

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

Larry Sudman,  
Appellant,

v.

Cass County Board of Equalization,  
Appellee.

Case No: 14R 207

**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 June 25, 2015. Larry Sudman (“Taxpayer”) appeared telephonically at the hearing before the Nebraska Tax Equalization and Commission (“Commission”). Nathan Cox, the Cass County Attorney, appeared telephonically on behalf of the Cass 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.<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 (2014 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 August 12, 2014, 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).<sup>4</sup> 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 the County Board (herein referred to as the “County Board Decision”). Instead, the envelope included a “2014 Notice of Valuation Change” issued by the County Board and mailed to the Taxpayer on July 30, 2014. Unlike the County Board Decision required for purposes of perfecting an appeal, this document provides notice regarding the County Board’s action to grant a flood adjustment to certain parcels in Cass County and outlines procedures to appeal this adjustment to the County Board rather than the Nebraska Tax Equalization and Review Commission.<sup>5</sup>

On September 3, 2014, the Commission received an envelope containing an appeal of the determination of the Cass County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).<sup>6</sup> This envelope also contained the above-referenced County Board Decision.<sup>7</sup>

The deadline for filing appeals to the Commission of county board of equalization determinations for tax year 2014 was on or before August 25 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>8</sup> The Cass County Board did not adopt a resolution extending the deadline for hearing protests, so the filing deadline for tax year was August 25, 2014.

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

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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> Case File.

<sup>5</sup> Case File.

<sup>6</sup> Case File.

<sup>7</sup> Case File.

<sup>8</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

on or before the date specified by law for filing the appeal.<sup>9</sup> The envelope containing the Taxpayer's appeal together with the County Board Decision was postmarked September 2, 2014, and received by the Commission on September 3, 2014.<sup>10</sup>

A Show Cause hearing was held on June 25, 2014, to determine if the Commission has jurisdiction to hear the Taxpayer's appeal. In effect, the Taxpayer asked the Commission to take jurisdiction because he intended to file the County Board Decision with his mailing received by the Commission on August 12, 2014, and that he mistakenly included the above-referenced "2014 Notice of Valuation Change."<sup>11</sup>

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.<sup>12</sup> 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 Cass County Treasurer, and the officer charged with preparing the tax list for Cass County as follows:

Lori L. Huebner  
145 N 4th St.  
Plattsmouth, NE 68048

Richard Wassinger  
346 Main St., Rm 204  
Plattsmouth, NE 68048

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<sup>9</sup> Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

<sup>10</sup> Case File.

<sup>11</sup> See, Case File.

<sup>12</sup> *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000).

as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

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

**SIGNED AND SEALED** July 2, 2015

**Seal**

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Thomas D. Freimuth, Commissioner

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Nancy J. Salmon, Commissioner