

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

Ronald L. Gustafson,
Appellant,

Case No. 23R 1681

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Lancaster County Board of
Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on November 14, 2023 at 1:00 PM. Ronald L. Gustafson (the Taxpayer) appeared telephonically. Daniel J. Zieg, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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

Philip Swaroff testified he has been a friend of the Taxpayer for several years. Swaroff testified the Taxpayer suffers from a cognitive impairment and memory issues which caused him to be confused regarding the filing dates.

Gustafson testified he timely filed a protest with the Lancaster County Board of Equalization and had received the decision on his protest on or about August 9, 2023.

IV. ANALYSIS

On September 28, 2023, the Commission received appeal documents and a filing fee regarding an appeal of a determination of the Lancaster County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502.

The deadline for filing the appeal for tax year 2023 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 77-1502.⁶ The Lancaster County Board did adopt a resolution extending

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

the deadline for hearing protests, and as September 10, 2023 fell on a Sunday, the appeal deadline was extended to September 11, 2023.⁷

An appeal 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.⁸ The Commission did not receive the appeal materials until September 28, 2023. While the Taxpayer asks the Commission to consider the Taxpayer's condition and exercise discretion to waive the filing deadline, that would constitute equitable relief. As an administrative agency, the Commission only has the jurisdiction and authority provided to it by statute.⁹ The Commission has not had equitable power since Neb. Rev. Stat. § 77-1511 was repealed in 2001.¹⁰

Accordingly, while the Commission is sympathetic to the Taxpayer's circumstances, the Commission cannot, by law, alter or waive the requirement for appeal documents to be postmarked or received by the filing deadline. Therefore, the Commission determines the appeal was not timely filed and perfected.

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 Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster County as follows:

⁷ Neb. Rev. Stat. § 49-1203 (Reissue 2021).

⁸ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

⁹ See *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 873 N.W.2d 201 (2016).

¹⁰ See Laws 2001, LB 465, § 12.

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Lancaster County Treasurer
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Dan Nolte
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3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED: November 20, 2023



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner