

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shelly Ann Luehring
Appellant,

v.

Jefferson County Board of Equalization,
Appellee.

Case No: 14H 001

**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 May 29, 2014. Shelly Ann Luehring appeared telephonically at the hearing before the Commission. Linda Bauer, the Jefferson County Attorney, appeared telephonically on behalf of the Jefferson County Board of Equalization (the County Board). The Commission took notice of its case file for the purpose of determining personal jurisdiction 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 77-3519 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision.² 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.³

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

² Neb. Rev. Stat. §77-3519 (2012 Cum. Supp.).

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

III. ANALYSIS

The denial of Homestead Exemption by the County Board was made on December 3, 2013. (Case File). The deadline for filing an appeal of the action of the County Board of Equalization pursuant to section 77-3519 was within thirty days after the December 3, 2013, decision.⁴ Therefore, the appeal filed by the Taxpayer was timely only if filed with the Commission by January 2, 2014.

On January 27, 2014, the Commission received an envelope containing an appeal form and filing fee but lacking a copy of the determination of the Jefferson County Board of Equalization. (Case File). In order to perfect an appeal, the Commission must receive the appeal form, the filing fee, and a copy of the determination made by the County Board.⁵ On February 13, 2014, the Commission received from the Taxpayer an envelope containing a denial of Homestead Exemption by the County Board, which was the third item required by statute to complete the appeal. (Case File). Therefore, the Appellant's appeal was filed on February 13, 2014.

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 the third item required for the appeal had an illegible postmark and was marked as received by the Commission on February 13, 2014. (Case File).

Therefore, since the appeal was not received by January 2, 2014, 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.

⁴ Neb. Rev. Stat. §77-3519 (2012 Cum. Supp.).

⁵ Neb. Rev. Stat. §77-1502 (Reissue 2009).

⁶ Neb. Rev. Stat. §77-5013(2) (2012 Cum. Supp.).

2. This decision, if no appeal is filed, shall be certified within thirty days to the Jefferson County Treasurer, and the officer charged with preparing the tax list for Jefferson County as follows:

Vicki Haskell
411 4th St.
Fairbury, NE 68352

Leroy Bast
411 4th St.
Fairbury, NE 68352

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 June 10, 2014.

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner