

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Richard W. Kruse Revocable Trust  
Appellant,

v.

Washington County Board of Equalization  
Appellee

Case No: 11A 078

**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 June 26, 2012. Richard W. Kruse appeared telephonically at the hearing before the Commission as the Trustee. Edmond Talbot, Deputy Washington County Attorney, appeared telephonically on behalf of the Washington County Board of Equalization. The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

**II. STANDARD OF REVIEW**

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it 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.<sup>1</sup> Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.<sup>2</sup> Parties cannot confer subject matter

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2010 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.<sup>3</sup>

### **III. ANALYSIS**

On August 25, 2011, the Commission received an envelope containing an appeal of the determination of the Washington County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The envelope did not contain a copy of the decision, order, determination, or action appeal from, or other information that documents the decision, order, determination, or action appealed from (BOE Decision). The deadline for filing the appeal for tax year 2011 was on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.<sup>4</sup> The Washington County Board could not and therefore did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2011 was August 24, 2011. The appeal 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.<sup>5</sup> The envelope was postmarked August 24, 2011, but it did not contain a copy of the BOE Decision (Form 422). A subsequent mailing including the BOE Decision was postmarked December 21, 2011, and received by the Commission on December 22, 2011. (Case File). Therefore, the Commission determines that the appeal was not timely filed.

### **IV. CONCLUSION**

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

### **V. ORDER**

#### **IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeal is dismissed with prejudice.

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

<sup>4</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

<sup>5</sup> Neb. Rev. Stat. 77-5013(2) (2010 Cum. Supp.).

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

Steven Mencke  
Washington County Assessor  
1555 Colfax St.  
Blair, NE 68008

Marjorie Hoier  
Washington County Treasurer  
PO Box 348  
Blair, NE 68008

as required by Neb. Rev. Stat. §77-5018 (Reissue 2009).

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

**SIGNED AND SEALED** August 29, 2012

**Seal**

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Nancy J. Salmon, Commissioner

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Robert W. Hotz, Commissioner