

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

Fundamental Investments LLC,
Appellant,

v.

Douglas County Board of
Equalization,
Appellee.

Case Nos. 24R 1491, 24R 1492,
24R 1493, 24R 1494, 24R 1495,
24R 1496, 24R 1497, 24R 1498

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 31, 2024 at 11:00AM. No one appeared telephonically on behalf of Fundamental Investments LLC (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 as related to 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 When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.³ 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.⁴

III. FINDINGS OF FACT

These appeals were received by the Commission on September 16, 2024. The appeal forms are dated September 10, 2024. The deadline for filing appeals from Douglas County was September 10, 2024. The envelope containing these appeals was not postmarked.

IV. ANALYSIS

Any tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or any payment required or authorized to be filed or made to the State of Nebraska, or to any political subdivision thereof, which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was deposited in the United States mail on or before the date for filing or paying.⁵

On September 16, 2024, the Commission received an envelope containing appeals of the determinations of the County Board made pursuant to Neb. Rev. Stat. § 77-1502. The Douglas County Board did adopt a resolution extending the deadline for hearing protests, so the filing deadline for tax year 2024 was September 10, 2024. The envelope

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

³ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ Neb. Rev. Stat. § 49-1201 (Reissue 2021).

containing the appeals was not postmarked but was received by the Commission on September 16, 2024.

Without competent evidence to demonstrate the appeals were deposited in the United States mail on or before the requisite date for filing the appeals, the Commission cannot find it has jurisdiction over these appeals.

Additionally, the Commission's September 19, 2023, Order specifies "[a]n order dismissing the appeal will be issued if Appellant fails to appear at the hearing within fifteen minutes of the time and date listed above." As stated above, the Taxpayer did not appear within fifteen minutes of the date and time for hearing.

V. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

THEREFORE, IT IS ORDERED:

1. The above captioned appeals are 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: November 25, 2024



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner