

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Frenchman Valley Produce, Inc.,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case No: 16C 0375

**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 17, 2017. Joel E. Burke appeared telephonically at the hearing before the Commission as legal counsel for Frenchman Valley Produce, Inc, (the Taxpayer). Joe Wright, Deputy Lincoln County Attorney, appeared telephonically on behalf of the Lincoln County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal 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 (2016 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 29, 2016, 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). (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 26, 2016, and received by the Commission on August 29, 2016. (Case File). Therefore, the Commission determines that the appeal was not timely filed.

The Taxpayer argues that it should have 30 days to file an appeal after receiving the decision of the County Board. The County Board reached its decision on July 25, 2016 and mailed notice to the Taxpayer on July 29, 2016. The Taxpayer argues that by waiting until July 29, 2016, notice would not have been received by the Taxpayer until August 1, 2016, giving the Taxpayer only 23 days to file an appeal. However, the law is clear that the filing deadline for the appeal was August 24, 2016, regardless of the number of days between the County Board's decision and the Taxpayer's deadline.

The County Board was not late in mailing notice. Neb. Rev. Stat. 77-1502(6) states that "On or before August 2 [...] the county clerk shall mail to the protestor written notice of the board's decision."⁶ The county clerk mailed written notice of the board's decision on July 29, 2016. The Taxpayer's contention that 30 days must be given to appeal to the Commission is incorrect

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) (2016 Cum. Supp.).

⁶ Neb. Rev. Stat. 77-1502(6) (2016 Cum. Supp.).

because the County Board can send notice of their decision until August 2, or 22 days before the deadline created by Neb. Rev. Stat. 77-1510.

There is no provision in the law that requires a 30 day time frame in this situation, only that an action must be appealed “on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline.”⁷ In this appeal, August 24, 2016 is the final day in which an appeal to the Commission may be requested, therefore, the appeal was not timely filed and the Commission does not have jurisdiction to hear the appeal.

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 Lincoln County Treasurer, and the officer charged with preparing the tax list for Lincoln County as follows:

Julie Stenger
301 N Jeffers, Rm 110A
North Platte, NE 69101

Sue Fleck
301 N Jeffers, Rm 102
North Platte, NE 69101

as required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

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

⁷ Neb. Rev. Stat. 77-1510 (Reissue 2009).

SIGNED AND SEALED February 24, 2017

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner