

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Norman Denenberg et al. Trust,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 817

**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 March 9, 2016. Norman Denenberg, Trustee of the Norman Denenberg et al. Trust (the Taxpayer), appeared telephonically at the hearing before the Commission. Shakil Malik, Deputy Douglas County Attorney, also appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and heard argument regarding the Jurisdiction of the Commission to hear this appeal.

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 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

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

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 December 9, 2015, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (2014 Cum. Supp.). 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 County Board adopted a resolution extending the deadline for hearing protests, 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 December 3, 2015, and received by the Commission on December 9, 2015.

The Taxpayer requested that the Commission waive the statutory deadline. This amounts to a request for equitable relief. The Commission has only that authority specifically conferred upon it by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by construction necessary to achieve the purpose of the relevant provisions or act. The Commission does not generally have equitable powers, and does not specifically have equity powers in jurisdictional matters.⁶

IV. CONCLUSION

The Commission determines that the appeal was not timely filed and, therefore, the Commission does not have jurisdiction to hear the above captioned appeal.

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

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato
Douglas County Assessor & Register of Deeds
1819 Farnam Street, Room H09
Omaha, Nebraska 68183

John Ewing
Douglas County Treasurer
1819 Farnam Street, Room H03
Omaha, Nebraska 68183

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

SIGNED AND SEALED March 15, 2016

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner