

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Maria Garcia
Appellant,

v.

Hall County Board of Equalization
Appellee

Case No: 16C 0053

**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 December 13, 2016. Maria Garcia (the Taxpayer) did not appear at the hearing either in person or by telephone. Jack Zitterkopf, Hall County Attorney, appeared telephonically on behalf of the Hall County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction.

II. STANDARD OF REVIEW

The Commission obtains jurisdiction over an appeal when the appeal form 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 pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24 or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² Parties cannot confer subject matter jurisdiction on a tribunal by

¹ See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

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

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

III. ANALYSIS

On August 25, 2016, the Commission received an envelope containing an appeal of the determination of the Hall 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 2016 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 County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2016 was August 24, 2016.

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 envelope containing the appeal was postmarked August 23, 2016 and received by the Commission on August 25, 2016. (Case File). However, the appeal form received was not signed. On October 17, 2016, the Commission received a second appeal form from the Taxpayer. This form was signed by the Taxpayer and was postmarked October 14, 2016.

Included with the appeal form was a copy of a Form 422 protest form for a protest for tax year 2011. There is no evidence in the Case File to indicate that a protest was filed regarding the Subject Property for tax year 2016.

In order for an appeal to the Commission to be properly perfected, the appeal form must be timely filed, the filing fee must be 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, must be timely filed.⁶ In this case, the appeal included a copy of a 2016 Notice of Valuation from the County Assessor, but there was no evidence in the Case File that a protest had been filed for tax year 2016, and the appeal did

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) (2014 Cum. Supp.).

⁶ See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

not include a copy of any decision, order, determination, or action appealed from, or other information that documents any decision, order, determination, or action appealed from as required by law.

The Commission made multiple attempts to reach the Taxpayer by telephone beginning at the time of the scheduled hearing and for fifteen minutes thereafter. Based upon the Taxpayer's failure to appear for the hearing either in person or by telephone, the County Board made a motion for dismissal.

IV. CONCLUSION

The Commission should dismiss the appeal based upon the Taxpayer's failure to appear at the scheduled hearing.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.

This decision, if no appeal is filed, shall be certified within thirty days to the Hall County Treasurer, and the officer charged with preparing the tax list for Hall County as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.) as follows:

Janet Pelland
Hall County Assessor
121 S Pine St. Ste 1
Grand Island, NE 68801

Peg Pesek
Hall County Treasurer
121 S Pine St.
Grand Island, NE 68801

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

SIGNED AND SEALED December 21, 2016

Seal

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner