

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

AltEn, LLC,  
Appellant,

v.

Saunders County Board of Equalization,  
Appellee

Case No: 12C 060

**ORDER FOR DISMISSAL WITH  
PREJUDICE**  
(Subject Matter Jurisdiction)

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 20, 2012. Dennis M. Langley, a managing member and authorized representative of AltEn, LLC (“Taxpayer”), appeared telephonically at the hearing before the Commission. Scott Tingelhoff, Saunders County Attorney, appeared on behalf of the Saunders County Board of Equalization (“County Board”). 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 person prevented from appealing pursuant to section 77-1502 of Nebraska Statutes due to a failure to give timely notice may petition the Commission on or before December 31 of each year to determine the actual value of real property.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> See, Neb. Rev. Stat. § 77-5013 (2012 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. § 77-1507.07 (Reissue 2009).

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

### III. ANALYSIS

On August 17, 2012, the Commission received an envelope from the Taxpayer containing a petition for the Commission to determine the actual value of real property. The Taxpayer's petition asserted that the County Assessor failed to provide timely notice as required by Nebraska Statutes section 77-1315, thereby preventing a timely appeal to the County Board under Nebraska Statutes section 77-1502. (Case File).

Dennis M. Langley testified that the Taxpayer's petition related to the County Assessor's valuation of the Subject Property for tax year 2011. The County Board stipulated that no notice of change in valuation was sent to the Taxpayer for tax year 2011.<sup>4</sup> Both parties offered to stipulate that the Commission had jurisdiction to hear the appeal.

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> Nebraska Statutes section 77-1507.01 allows a party to petition the Commission to determine the valuation of real property if failure to provide notice prevented timely filing under Nebraska Statutes section 77-1502. Such petition, however, must be placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received on or before December 31 of each year.<sup>6</sup>

In order for the Commission to acquire subject matter jurisdiction under Nebraska Statutes section 77-5007, petitions regarding the assessed value of real property for which a failure to provide proper notice prevented timely filing for tax year 2011 must be placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission or otherwise received by the Commission by December 31, 2011. The envelope containing the Taxpayer's petition was postmarked August 15, 2012, and received by the Commission on August 17, 2012. (Case File).

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<sup>4</sup> See E1.

<sup>5</sup> Neb. Rev. Stat. § 77-5013(2) (2012 Cum. Supp.).

<sup>6</sup> Neb. Rev. Stat. § 77-1507.01 (Reissue 2009).

The Nebraska Supreme Court has held that the Commission does not have equity powers in jurisdictional matters.<sup>7</sup> 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.<sup>8</sup> Therefore, the Commission determines that the Taxpayer's appeal was not timely filed.

#### IV. CONCLUSION

1. 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 Saunders County Treasurer, and the officer charged with preparing the tax list for Saunders County as follows:

Cathy Gusman  
433 N Chestnut Ste 200  
Wahoo, NE 68066

Patricia Hunter  
PO Box 337  
Wahoo, NE 68066

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

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

**SIGNED AND SEALED** May 22, 2013

**Seal**

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Thomas D. Freimuth, Commissioner

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Nancy J. Salmon, Commissioner

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<sup>7</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000).

<sup>8</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).