

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

Lindsey DeBerry,
Appellant,

Case No. 24R 1515

v.

Douglas County Board of
Equalization,
Appellee.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on November 6, 2024 at 9:00AM. No one appeared telephonically on behalf of 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 for the limited purpose of determining jurisdiction.

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

On October 4, 2024, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. § 77-1502. The County Board adopted a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2024 was September 10, 2024. The envelope containing the appeal was postmarked October 2, 2024, and received by the Commission on October 4, 2024.

IV. ANALYSIS

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.⁵

On October 4, 2024, the Commission received an envelope containing an appeal of the determination of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. The envelope did not contain a copy of the decision, order, determination, or action appeal from, or other information that documents the decision, order, determination, or action appealed from (County Board Decision). The deadline for filing the appeal for tax year 2024 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

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. § 77-5013(2) (Reissue 2018).

protests under section 77-1502.⁶ 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 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.⁷ The envelope did not contain a copy of the County Board Decision.

The Taxpayer's appeal form indicates the position that the County Board failed to provide notice of a change in value, and therefore prevented the Taxpayer from timely filing a protest or appeal. However, the Taxpayer did not appear at the November 6, 2024, hearing to determine whether the Commission had the authority to hear the merits of the Taxpayer's appeal. 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. For these reasons, the Commission should dismiss the appeal.

V. CONCLUSION

Since the Taxpayer failed to appear at the hearing to provide evidence the Commission may exercise jurisdiction over the appeal, the Commission should dismiss the appeal for failure to appear and lack of jurisdiction.

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

⁶ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

⁷ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

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 8, 2024



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner