

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Clarice A. Loomis,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee

Case No: 12C 218

**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. Clarice A. Loomis appeared telephonically at the hearing before the Nebraska Tax Equalization and Commission (“Commission”) as the Taxpayer. 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 10, 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).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, a copy of a letter dated August 1, 2012, from the County Board indicating a referee’s recommendation to the County Board concerning the Taxpayer’s appeal was included in the envelope.⁵

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 77-1502.⁶ The County Board did adopt a resolution extending the deadline for hearing protests,⁷ 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.⁸ The envelope containing the Taxpayer’s appeal was postmarked September 7, 2012, and received by the Commission on September 10, 2012, but the envelope did not contain a copy of the County Board Decision.⁹

The Commission held a Show Cause hearing on December 20, 2012 to determine if the Commission has jurisdiction to hear the appeal.

The County Board asserted that the letter dated August 1, 2012, is not notice of the County Board’s decision. The County Board also asserted that the letter dated August 1, 2012, states that in order to appeal to the Commission the Taxpayer would need to submit “a copy of your

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

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).

final value letter from the Board of Equalization which you will receive after August 10, 2012.”¹⁰

The Taxpayer testified that she received a letter from the County Board dated August 9, 2012, which stated the final value, but that she mistakenly included the letter dated August 1, 2012, because the two letters are so similar. The Taxpayer asked that the Commission take jurisdiction because she intended to file the appropriate letter.

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.¹¹ 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 Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster County as follows:

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

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

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

¹⁰ (Case File).

¹¹ *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