

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

James J. Obrien,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 11R 438

**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 13, 2011. James J. O'Brien (herein referred to as the "Taxpayer") appeared telephonically at the hearing before the Commission. Diane M. Carlson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (herein referred to as the "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 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 (2012 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 13, 2011, the Commission received an envelope postmarked September 12, 2011, containing an appeal of the determination of the County Board made pursuant to Nebraska Statutes section 77-1502. (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 (herein referred to as the “BOE Decision”).

The deadline for filing the appeal 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 County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2011 was September 10, 2011. September 10, 2011, was a Saturday extending the date for filing to September 12, 2011.<sup>5</sup>

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.<sup>6</sup> While the Taxpayer’s envelope was postmarked September 12, 2011, it did not contain a copy of the BOE Decision.

The Taxpayer asserted that he believed he mailed the original BOE Decision in the envelope received by the Commission on September 13, 2011. The Taxpayer requested that the Commission assume jurisdiction for this reason.

The Taxpayer’s argument is equitable in nature. In *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission and Douglas County Board of Equalization*,<sup>7</sup> the Supreme Court of Nebraska held that, “TERC does not have power to apply equitable principles in jurisdictional matters...” In the *Creighton* case, the appellant filed its

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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. § 25-2221 (Reissue 2008).

<sup>6</sup> Neb. Rev. Stat. § 77-5013(2) (2010 Cum. Supp.).

<sup>7</sup> 620 N.W.2d 90, 260 Neb. 905, 921 (2000).

appeal by the incorrect appeal deadline listed on the Commission's appeal form. Applying equitable principles, the Commission determined that the appeal was timely filed because the appellant had relied on the incorrect information provided by the Commission. The Supreme Court of Nebraska held, however, that the Commission did not have the authority to adopt equitable principles to allow jurisdiction.<sup>8</sup>

The Commission did not receive the BOE Decision by the statutory deadline. Therefore, the Commission determines that the Taxpayer's appeal was not timely filed.

It is noted that paragraph 4 of the Commission's Appeal document requires as follows: "Each appeal must be accompanied by a copy of the decision, action, order or determination appealed from or other documentation of that decision, action, order or determination." The Commission also notes that the bottom portion of the BOE Decision states as follows: "A copy of this Notification of Board Action must be included to complete an appeal to the Tax Equalization and Review Commission."

Under cover of letter dated December 2, 2011, the Commission advised the Taxpayer that his appeal was not perfected. A later envelope containing the BOE Decision was postmarked December 9, 2011, and received by the Commission on December 12, 2011. (Case File).

#### **IV. CONCLUSION**

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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

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

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<sup>8</sup> *Id.*

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

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 July 10, 2013.**

**Seal**

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Thomas D. Freimuth, Commissioner

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Nancy J. Salmon, Commissioner