

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

57Pro, LLC
Appellant,

v.

Lancaster County Board of Equalization,
Appellee

Case No: 12C 212

**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 20, 2012. Matthew M. Maude, Manager of 57Pro, LLC appeared telephonically at the hearing before the Commission as the Manager. Michael E. Thew, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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 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 77-1502.² Parties cannot confer subject matter

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

² 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.³

III. ANALYSIS

On September 7, 2012, the Commission received an envelope containing an appeal of the determination of the Lancaster County Board of Equalization 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 appeal from, or other information that documents the decision, order, determination, or action appealed from (Decision). (E1). The envelope did contain a letter from the County Board dated August 1, 2012, informing the Taxpayer of the recommendation of the independent referee to the County Board (Recommendation Letter). Matthew Maude, Manager of the Taxpayer testified that he did not receive the Decision until after the present appeal was filed, but that he had received the Recommendation Letter from the County Board and included that document with his Appeal. The Taxpayer argued that because the value indicated in the Recommendation Letter was the same as the value determined by the County Board, the Recommendation Letter should be deemed to be the Decision. 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 has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁴ The Lancaster 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 Decision, as required by § 77-5013. 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.

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.).

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This Order, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and to the officer charged with preparing the tax list for Lancaster County as follows:

Norman Agena
Lancaster County Assessor
555 S 10th St. Rm 102
Lincoln, NE 68508

Andy Stebbing
Lancaster County Treasurer
555 S 10th St. Rm 102
Lincoln, NE 68508

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 January 11, 2013

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner