

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Heartland Baptist Church
Appellant,

v.

Box Butte County Board of Equalization
Appellee

Case No: 16E 0001

Decision and Order Vacating the
Determination of the County Board

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 25, 2016. Dennis E. Gruber, Pastor of Heartland Baptist Church appeared telephonically at the hearing before the Commission for Heartland Baptist Church (the Taxpayer). Aaron Bourne, Deputy Box Butte County Attorney, appeared telephonically on behalf of the Box Butte County Board of Equalization (the County Board). The Tax Equalization and Review Commission (Commission) took notice of its case files for the purpose of determining personal 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 Neb. Rev. Stat. § 77-202.02 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 within thirty days after the decision of the county board of equalization.² Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver,

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

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

estoppel, consent, or conduct of the parties.³ The Commission is an administrative agency and only has that authority granted it by the legislature.⁴

III. ANALYSIS

On February 25, 2016, the Commission received an envelope containing an appeal of an exemption determination of the Box Butte County Board of Equalization. (Case File). This envelope contained an appeal form and filing fee, but 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.

On February 26, 2016 a copy of the determination was received by the Commission in the form of the Exemption Application Form 451.(Case File). The Form 451 indicated the Exemption Application was for the 2015 tax year, but was signed and dated November 7, 2015.

The deadline for filing appeals of exempt status determinations is within thirty days after the decision of the county board of equalization.⁵ The determination of the County Board indicates that the determination was for the 2015 tax year and was made on January 19, 2016 which would mean that the appeal to the Commission was filed more than 30 days from the date of the decision of the County Board. (Case File). For these reasons the Commission set this matter for a Show Cause Hearing to determine if the Commission had jurisdiction to hear this appeal.

At the Show Cause Hearing the parties stipulated that the Form 451 was submitted for a tax year 2016 exemption. The evidence and testimony before the Commission further indicate that the County Board took action on the Taxpayer's Exemption Application on January 19, 2016.

Applications for tax exemption for real or personal property in tax year 2016 shall be filed on or before December 31, 2015.⁶ The county assessor shall examine the applications and recommend either taxable or exempt status for the real property to the county board of equalization on or before February 1, 2016.⁷ The Form 451 demonstrates that the Taxpayer filed

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

⁴ *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998)(Citations omitted).

⁵ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁶ Neb. Rev. Stat. §77-202.01(1)(Reissue 2009).

⁷ Neb. Rev. Stat. §77-202.01(1) (Reissue 2009).

the exemption application on time and that the Box Butte County Assessor examined and made her recommendations to the County Board on time.⁸

The statutes then give the county board of equalization the authority to grant or withhold the tax exemption between February 1, 2016 and June 1, 2016.⁹ The Form 451 and other evidence indicates that the County Board took action to withhold the tax exemption on January 19, 2016, which is outside of the timeframe it had the authority to take such action.¹⁰

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.¹¹ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”¹²

IV. CONCLUSION

The Commission finds that the County Board did not have the authority to grant or withhold the Taxpayer’s tax exemption on January 19, 2016, and that therefore the action of the County Board is void and the Commission therefore lacks subject matter jurisdiction in this appeal.

The Commission’s decision herein does not determine whether the Taxpayer’s exemption should be granted or withheld for tax years 2016. Rather, the Commission is simply deciding that it does not have subject matter jurisdiction over this particular appeal.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The determination of the County Board taken on January 19, 2016, regarding the Taxpayer’s Exemption Application are void.
2. The determination of the Box Butte County Board of Equalization is vacated.

⁸ Case File

⁹ Neb. Rev. Stat. §77-202.02 (Reissue 2009).

¹⁰ Case File.

¹¹ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

¹² *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).

3. This decision, if no appeal is filed, shall be certified within thirty days to the Box Butte County Treasurer, and the officer charged with preparing the tax list for Box Butte County as follows:

Michelle Robinson
515 Box Butte Suite 102
Alliance, NE 69301

Kim Burke-Smith
PO Box 655
Alliance, NE 69301

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

4. Any Request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this matter.

SIGNED AND SEALED May 16, 2016

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner