

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

Guardian Property Services LLC,  
Appellant,

v.

Sarpy County Board of Equalization  
Appellee

**For the Appellant:**  
Fiona Moody,  
Office Manager,

Case Nos: 11R-437

Order Dismissing for Want of Jurisdiction

**For the Appellee:**  
Nicole O’Keefe  
Deputy Sarpy County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on July 30, 2012. Fiona Moody appeared telephonically at the hearing before the Commission as the Office Manager for Guardian Property Services, LLC (Taxpayer). Nicole O’Keefe, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy County Board of Equalization. The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

**II. STANDARD OF REVIEW**

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it 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 of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 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>2</sup> Parties cannot confer subject matter

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2010 Cum. Supp.).

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

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 September 12, 2011, the Commission received an envelope containing an appeal of the determination of the Sarpy 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 2011 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 Sarpy County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2011 was August 24, 2011. 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>5</sup> The envelope containing the appeal was postmarked September 9, 2011 and received by the Commission on September 12, 2011. (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.

### **V. ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 11R-437 is dismissed.
2. Each party is to bear its own costs in this proceeding.

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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) (2010 Cum. Supp.).

3. This order is effective on August 2, 2012.

Signed and Sealed: August 2, 2012

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner