

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brad L. Moser & Mary B. Moser,
Appellants,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 15A 231 to 15A 238

**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 18, 2015. Brad & Mary Moser (the Taxpayer) appeared at the hearing. Ryan M. Swaroff, Deputy Lancaster County Attorney, appeared on behalf of the Lancaster County Board of Equalization (the County Board). Without objection, the Tax Equalization & Review Commission (the Commission) took notice of its case files for the purposes of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and argument regarding the Jurisdiction of the Commission to hear these appeals. Prior to adjournment, the Commission left the record open until December 22, 2015 for the purposes of the correction of a clerical error relating to Exhibit 1. A corrected copy of Exhibit 1 was submitted to the Commission prior to the close of business December 22, 2015.

II. STANDARD OF REVIEW

Neb. Rev. Stat. §77-5013 provides that the Commission obtains jurisdiction over an appeal when the appeal form 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 pursuant to §77-1502 may be appealed to the Tax Equalization and

¹ See, Neb. Rev. Stat. §77-5013 (2014 Cum. Supp.).

Review Commission (the Commission) in accordance with Neb. Rev. Stat. §77-5013 on or before August 24, or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. §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

III. ANALYSIS

On September 18, 2015, the Commission received an envelope containing eight appeals of determinations of the Lancaster County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502. The deadline for filing appeals of these determinations for tax year 2015 was on or before August 24 or on or before September 10 if the county board has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁴ The Lancaster County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2015 was September 10, 2015. 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 was postmarked September 16, 2015, and was received by the Commission on September 18, 2015.

Mary Moser testified that the Taxpayer did not receive notice of the County Board decisions until September 16, 2015, when she received them by email after requesting them. Moser testified that she and Brad Moser had been on vacation from August 18, 2015 to August 23, 2015, and had had their mail held at a U.S. Post Office until August 24, 2015. She asserted that no notices of the County Board decisions for tax year 2015 were received at the mailing address of the Taxpayer. Moser further testified that upon receiving the notices by email she downloaded appeal forms from the Commission's website, completed the forms, and mailed them to the Commission. The envelope containing the appeal forms was postmarked September 16, 2015,⁶ and was received by the Commission on September 18, 2015. Therefore, the

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).

⁴ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁵ Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

⁶ Case File.

Commission determines that the appeal was not timely filed under the requirements of Section 77-1510.⁷

However, if a failure by the County Board to give notice of the County Board's decisions prevented the Taxpayer, who otherwise would have a right to appeal, from timely filing the appeals, the Taxpayer may file a Petition with the Commission by December 31 of the tax year.⁸ The County Clerk was required to mail notice of the County Board's decisions to the Taxpayer by August 18, 2015.⁹

Moser testified no notice of the County Board decisions was received in the mail by the Taxpayer. The County Board offered Exhibit 1, an affidavit of Cori Beattie, Chief Deputy County Clerk of the office of the Lancaster County Clerk. Beattie averred that notices of the decisions of the County Board were mailed by first class mail, postage prepaid, to the Taxpayer's address of record on August 7, 2015. Beattie's averment is persuasive evidence that there was no failure to give notice to the Taxpayer that prevented timely filing of the appeals.

Therefore, the Commission determines that it does not have jurisdiction over the appeals or petitions.

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. As required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.), this decision, if no appeals are 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. Room 102
Lincoln, NE 68508

⁷ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁸ See, Neb. Rev. Stat. §77-1507.01(2014 Cum. Supp.).

⁹ See Neb. Rev. Stat. §77-1502(6) (2014 Cum. Supp.).

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

SIGNED AND SEALED January 14, 2016

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner