

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas H. Vipond
Appellant,

v.

Dakota County Board of Equalization
Appellee

Case No: 16R 0469

**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. Thomas H. Vipond (the Taxpayer), appeared by telephone. Kim Watson, Dakota County Attorney, appeared telephonically on behalf of the Dakota 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. The Commission received evidence and heard argument regarding the Jurisdiction of the Commission to hear this appeal.

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 September 2, 2016, the Commission received an envelope, postmarked August 31, 2016, containing an appeal of the determination of the Dakota 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 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 31, 2016 and received by the Commission on September 2, 2016. (Case File).

At the hearing, the Taxpayer testified that he relied on information supplied on the back of the Commission's appeal form in determining the due date for his appeal. He stated that based on the language of that form, the deadline to file his appeal was October 15, 2016. The Taxpayer relied on the following language from the back page of the Commission's appeal form:

If a County Board of Equalization made an initial determination that property is undervalued or overvalued, it proposed a value and sent notice of that value. An appeal of a Board's decision on a protest of that value must be filed on or before October 15, unless the protest hearing deadline has been extended. The protest hearing deadline can only be extended by a County Board of Equalization in Douglas, Lancaster or Sarpy Counties. If the protest hearing deadline has been extended by the County Board of Equalization, an appeal from a decision on the protest must be filed on or before October 30. Review section 77-1504 of

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.).

Nebraska Statutes and call the county clerk if you want to know if the protest hearing deadline has been extended by the County Board of Equalization.⁶

The Taxpayer argued that his appeal was timely filed because it was received by the Commission prior to the October 15 deadline stated in the part of the instructions recited above.

The Commission finds that the appeal was not timely filed. The October 15 deadline referenced on the form is not applicable to the Taxpayer's appeal because his property was not considered to be undervalued or overvalued by the County Board. A determination that property is undervalued or overvalued is a specific procedure outlined by Nebraska law.⁷ A County Board of Equalization may meet on or after June 1 and on or before July 25 to consider and correct the current year's assessment of any real property which has been undervalued or overvalued.⁸ In this appeal, there is no evidence that there was a determination made by the County Board that the Taxpayer's property was undervalued or overvalued.

This process is different from an appeal of a notice of valuation change that is sent out by the County Assessor. The process for an appeal of a valuation change is set out in the paragraph immediately before the one relied upon by the Taxpayer. The form includes deadline information for appeals involving a valuation change. It states:

If you received a notice of valuation change from the county assessor and were required to file a protest on or before June 30 then an appeal from a decision on the protest, must be filed on or before August 24, unless the protest hearing deadline has been extended. The protest hearing deadline can only be extended by a County Board of Equalization in Douglas, Lancaster or Sarpy Counties. If the protest hearing deadline has been extended by the County Board of Equalization, an appeal from a decision on the protest must be filed on or before September 10. Review sections 77-1502 and 77-1510 of Nebraska Statutes and call the county clerk if you want to know if the protest hearing deadline has been extended by the County Board of Equalization.⁹

The Taxpayer's property in this case was subject to a valuation change from the County Assessor. The Taxpayer received a "2016 Notice of Valuation" from the Dakota County Assessor on or about May 31, 2016.¹⁰ We find that his appeal was due on August 24, 2016 and

⁶ Appeal Form of the Nebraska Tax Equalization and Review Commission.

⁷ See, Neb. Rev. Stat. §77-1504 (2014 Cum. Supp.).

⁸ Neb. Rev. Stat. §77-1504 (2014 Cum. Supp.).

⁹ Appeal Form of the Nebraska Tax Equalization and Review Commission.

¹⁰ Exhibit 1:2.

not October 15, 2016. Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

- V. 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.

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

Jeff Curry
PO Box 9
Dakota City, NE 68731

Robert Giese
PO Box 863
68731

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