

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Target Corporation,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13C 797

**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 February 14, 2104. Shaun James, Legal Counsel for Target Corporation, appeared telephonically at the hearing before the Commission. 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 October 1, 2013, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ The deadline for filing appeals of these determinations for tax year 2013 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 77-1502.⁵ The County Board had adopted a resolution extending the deadline for hearing protests,⁶ so the filing deadline for tax year 2013 was September 10, 2013. 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.⁷ The envelope containing the appeal was not postmarked.⁸

Catherine Courteau, Senior Manager – Real Estate Tax, Target Corporation, testified that she had reviewed the Commission’s appeal form prior to submitting the appeal. She testified that she was confused by the multiple dates listed on the back of the form and had determined that she had until October 15, 2013, to file the appeal.

The back of the Commission’s appeal form indicates that the filing deadline for appeals with the Commission varies by the type of appeal.⁹ The form states some common filing deadlines, but states in bold that the signee has the responsibility to review appropriate statutes to insure that the appeal is timely filed.¹⁰ Courteau testified that the Subject Property’s valuation had not changed, and that she was confused by the language on the Commission’s form concerning the appropriate appeal deadline.

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

⁴ Case File.

⁵ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁶ Case File.

⁷ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁸ The envelope was not sent through the United States Postal Service. See, Case File.

⁹ *Id.*

¹⁰ *Id.*

The Nebraska Supreme Court held in *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, that the Commission does not have the equitable power to adopt a “doctrine of unique circumstances.”¹¹ This doctrine would allow the Commission to take jurisdiction over an appeal where an appellant relied on erroneous statements by the Commission that it would have jurisdiction.¹² The Court reasoned that the Legislature did not grant the Commission equitable powers concerning jurisdictional issues.¹³ The Court, in *Creighton*, held that the Commission exceeded its authority when it attempted to adopt this equitable doctrine.¹⁴

Nebraska Statutes section 77-5013(1)(a) requires an appellant to timely file an appeal with the Commission before the Commission obtains jurisdiction over the appeal. The Commission determines that the appeal was not timely filed. The Commission finds that even if the Commission’s appeal form was ambiguous, the Commission would not have the equitable authority necessary to take jurisdiction over the appeal.

IV. CONCLUSION

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

V. 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

¹¹ 260 Neb. 905, 620 N.W.2d 90 (2000) (superseded in part by *Widtfeldt v. Tax Equalization and Review Commission*, 15 Neb.App. 410, 728 N.W.2d 295 (2007) on another issue).

¹² See, *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

¹³ *Id.*

¹⁴ *Id.*

John Ewing
1819 Farnam St., Rm H03
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 February 25, 2014

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner