

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paxton-Mitchell Co
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 11C-003 & 11C-004

Decision Dismissing for Want of
Jurisdiction

For the Appellant:

Michael D. Smith
Office Manager

For the Appellee:

Thomas S. Barrett
Deputy Douglas County Attorney

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

A jurisdictional Show Cause Hearing was held on January 9, 2012, recessed and resumed on January 10, 2012. Michael Smith, Office Manager of Paxton-Mitchel Co. (Taxpayer) appeared telephonically. Thomas Barrett, a Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (County). The Parties agreed to consolidate the above-captioned appeals for hearing purposes. The Commission also took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

I. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it 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 actions appealed from, is timely filed.¹ Any person having a right to appeal may petition the Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure of notice prevented timely filing of a protest or appeal provided for in §§77-1501 to 77-1510.² Parties cannot confer subject matter jurisdiction on a

¹ See, Neb. Rev. Stat. 77-5013 (2010 Cum. Supp.)

² See, Neb. Rev. Stat. 77-1507.01 (Reissue 2009).

tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent or conduct of the parties.³

II. ANALYSIS

On August 1, 2011, the Taxpayer filed petitions with the Commission pursuant to Neb. Rev. Stat. §77-1507.01 (Reissue 2009). The Taxpayer claimed that it did not receive notice of the new assessed valuation from the Douglas County Assessor in a timely manner and was therefore prevented from filing protests with the Douglas County Board of Equalization.

The Commission received the County Assessor's "Preliminary Douglas County Commercial Valuation Notice" ("the Notice") for each parcel. (E1, in each case). The Taxpayer asserted that it did not receive the Notice offered into evidence until July 11, 2011, after the June 30, 2011, deadline for filing a protest with the Douglas County Board of Equalization.⁴ The Taxpayer also asserted that it had not yet received the final valuation notice from the Douglas County Assessor for the 2011 tax year for the subject properties.

The Notices referenced by the Taxpayer indicate that the Douglas County Assessor mailed these preliminary determinations to the Taxpayer in April of 2011, to the address: 2614 Martha St., Omaha, NE 68105. (E1 in each case). The Taxpayer does not dispute that the County Assessor properly mailed the Notices to the Taxpayer's correct address prior to the deadline for providing notice of a change in valuation.⁵ The evidence before the Commission is that the Taxpayer experienced receipt of mail problems in April of 2011 and for several months subsequent thereto.

III. CONCLUSION

The Commission finds that the Taxpayers receipt of mail problems are not sufficient for purposes of granting jurisdiction pursuant to Neb. Rev. Stat. §77-1507.01 (Reissue 2009). Therefore, the Commission does not have jurisdiction to hear either of the above captioned petitions.

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

⁴ See, Neb. Rev. Stat. §77-1502(1) (2011 Supp.)

⁵ June 1, 2011. See, Neb. Rev. Stat. §77-1315 (Reissue 2009)

IV. ORDER

IT IS ORDERED THAT:

1. The petitions in Case Nos. 11C-003 and 11C-004 are dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed: February 15, 2012

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner