

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Greenhouse Gardens, LLC
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 16R 0511

**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 February 14, 2017. Molly Romero, Managing Partner of Greenhouse Gardens, LLC (the Taxpayer) appeared telephonically at the hearing before the Commission. Shakil A. Malik, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Tax Equalization and Review Commission (the Commission) took notice of the case file 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. APPLICABLE LAW

On or before June 1, ... the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address.

Neb. Rev. Stat. §77-1315 (2) (2016 Cum. Supp.).

Any person otherwise having a right to appeal may petition the [Commission] in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.

Neb. Rev. Stat. §77-1507.01 (Reissue 2009).

(1) The commission obtains exclusive jurisdiction over an appeal or petition when:

(a) The commission has the power or authority to hear the appeal or petition;

- (b) An appeal or petition is timely filed;
 - (c) The filing fee, if applicable, is timely received and thereafter paid; ...
- Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, 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 or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

Neb. Rev. Stat. §77-5013 (2016 Cum. Supp.).

The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30.

Neb. Rev. Stat. §77-1502(1) (2016 Cum. Supp.).

III. JURISDICTIONAL STANDARD

The Commission obtains jurisdiction over a petition when a Taxpayer proves that a failure to give notice of a change in assessed value prevented the timely filing of a protest to the County Board.¹ In addition, the petition must be timely filed and the filing fee must be timely received.²

IV. FINDINGS OF FACT

On November 29, 2016, the Commission received an envelope containing an appeal form submitted by the Taxpayer regarding the Subject Property (Case File). In its filing, the Taxpayer asserted the right to file a petition under Neb. Rev. Stat. §77-1507.01, which sets December 31 of the same tax year as the filing deadline. The Taxpayer claimed this right based upon an assertion that no notice of the assessment of the Subject Property had been given to the Taxpayer as required by Neb. Rev. Stat. §77-1315(2).

At the hearing, Molly Romero, the Managing Partner of Greenhouse Gardens, LLC, testified on behalf of the Taxpayer. According to her testimony and the record in the Case File, the

¹ Neb. Rev. Stat. §77-1507.01 (Reissue 2009).

² Neb. Rev. Stat. §77-5013 (2016 Cum. Supp.).

Subject Property was a rental property owned by the Taxpayer, with an address different from the business address of the Taxpayer. The Taxpayer purchased the Subject Property in 2013. For tax years 2014 and 2015, assessment notices were sent by the County Assessor and tax statements were sent by the County Treasurer to the Subject Property, not to the business address of the Taxpayer.

For both tax years 2014 and 2015, the Taxpayer protested and appealed the taxable value of the Subject Property. Those appeals were heard on November 18, 2016. At that hearing, Ms. Romero asked a representative of the County Assessor attending the hearing to thereafter send such notices to the business address of the Taxpayer.

Ms. Romero testified that the assessment for tax year 2016 was different from the taxable value for tax year 2015 and that the Subject Property was vacant during an unidentified period of time during calendar year 2016. There is no evidence in the record to show that prior to June 1, 2016, the Taxpayer provided the County Assessor with any request or notice that the business address of the Taxpayer be used to notify the Taxpayer regarding the Subject Property.

The Taxpayer alleges that it did not receive from the County Assessor a notice of the increased assessment of the Subject Property for tax year 2016, as required by Neb. Rev. Stat. §77-1315(2). Under that subsection, the County Assessor is required to give notice when the assessment is “at a value different than in the previous year.”³ The record includes sufficient evidence that the assessed value for 2016 was different from the taxable value for tax year 2015, and that the notice of an increased assessment for tax year 2016 was sent to the Subject Property, but that the Taxpayer never received the notice. However, there is also sufficient evidence in the record that the notice of the assessment for tax year 2016 was sent to the “last known address” of the Taxpayer.⁴

When the Taxpayer has consistently received and responded to mailings from the taxing authorities, as was the case here, we find that the address effectively relied upon by the taxing authority satisfies the requirement that the notice be given to the last known address. Because we find that there is sufficient evidence that the assessment notice was given to the Taxpayer at the Taxpayer’s last known address, we cannot conclude that a failure to give notice of an assessment

³ Neb. Rev. Stat. §77-1315(2).

⁴ *Id.*

prevented the timely filing of a protest to the County Board. It follows that we cannot exercise jurisdiction of the filing as a petition under Neb. Rev. Stat. §77-1507.01.

Further, since the Taxpayer was given timely notice of the assessment and since no protest was filed by the Taxpayer by June 30, 2016, neither the County Board nor the Commission may properly exercise jurisdiction over the filing as a protest or as an appeal.⁵

For the sake of completeness, at the hearing, the County Board raised the question as to whether the County Assessor, rather than the County Board, is the proper party in these proceedings. Because the Commission has determined that it does not have jurisdiction, no discussion in relation to that issue is necessary.

V. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned case.

VI. ORDER

IT IS THEREFORE ORDERED THAT:

1. Case No: 16R 0511 is dismissed with prejudice.
2. This order, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.) as follows:

Diane Battiato
1819 Farnam Stre. Ste H09 Civic Center
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
68183

⁵ See, Neb. Rev. Stat. §77-1502(1) (2016 Cum. Supp.)

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

SIGNED AND SEALED February 17, 2017

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner