

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

One Hope Church f/k/a
Citylight Benson Church,
Appellant,

v.

Douglas County Board of
Equalization,
Appellee.

Case No. 24E 0089

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

On June 10, 2024, the Commission received an appeal seeking review of a decision of the Douglas County Board of Equalization made on May 7, 2024. The County Board's decision denied permissive property tax exemption for real and personal property associated with Parcel #2135890000. Based upon the Form 451 (Exemption Application), exemption was sought for tax year 2023 and signed by the Taxpayer on March 31, 2024. The Douglas County Assessor recommended denial of the exemption, and the County Board ultimately denied the exemption application on May 7, 2024. The appeal to the Commission was postmarked June 7, 2024.

The Commission held a jurisdictional show cause hearing on July 18, 2024 at 11:00AM. Raquel Horton, the Director of Operations for One Hope Church (the Church) appeared telephonically. 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.

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 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

Horton testified the Form 451 was signed on March 31, 2024, seeking exemption for the Subject Property for tax year 2023. She stated a staffing change at the end of calendar year 2022 resulted in the failure of the Church to file the required exemption application for

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

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).

tax year 2023. Horton indicated she discovered in March 2024, that the Taxpayer had been assessed property taxes for tax year 2023.

She confirmed the appeal to the Commission was signed and deposited with the US Postal Service late in the day on June 6, 2024.

IV. ANALYSIS

A. The appeal to the Commission was timely filed.

An appeal or petition to the Commission is timely filed 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 or petition.⁶ When a county board of equalization denies a permissive exemption application, the party seeking the exemption may appeal to the Commission within 30 days of the county board's decision.⁷ Thirty days from the May 7, 2024 county board decision was June 6, 2024. Based upon Horton's un rebutted testimony that the exemption application was deposited with the US Postal Service on June 6, 2024, the Commission finds the appeal was timely filed.

B. The County Board should have dismissed the exemption application for untimely filing.

The process for seeking a permissive property tax exemption is controlled by Neb. Rev. Stat. § 77-202.01 (Reissue 2018), which states in relevant part:

(1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section [77-202](#) for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner.... The county assessor shall examine the application

⁶ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

⁷ Neb. Rev. Stat. § 77-202.04(1) (Reissue 2018).

and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before March 1 following....

(2) Any organization or society *which fails to file an exemption application on or before December 31* may apply on or before June 30 to the county assessor. The organization or society *shall also file in writing a request with the county board of equalization for a waiver* so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists *for the failure to make application on or before December 31*. ...[emphasis added]

Here, testimony from Horton, as well as the Form 451 itself, indicates the Taxpayer is seeking permissive exemption for taxes levied for tax year 2023. Per section 77-202.01, any exemption application must be received by December 31 of the prior year. In this case, the exemption application must have been filed on or before December 31, 2022. If a taxpayer does not file an exemption application on or before December 31 of the year prior, the taxpayer may file on or before June 30 only after the County Board has granted a waiver after receiving a written waiver request.

The Taxpayer's exemption application before us was filed on March 31, 2024, fifteen months after the December 31, 2022, deadline and nine months after the June 30, 2023, late filing deadline. The Commission finds the Taxpayer's exemption application to be untimely.

Because the Form 451 was not timely filed, the Commission finds the County Board lacked any authority to rule on the merits of the application and should have simply dismissed the application for untimely filing rather than denying the application.

C. The Commission is without jurisdiction to act on this appeal and must dismiss the case.

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject

matter.⁸ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”⁹ The Commission has no authority to waive or equitably alter the strict filing deadlines set forth in statute as such power does not fall within the authority conferred upon the Commission by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions. Because the County Board of Equalization did not have subject matter jurisdiction the Commission determines it does not have jurisdiction over the appeal.

V. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal and the appeal should be dismissed.

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

⁸ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

⁹ *Carlos H. v. Lindsay M.*, 283 Neb. 1004 (2012).

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

SIGNED AND SEALED: July 23, 2024



Robert W. Hotz, Commissioner

Jackie S. Russell, Commissioner