

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Theresa M. Manahan,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0617

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on December 18, 2019. Theresa M. Manahan (the Taxpayer) appeared telephonically. Jennifer D. Chrystal-Clark, 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, received evidence, and heard argument regarding its jurisdiction to hear this appeal.

II. STANDARD OF REVIEW

The Commission obtains jurisdiction over an appeal when the Commission has the authority to hear the appeal, the appeal 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 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 acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

¹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

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

III. ANALYSIS

An appeal or petition to the Commission is timely filed 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 or petition.⁴ The County Board adopted a resolution extending the deadline for hearing protests, so the filing deadline for tax year 2019 was September 10, 2019.⁵

On October 2, 2019, the Commission received an envelope containing a completed and signed appeal form, a check for the required filing fee, and a report of a referee proceeding. The envelope did not include a copy of a final determination of the County Board. The Taxpayer testified that she took the envelope containing the appeal materials to a United Parcel Service (UPS) store on September 10, 2019, to have postage applied and to have the envelope mailed through the United States Postal Service (USPS). UPS weighed the envelope, affixed postage, and delivered or otherwise transferred the envelope to the USPS to be mailed.⁶ At some point after September 10, 2019, the USPS returned the envelope to the Taxpayer with an indication that it had inadequate postage. The Taxpayer went to a local post office and inquired as to the reason the envelope was returned, and an employee did not give her a definitive answer. The Taxpayer returned to the UPS store, which affixed a new label with the same postage as before and, again, delivered or otherwise transferred the envelope to the USPS to be mailed.

The question of whether the materials in the envelope were “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 or petition,” is factually and legally complex. However, even if we were to conclude that those materials were filed on time, the materials did not include the required documentation of the County Board’s decision or determination.

⁴ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

⁵ Case file.

⁶ The statute addresses appeals placed in the United States mail, not appeals delivered to a common carrier such as UPS. Additionally, a search of the tracking information listed on the envelope shows that USPS picked up the envelope on September 11, 2019: the day after the statutory deadline.

On or about November 5, 2019, upon receiving correspondence from the Commission, the Taxpayer did enclose a copy of the County Board's decision when requesting the jurisdictional show cause hearing. As noted above, this documentation of the county board's decision was not included in the appeal filing received by the Commission on October 2, 2019, when the documentation received was the referee report, not the county board decision.

Neb. Rev. Stat. § 77-1502.01 provides, in relevant part:

In all counties the county board of equalization may appoint one or more suitable persons to act as referees. [...] The county board of equalization may direct that any protest filed in accordance with section 77-1502, shall be heard in the first instance by the referee in the manner provided for the hearing of protests by the county board of equalization. Upon the conclusion of the hearing in each case, the referee shall transmit to the county board of equalization all papers relating to the case, together with his or her findings and recommendations in writing. The county board of equalization, after considering all papers related to the protest and the findings and recommendations of the referee, may make the order recommended by the referee or any other order in the judgment of the board of equalization required by the findings of the referee, or may hear additional testimony, or may set aside such findings and hear the protest anew.

Under this statute, the County Board is not bound by the recommendation of the referee. It may choose to make the order recommended; it may enter any other order required in its judgment; it may hear additional testimony; or it may set aside the referee's findings completely and hold a new hearing. We conclude that the referee report is not a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from. Therefore, the Commission determines that the statutorily required documentation was not timely filed.

Because we lack jurisdiction over the appeal on this basis, we do not address the issue of whether delivering the envelope to UPS on September 10, 2019, constituted a timely filing of the contents.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

THEREFORE IT IS ORDERED:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. § 77-5018 (Reissue 2018), 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:

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

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

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

SIGNED AND SEALED: January 7, 2020

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner