

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

Bernard J. Divis,  
Appellant,

v.

Colfax County Board of Equalization,  
Appellee

Case No: 16R 0070

**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 14, 2016. Bernard J. Divis appeared at the hearing before the Commission as the Taxpayer. Edmond E. Talbot III, appeared telephonically on behalf of the Keith 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**

Neb. Rev. Stat. 77-5013 of the Nebraska Statutes provides that 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

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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).

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.<sup>3</sup>

### III. ANALYSIS

On August 25, 2016, the Commission received an envelope containing an appeal of the determination of the Colfax County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). This envelope did not contain a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from (BOE Decision). The deadline for filing the appeal of the decision of the Colfax County Board of Equalization for tax year 2016 was on or before August 24.<sup>4</sup> The appeal 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>5</sup> The envelope received on August 25, 2016, did not contain a copy of the BOE Decision. Another envelope containing the BOE Decision was postmarked October 11, 2016, and received by the Commission on October 13, 2016. (Case File). The copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, was not timely filed. Therefore, the Commission determines that the appeal was not timely filed.

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

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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> Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

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as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

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

**SIGNED AND SEALED** January 4, 2017.

**Seal**

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Steven A. Keetle, Commissioner

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Nancy J. Salmon, Commissioner