

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mary L. Drey
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 11R 415

**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 31, 2012. Mary L. Drey appeared telephonically at the hearing before the Commission as the Subject Property owner (“Taxpayer”). Sandra Connolly, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (“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 jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

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

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

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

III. ANALYSIS

On September 12, 2011, 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).⁴ 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 the County Board (herein referred to as the “County Board Decision”). Instead, the envelope contained a copy of the Douglas County Assessor’s 2011 Valuation Notice dated May 16, 2011, together with a copy of the County Board’s receipt of the Taxpayer’s protest of the Assessor’s 2011 valuation (the County Board’s receipt indicates it was mailed to the Taxpayer on July 5, 2011).⁵

The deadline for filing the appeal for tax year 2011 was on or before August 24 or on or before September 12 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁶ The County Board did adopt a resolution extending the deadline for hearing protests,⁷ so the filing deadline for tax year 2011 was September 12, 2011. 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.⁸ The envelope containing the Taxpayer’s appeal was postmarked September 9, 2011, and received by the Commission on September 12, 2011, but the envelope did not contain a copy of the County Board Decision.⁹

The Commission held a Show Cause hearing on July 31, 2012, to determine if the Commission has jurisdiction to hear the appeal.

The County Board asserted that the documents referenced above that were contained in the envelope received by the Commission on September 12, 2011, did not include the County Board Decision.

⁴ (Case File).

⁵ (Case File).

⁶ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁷ (Case File).

⁸ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁹ (Case File).

The Taxpayer testified that she mistakenly included the Douglas County Assessor's 2011 Valuation Notice and the County Board's receipt in the envelope received by the Commission on September 12, 2011, in part due to confusing filing instructions on the Valuation Notice. The Taxpayer asked that the Commission take jurisdiction because she intended to file the appropriate letter by the September 12, 2011, statutory deadline.

The Taxpayer's request for relief sounds in equity. The Nebraska Supreme Court has held that the Commission does not have equity powers in jurisdictional matters.¹⁰ The Commission did not receive a copy of the County Board Decision 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 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

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

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

¹⁰ *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000).

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

SIGNED AND SEALED June 3, 2013.

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner