

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cargill Meat Solutions Corporation,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 13C 465

**DECISION AND 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 January 15, 2014. Colin Mues appeared telephonically at the hearing before the Tax Equalization and Review Commission (the Commission) as legal counsel for Cargill Meat Solutions Corporation (the Taxpayer). Elizabeth Lay, Deputy Platte County Attorney, appeared telephonically on behalf of the Platte County Board of Equalization (the County Board). The Commission took notice of the case file for the purpose of determining personal jurisdiction 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 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

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

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

acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On September 9, 2013, the Commission received an envelope containing an appeal of the determination of the Platte County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The deadline for filing appeals of these determinations for tax year 2013 was on or before August 24, 2013 since the County Board did not adopt a resolution extending the deadline for hearing protests.⁴ 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 envelope containing the appeal has no postmark and was received by the Commission on September 9, 2013. (Case File). The Taxpayer did not dispute that the filing was made with the Commission on September 9, 2013.

The Taxpayer argued that because appeals for the same property for prior tax years were pending with the Commission, the Commission has jurisdiction over the present appeal for tax year 2013. However, the deadline for filing an appeal of the decision of the County Board for each tax year is set by statute and a timely filing is required for the Commission to have jurisdiction over this appeal.⁶ The Nebraska Supreme Court has held that the Commission does not have equity powers in jurisdictional matters.⁷ The Commission finds that it does not have the authority to consider an untimely filed appeal for tax year 2013 even when an appeal is pending for an appeal of the same property from a prior tax year. Therefore, the Commission determines that this 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.).

⁶ See, Neb. Rev. Stat §77-1510 (Reissue 2009) and 77-5013 (2012 Cum. Supp.)

⁷ *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000).

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

Thomas Placzek
2610 14th St.
Columbus, NE 68601

Theresa Gabriel
2610 14th St.
Columbus, NE 68601

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 24, 2014

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner