

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

BHRHUD LP,  
Appellant,

v.

Douglas County Board of  
Equalization,  
Appellee.

Case No. 23C 1693

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on January 23, 2024, at 11:00 AM. Steven Ranum appeared telephonically on behalf of BHRHUD LP (the Taxpayer). Landon L. Friesen, 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. Exhibits 1-3 were admitted into evidence.

**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**

#### **A. Testimony of Neeraj Agarwal**

Neeraj Agarwal oversees the operations of the Subject Property. Agarwal testified the Appellant had relocated from its 3814 Farnam Street address over one year ago. However, the Appellant had been having mail which was sent to the 3814 Farnam address forwarded to a PO Box under the control of the Appellant. Agarwal stated he had no prior issues with the forwarding of mail and continues to receive forwarded mail at the PO Box. Agarwal testified he did not receive notice of the 2023 change in valuation, but if he had received it, he would have timely protested the valuation increase.

#### **B. Testimony of Christine Seitz**

Christine Seitz is the Real Estate Records Supervisor with the Douglas County Assessor/Register of Deeds. Seitz confirmed the address on record with the Assessor's Office when the valuation notices were generated was the 3814 Farnam Street address.<sup>6</sup> Seitz also testified the valuation notice sent by the Assessor's Office was

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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> Exhibits 2 and 3.

returned from the US Postal Service indicated as unable to forward. Seitz indicated all returned mail received by the Assessor's Office is manually entered into a spreadsheet by Assessor staff indicating the parcel identification number, the taxpayer name, and the reason for return.

#### IV. ANALYSIS

On December 11, 2023, the Commission received an envelope containing an appeal and material regarding a determination of the County Board made pursuant to Neb. Rev. Stat. § 77-1502. The Douglas County Board adopted a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2023 was September 10, 2023. However, the documents received indicated the filing was not an appeal pursuant to Neb. Rev. Stat. § 77-1510, but rather a petition pursuant to Neb. Rev. Stat. § 77-1507.01.

Neb. Rev. Stat. § 77-1507.01 states:

Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if *a failure to give notice* prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510 (emphasis added).

Here, the Taxpayer argues its failure to receive notice is evidence the County Board failed to give notice as required by Neb. Rev. Stat. § 77-1315.<sup>7</sup> Resolution of this issue requires close examination of the actual statutory language. Under Neb. Rev. Stat. § 77-1315(2), when a valuation by a County Assessor is different from the valuation of the previous tax year, notice “shall be given by first-class mail addressed to such owner’s last-known address.”

In the record of this proceeding, there is evidence the change of valuation notice was given as required by Neb. Rev. Stat. § 77-1315.

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<sup>7</sup> The statute requires that, “[s]uch notice shall be *given* by first-class mail addressed to such owner’s last-known address.” Neb. Rev. Stat. § 77-1315(2) (emphasis added).

Mailing of the notice to the last known address of the Taxpayer was supported by the return of the envelope, and subsequent documentation of the returned envelope by Assessor staff. Competent evidence supports the conclusion that notice was given.

As required by Neb. Rev. Stat. § 77-1507.01, in order for the Taxpayer to assert the Commission has authority to exercise jurisdiction in this matter, the Taxpayer must first show there was a failure to give notice of a valuation change. The Commission concludes there was no such failure. Further, Neb. Rev. Stat. § 77-1507.01 does not allow a taxpayer to simply assert it did not receive or read the notice; the plain words of the statute require a “failure to give notice.” The Taxpayer has not proven that notice was not given under the facts of this case. We will not construe these statutes that require that notice be given to require the Assessor to prove notice was actually received by the Taxpayer.

## 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 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

Walt Peffer  
Douglas County Assessor  
1819 Farnam St, 4th Floor  
Omaha, NE 68183

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

**SIGNED AND SEALED:** March 4, 2024



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner