

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Vitaly Ekwen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 17R 0648, 17R 0649, 17R 0650

**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 18, 2017. Vitaly Ekwen (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. The issue before the Commission at the hearing was whether the appeals were filed by the applicable deadline.

II. STANDARD OF REVIEW

Neb. Rev. Stat. § 77-5013 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 Parties 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.²

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

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

III. ANALYSIS

A full understanding of the matter requires some knowledge of its history, much of which is public record. In 2016, the Commission ordered Douglas County to reduce the valuation of residential properties in a certain market area of the county, to bring the assessed to sale ratios into a statutorily acceptable range. Douglas County appealed the Commission's decision, and the Nebraska Supreme Court ruled in the county's favor, causing the Commission to issue an order restoring the previous assessments of the properties.³ In 2017, Douglas County then issued notice of the 2016 valuation changes, and the Taxpayer filed protests on three parcels of residential property sometime between August 15 and September 14, 2017. In response to these protests, the County Board issued decisions substantially reducing the assessed value of each parcel (for tax year 2016) on September 26, 2017. The Taxpayer filed appeals of each decision with the Commission. The appeals were all postmarked October 28, 2017, and received October 30, 2017.

Each County Board decision sent to the Taxpayer included the statement, "An appeal to [the Commission] must be filed on or before October 30, 2017." Mr. Malik advised the Commission that the County Board concluded that no existing statute contemplated a situation in which property values were increased by court order, after the normal window for filing protests and appeals had passed. The County Board decided that the closest statutory analog was the procedure for dealing with undervalued and overvalued property described under Neb. Rev. Stat. § 77-1504 (which allows for an appeal to the Commission on or before October 30 of the same tax year).⁴

The problem with this reasoning is that the plain language of Neb. Rev. Stat. § 77-1504 provides that "[a]ction of the county board of equalization pursuant to this section shall be for the current assessment year only" (emphasis added). The filing deadline of October 30, 2017 is not applicable to the evidence received in this appeal because the protest and appeal were made regarding the 2016 taxable value, not "the current assessment year." We find that the County Board was in error by relying upon October 30, 2017 as the appeal filing deadline.

³ See *County of Douglas v. Nebraska Tax Equalization and Review Commission*, 296 Neb. 501, 894 N.W.2d 308 (2017).

⁴ Neb. Rev. Stat. 77-1504 (2014 Cum. Supp.)

The applicable statute, for the Commission’s jurisdictional purposes, is Neb. Rev. Stat. § 77-5013(2), which provides: “If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.” Application of this statute to the facts of the case would result in a filing deadline of October 27, 2017, thirty days after the September 26, 2017 notice of decision by the County Board. However, the Taxpayer’s appeal in this case was postmarked October 28, 2017, and the Commission finds no competent evidence in the record to conclude that the postmark is erroneous. Despite the language in the County Board’s decision that the Taxpayer had until October 30 to appeal, it is the statutory date that controls for jurisdictional purposes.⁵

The correct deadline for filing an appeal in this matter was October 27, 2017. The appeal was filed on October 28, 2017. Therefore, the Commission determines that the appeal was not timely filed, and the Commission does not have jurisdiction over 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.

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 (2016 Cum. Supp.) as follows:

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

John Ewing
1819 Farnam St., Rm H03
68183

⁵ See *Republic Bank, Inc. v. Lincoln County Bd. of Equalization*, 283 Neb 721, 731, 811 N.W.2d 682, 690 (2012).

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

SIGNED AND SEALED December 20, 2017

Seal

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner