

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Hillsborough West Plaza, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 16C 0374

**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 January 4, 2017. Lindsay Banks, Vice-President/Secretary for the Taxpayer appeared by telephone. Shakil A. Malik, Deputy Douglas County Attorney, appeared by telephone on behalf of the Douglas 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.<sup>1</sup> 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.<sup>2</sup> Parties cannot confer subject matter jurisdiction on a tribunal by

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

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

### III. ANALYSIS

On September 13, 2016, the Commission received an envelope containing an appeal of the determination of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The deadline for submitting the filing fee 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.<sup>4</sup> The Douglas County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the appeal filing deadline for tax year 2016 was September 10, 2016. Since this date was on a Saturday, the filing deadline is extended to September 12, 2016.<sup>5</sup>

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.<sup>6</sup> The envelope containing the appeal was sent via Federal Express on September 12, 2016, but was not received by the Commission until September 13, 2016. Because the envelope was neither placed in the U.S. Mail nor received by the Commission on or before September 12, 2016, the appeal was not timely filed.

Therefore, the Commission determines that it does not have jurisdiction over the above-captioned appeal.

### IV. CONCLUSION

The Commission lacks jurisdiction to hear the appeal and it therefore must be dismissed.

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

<sup>4</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

<sup>5</sup> If a filing deadline is on a weekend or state or federally recognized holiday, the next business day becomes the filing deadline. Title 442 Ch. 5, §001.08E. See also, Neb. Rev. Stat. §49-1203.

<sup>6</sup> Neb. Rev. Stat. § 77-5013(2) 2014 Cum. Supp.).

**V. 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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.) as follows:

Diane Battiato  
1819 Farnam Stre. Ste H09 Civic Center  
Omaha, NE 68183-1000

John Ewing  
1819 Farnam St., Rm H03  
Omaha, NE 68183

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

**SIGNED AND SEALED** January 6, 2017.

**Seal**

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Steven A. Keetle, Commissioner

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Nancy J. Salmon, Commissioner