

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lozier Corporation,
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case Nos: 11C-517, 11C-518 & 11C-519

Order Dismissing for Want of Jurisdiction

For the Appellant:

Jan Muller,
Vice President and Treasurer

For the Appellee:

Theresia M. Urich
Deputy Douglas County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon

A jurisdictional show cause hearing was held on February 2, 2012. Jan Muller appeared telephonically at the hearing before the Commission as the Vice-President and Treasurer of Lozier Corporation (Taxpayer). Theresia M. Urich, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization. The Commission received exhibits and testimony. 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 action 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 September 20, 2011, the Commission received an envelope containing an appeal of three determinations of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. 77-1502 (Reissue 2009). (Case File). The deadline for filing appeals of these determinations for tax year 2011 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 protests under section 77-1502.⁴ The Douglas County Board did adopt a resolution extending the deadline for hearing protests (Case File) and because September 10, 2011, fell on a Saturday the filing deadline for tax year 2011 was September 12, 2011.⁵ An appeal to the Commission 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.⁶ The envelope containing these appeals does not have a legible cancellation mark, however, it does have two different Pitney Bowes postage labels, one for \$4.13, dated September 1, 2011, and another for \$2.30, dated September 15, 2011. (E5).

Taxpayer called as a witness David Belpedio, a partner in the accounting firm of Marks Nelson Vohland Campbell Radetic, LLC, (Marks Nelson) who testified that the envelope containing the appeals was sent by his firm to the Commission through the United States Mail, with \$4.13 in postage prepaid, on September 1, 2011. Belpedio also testified that on September 15, 2011, the envelope containing the appeals was in the office of Marks Nelson in Overland Park, Kansas and an additional \$2.30 in postage was affixed to the envelope containing the appeals by an employee of Marks Nelson for the sole purpose of obtaining a return receipt on the envelope. The Commission finds that there is credible evidence that the envelope was placed in the United States Mail prior to September 15, 2011, but that the envelope was delivered to the offices of Marks Nelson Overland Park, Kansas, rather than to the Commission. The evidence

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

⁴ Neb. Rev. Stat. §77-1510 (Reissue 2009)

⁵ Neb. Rev. Stat. §49-1203 (Reissue 2010)

⁶ Neb. Rev. Stat. 77-5013(2) (2010 Cum. Supp.)

before the Commission demonstrates that the envelope containing the appeals was in the office of Marks Nelson in Overland Park, Kansas on September 15, 2011, not appropriately placed in the United States mail for delivery to the Commission prior to that date. After leaving the offices of Marks Nelson on September 15, 2011, the envelope containing the appeals was received by the Commission on September 20, 2011, without a legible postmark. Therefore the Commission determines that the appeals were not timely filed.

III. CONCLUSION

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

IV. ORDER

IT IS ORDERED THAT:

1. The appeals in Case Nos. 11C-517, 11C-518 and 11C-519 are dismissed.
2. Each party is to bear its own costs in this proceeding.
3. This order is effective on March 23, 2012

Signed and Sealed: March 23, 2012

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner