

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert L. Bundy Family Partnership,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos.: 12A 55 – 12A 58

**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 February 25, 2013. Shaun M. James appeared telephonically on behalf of the Robert L. Bundy Family Partnership (herein referred to as the “Taxpayer”). Nicole O’Keefe, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy County Board of Equalization (herein referred to as the “County Board”). The Commission took notice of its case file 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 August 29, 2012, the Commission received an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). The deadline for filing appeal of this determination 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 Sarpy County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2012 was August 24, 2012.

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.⁵ The appeal was received by the Commission on August 29, 2012, in an envelope postmarked August 27, 2012. (Case File).

The Commission held a Show Cause hearing on February 25, 2013, to determine if the Commission has jurisdiction to hear the appeal.

The Taxpayer asserted that the appeal was filed late due to a clerical error, and that the General Manager of the Taxpayer was under the impression the filing deadline with the Commission was August 31, 2012. The Taxpayer also asserted that the County Board would not suffer adverse consequences stemming from a finding of jurisdiction because appeals for the Subject Properties for tax year 2011 had been timely filed with the Commission, and that the issues involved for tax years 2011 and 2012 were similar. The Taxpayer requested that the Commission assume jurisdiction for the reasons stated.

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*

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.).

Equalization,⁶ 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 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.⁷

The Commission did not receive the appeal by the statutory deadline. Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

ORDER

IT IS THEREFORE ORDERED THAT:

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

Dan Pittman
1210 Golden Gate Dr. Ste 1122
Papillion, NE 68046

Rich James
1210 Golden Gate Dr.
Papillion, NE 68046

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

⁶ 620 N.W.2d 90, 260 Neb. 905, 921 (2000).

⁷ *Id.*

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

SIGNED AND SEALED July 10, 2013

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner