional defects, the language of § 77-5013 is

⁶ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

⁷ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

⁸ 442 Neb. Admin. Code, ch.5, § 002.01 (6/7/2021).

⁹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

clear that without timely receipt of the proper filing fee, the Commission has no jurisdiction over an appeal. Without jurisdiction, the Commission must dismiss the appeal.¹⁰

Therefore, the Commission determines that the appeal was not timely filed.

V. 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 Dawes County Treasurer, and the officer charged with preparing the tax list for Dawes County as follows:

Sam Wellnitz
Dawes County Treasurer
PO Box 790
Chadron, NE 69337

Roberta Lindy Coleman
Dawes County Assessor
451 Main St
Chadron, NE 69337

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

SIGNED AND SEALED: November 8, 2023



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

¹⁰ See *Mid. Am. Agri. Prds. v. Perkins Cty. Bd. of Equalization*, 312 Neb. 341, 349, 979 N.W.2d 95, 100 (2022).