

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jay H. Draheim,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 371

**DECISION AND 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 July 17, 2013. Jay H. Draheim appeared telephonically at the hearing before the Commission as the Appellant. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas 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.¹ Any action of the County Board 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 77-1502.² Parties cannot confer subject matter jurisdiction on a tribunal

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On September 11, 2012, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The envelope did not contain a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from (the County Board determination). The deadline for filing the appeal for tax year 2012 was on or before August 24 or on or before September 10 if the county had adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁴ The County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2012 was September 10, 2012. The appeal 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 did not contain a copy of the determination of the County Board. Jay H. Draheim testified that the failure to include the determination of the County Board in the mailing with the appeal was his oversight. The envelope containing the determination of the County Board was postmarked September 10, 2012, and received by the Commission on September 11, 2012. (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 THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.

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) (2012 Cum. Supp.).

2. This decision and order, 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, as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.) :

Roger Morrissey
1819 Farnam Stre. Rm 400
Omaha, NE 68183-1000

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

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

SIGNED AND SEALED August 15, 2013

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner