

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mary House,
Appellant,

v.

Douglas County Board of Equalization
Appellee.

Case No: 14E 090

**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 October 29, 2014. The Commission attempted to no avail to contact Mary House, the Appellant, on three occasions on the date of the scheduled telephonic hearing on October 29, 2014.¹ Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization. The Commission took notice of its case files 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.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 The Commission left voicemails at the number listed in its case files for Mary House at approximately 12:30 p.m., 12:40 p.m., and 12:45 p.m., on October 29, 2014. The Commission's case files indicate that the contact for Mary House, the Appellant, is as follows: Teresa M. Rolfson, Board President.

² See, Neb. Rev. Stat. § 77-5013 (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

On June 23, 2014, the Commission received an envelope containing Mary House's appeal of the determination of the Douglas County Board of Equalization denying exempt status.⁴ The filing included a \$25 filing fee, the Commission's appeal form, and a copy of the County Board's determination denying tax exempt status for Mary House for tax year 2014 dated May 20, 2014.

Nebraska Statutes section 77-202.04 requires that a party appealing the determination of the county board of equalization concerning the tax exempt status of property must make the appeal to the Commission pursuant to Nebraska Statutes section 77-5013 and within thirty days after the decision of the county board of equalization.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 Nebraska Supreme Court has held that, for purposes of calculating filing deadlines, the computation is subject to Nebraska Statutes section 25-2221.⁷ Section 25-2221 states:

“Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.”⁸

Under the statutory framework above, Mary House's appeal required a postmark or delivery to the Commission no later than Thursday, June 19, 2014. Mary House's appeal to the Commission was signed on June 20, 2014, and the postmark on the envelope containing the appeal received by the Commission on June 23, 2014, is also dated June 20, 2014. Therefore, the Commission finds that Mary House's appeal is not timely.

The Commission notes that any effort to obtain relief regarding compliance with the above-noted filing deadline under the Nebraska Statutes is equitable in nature. In *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission and Douglas County Board of Equalization*,⁹ 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

⁴ Case File.

⁵ See, Neb. Rev. Stat. § 77- 202.04 (2012 Cum. Supp.).

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

⁷ *Strode v. Saunders County Bd. of Equalization*, 815 N.W.2d 856, 283 Neb. 802 (2012).

⁸ Neb. Rev. Stat. § 25-2221(Reissue of 2008).

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

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 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.¹⁰

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 St., 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 November 26, 2014.

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner

¹⁰ *Id.*