

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

Peltz Companies, Inc.,
Appellant,

Case No. 24C 0669

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Box Butte County Board of
Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on December 5, 2024, at 1:00PM. Cindy Schoeneman, the Corporate Secretary of Peltz Companies, Inc., appeared telephonically on behalf of the Taxpayer. Marissa Curtiss, Box Butte County Attorney, appeared telephonically on behalf of the Box Butte 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

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

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 Neb. Rev. Stat. § 77-1502.² 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.³

III. FINDINGS OF FACT

The Taxpayer's appeal form and County Board decision were received by the Commission on August 27, 2024. The envelope containing these materials was not postmarked. The filing fee for the appeal was not included in the envelope but was received in a later mailing September 9, 2024. The envelope containing the fee was postmarked September 3, 2024. The deadline for filing appeals from Box Butte County was August 26, 2024.⁴

Cindy Schoeneman testified she was the person who filed the protest and appeal on behalf of the Taxpayer. She testified she deposited appeal materials at the post office drop box in Alliance, Nebraska, on or about August 22, 2024. Schoneman acknowledged that in her haste, she failed to include the required filing fee with the August 22, 2024, mailing. Once she had realized the filing fee was not included, she sent a subsequent mailing on September 3, 2024, with the filing fee, and it was received by the Commission on September 9, 2024.

IV. ANALYSIS

On August 27, 2024, the Commission received an envelope containing an appeal of the determination of the Box Butte County

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

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Because the August 24, 2024, deadline set by Neb. Rev. Stat. § 77-1510 fell on a Saturday, Neb. Rev. Stat. § 49-1203 provides the deadline shall be the next business day, August 26, 2024.

Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. The envelope did not contain the applicable filing fee.

The deadline for filing the filing fee for tax year 2024 was on or before August 26, 2024 as August 24, 2024 fell on a non-business day. 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.⁵ The envelope containing the filing fee was postmarked September 3, 2024, and received by the Commission on September 9, 2024. Therefore, the Commission determines the appeal was not timely filed.

Neb. Rev. Stat. § 77-5013(1)(c) requires “[t]he filing fee, if applicable, is timely received and thereafter paid.” The receipt of the applicable filing fee is a jurisdictional requirement which must be met before the Commission has the authority to decide an appeal.

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

Valery Bell
Box Butte County Treasurer
PO Box 655
Alliance, NE 69301

Michelle Robinson
Box Butte County Assessor
515 Box Butte, Suite 102
Alliance, NE 69301

⁵ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

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

SIGNED AND SEALED: December 9, 2024



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner