

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Stephen M. Padgett,
Appellant,

v.

Harlan County Board of Equalization,
Appellee

Case No: 15H 0002

**ORDER VACATING DECISION OF
COUNTY BOARD AND GRANTING
HOMESTEAD EXEMPTION**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on February 25, 2016. Stephen M. Padgett (Taxpayer), appeared telephonically at the hearing before the Commission. Brian McQuay, Deputy Harlan County Attorney, appeared telephonically on behalf of the Harlan County Board of Equalization (the County Board of Equalization). The Commission took notice of its case file for the purpose of determining personal and subject matter jurisdiction. The Commission received additional evidence and heard argument regarding its jurisdiction to hear this appeal.

II. STANDARD OF REVIEW

Neb. Rev. Stat. §77-5013 of the Nebraska Statutes 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 of Equalization pursuant to § 77-3519 may be appealed to the Tax Equalization and Review Commission in accordance with § 77-5013 within thirty days after the date of the decision.² Parties cannot confer subject matter jurisdiction on a

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

² Neb. Rev. Stat. §77-3519 (2014 Cum. Supp.).

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

III. ANALYSIS

On December 7, 2015, the Commission received an envelope containing the Taxpayer's appeal of the Harlan County Board of Equalization's determination made pursuant to Neb. Rev. Stat. §77-3519 (Reissue 2009). (Case File). The County Board of Equalization denied the Taxpayer's appeal of the Homestead Exemption protest on October 20, 2015 (Case File). The deadline for filing appeals of these determinations for tax year 2015 was within thirty days after the decision.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 was postmarked December 3, 2015, and received by the Commission on December 7, 2015. (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 evidence and testimony before the Commission indicated that the Taxpayer initially filed his homestead exemption application with the Harlan County Assessor (Assessor) on March 6, 2015. On March 30, 2015, the Assessor sent the Taxpayer a letter requesting a current doctor's certification of disability for his homestead exemption application. The Assessor received letters from the doctor's office on April 6, 2015, and May 5, 2015, in response to her request. The Assessor then mailed a Notice of Rejection of Homestead Exemption to the Taxpayer on August 27, 2015.⁶

After that notice went out, the Assessor testified that the Taxpayer contacted her office and the County Clerk's office and that contact was treated as a protest of the August 27, 2015, rejection of the Taxpayer's Homestead Exemption Application. On October 6, 2015, the Assessor, at the request of the Department of Revenue, sent the Taxpayer a notice of a hearing

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. §77-3519 (2014 Cum. Supp.).

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

⁶ Exhibit 4

before the County Board of Equalization to be held on October 20, 2016. At this meeting the County Board of Equalization rejected the Taxpayer's Homestead Exemption Application. The Assessor prepared a new Rejection of Homestead Exemption Form 458R that she dated and mailed to the Taxpayer on October 21, 2015. However, that form reflected the County Board of Equalization's action was on October 20, 2015.

Sometime after receiving notice of the October 20, 2015, County Board of Equalization action, the Taxpayer requested an opportunity to "visit" with the County Board. On November 6, 2015, the Taxpayer was sent notice that he would be on the agenda for the November 17, 2015, meeting of the County Board to discuss his next steps regarding his homestead exemption application. The Taxpayer testified that when he attended the November 17 meeting of the Harlan County Board (not the Harlan County Board of Equalization) he found out that he could appeal the Rejection of a Homestead Exemption to the Commission. The Taxpayer then appealed the October 20, 2015, action of the County Board of Equalization to the Commission by mailing a complete appeal to the Commission postmarked December 3, 2015.

Homestead exemption applications are required to be filed annually with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year.⁷ The Taxpayer's Form 458 Homestead Exemption Application was filed with the Assessor's office on March 6, 2015, with the required doctor's certification received in the Assessor's office on April 6, 2015, or May 5, 2015. The Taxpayer therefore timely filed his Homestead Exemption Application for tax year 2015.

County assessors are required to examine each application for homestead exemption and determine, except for the income requirements, whether or not such application should be approved or rejected.⁸ In any case when the county assessor rejects an application for exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application, which notice shall be mailed not later than July 31 of each year, except that in case of a change in ownership or occupancy from January 1 through August 15 or a late application authorized by the county board or permitted because of a medical condition which impaired the applicant's ability to file in a timely manner, the notice

⁷ See, Neb. Rev. Stat. §77-3512 (2014 Cum. Supp.)

⁸ See, Neb. Rev. Stat. §77-3516 (2014 Cum. Supp.)

shall be sent within a reasonable time.⁹ The Taxpayer filed his homestead exemption application in a timely manner so the Assessor was required to mail notice of the rejection to the Taxpayer by July 31, 2015. The required notice was sent to the Taxpayer on August 27, 2015.¹⁰ The Taxpayer did not receive the notice of rejection from the Assessor by the statutorily required deadline.

The Courts in Nebraska have consistently voided actions of county boards when there was a failure to follow mandatory notice statutes. In *Rosenberry v. Douglas County*, the Nebraska Supreme Court held that a county assessor did not have authority to increase the assessed value of a property unless the taxpayer received appropriate notice.¹¹ The Court reasoned that it was mandatory under the applicable Nebraska Statute that a county assessor or county board of equalization provides notice of an increased assessment of property taxes to the taxpayer. Similarly, in *Gamboni v. County of Otoe*, the Nebraska Supreme Court held that where a county assessor provides notice of a valuation increase, but does not include all of the requisite information, then the increased valuation is void.¹²

In *Falotico v. Grant County Board of Equalization*, the Grant County Board of Equalization failed to send notice of its determination within 7 days as required by statute¹³. The taxpayer filed his appeal to the Commission late and the Nebraska Supreme Court determined that the Commission did not have jurisdiction. The increased assessment was held void because the taxpayer did not have an effective path for appealing the merits of the determination.

In *Darnall Ranch, Inc., v. Banner County Board of Equalization*, the Nebraska Supreme Court held that the Banner County Board of Equalization had violated the Open Meeting Acts concerning the taxpayer's petition to the county board of equalization¹⁴. The Court reasoned that because the taxpayer no longer had an avenue of appeal available the increased assessment was void.

As the above cases show, the Nebraska Supreme Court and Court of Appeals have determined that the appropriate remedy is to void the county's assessment when there is a failure

⁹ Neb. Rev. Stat. §77-3516 (2014 Cum. Supp.)

¹⁰ Exhibit 4

¹¹ 123 Neb. 803, 244 N.W. 398 (1932)

¹² 159 Neb. 417, 67 N.W.2d 489 (1954) disapproved on other grounds

¹³ 262 Neb. 292, 631 N.W.2d 492 (2001)

¹⁴ 280 Neb. 655, 789 N.W.2d 26 (2010)

to follow a mandatory provision of statute. This includes a failure to provide appropriate notice of a county board determination or an increase in taxation by a county assessor. The courts concluded that because the taxpayer had lost its access to review, the increased assessment was void.¹⁵

IV. CONCLUSION

The Commission finds that the because the Assessor failed to provide the Taxpayer with the required notice of rejection of homestead exemption, her action denying the exemption is void and the County Boards affirmance of that action is also void. The Taxpayer's Homestead Exemption should be granted.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The denial of the homestead exemption for the property which is the subject of this appeal by the Harlan County Assessor and Harlan County Board of Equalization is void.
2. The homestead exemption for the property which is the subject of this appeal shall be granted.
3. This decision, if no appeal is filed, shall be certified within thirty days to the Harlan County Treasurer, and the officer charged with preparing the tax list for Harlan County as follows:

Kim Wessels
PO Box 758
Alma, NE 68920

Diane Grotfeld
Box 559
Alma, NE 68920

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

¹⁵ The adoption of Nebraska Statutes section 77-1507.01, would change the outcome in some of the prior cases but there is no equivalent to this statute regarding Homestead Exemptions.

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

SIGNED AND SEALED August 31, 2016

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner