

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry B. Watzke,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R-551

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on June 18, 2013. Larry B. Watzke (“Taxpayer”) appeared telephonically. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (“County Board”). The Commission took notice of its case file for the purpose of determining personal and subject matter jurisdiction.

II. 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 action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 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 77-1502.² Parties cannot confer subject matter

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

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

III. ANALYSIS

On September 19, 2012, the Commission received an appeal of the determination of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). The deadline for filing appeal of this determination for tax year 2012 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), so the filing deadline for tax year 2012 was September 10, 2012.

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.⁵ The appeal was received by the Commission on September 19, 2012, in an envelope postmarked September 17, 2012. (Case File).

The Commission held a Show Cause hearing on June 18, 2013, to determine if the Commission has jurisdiction to hear the appeal.

The Taxpayer testified that the appeal was filed late because he was busy and missed the deadline. The Taxpayer asked that the Commission take jurisdiction because of the reason stated.

The Taxpayer's argument is equitable in nature. In *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission and Douglas County Board of Equalization*,⁶ the Supreme Court of Nebraska held that, "TERC does not have power to apply equitable principles in jurisdictional matters..." In the *Creighton* case, the appellant filed its appeal by the incorrect appeal deadline listed on the Commission's appeal form. Applying equitable principles, the Commission determined that the appeal was timely filed because the

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. 77-5013(2) (2012 Cum. Supp.).

⁶ 620 N.W.2d 90, 260 Neb. 905, 921 (2000).

appellant had relied on the incorrect information provided by the Commission. The Supreme Court of Nebraska held, however, that the Commission did not have the authority to adopt equitable principles to allow jurisdiction.⁷

The Commission did not receive the appeal by the statutory deadline. Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

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

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. 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:

Roger Morrissey
1819 Farnam Stre. Rm 400
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
Omaha, NE 68183

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

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

SIGNED AND SEALED July 10, 2013

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner

⁷ *Id.*