

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Matthew Gene O'Brien,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0464

**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 22, 2017. Matthew Gene O'Brien (the Taxpayer) appeared telephonically at the hearing before the Commission. Shakil A. Malik, Deputy Douglas County Attorney, appeared telephonically 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

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.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

¹ See, Neb. Rev. Stat. 77-5013 (2016 Cum. Supp.).

² 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.³

III. ANALYSIS

On September 19, 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 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 Douglas County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2016 was September 10, 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 September 16, 2016 and received by the Commission on September 19, 2016. (Case File). 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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

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

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.).

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

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

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

SIGNED AND SEALED March 1, 2017

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner