

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cascade Pines, LP,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee,

Case No: 12R-1145

**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 27, 2013. Clint Taubenheim appeared telephonically at the hearing before the Commission as the CFO of Cascade Pines, LP. Michael E. Thew, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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.¹ Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission (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 77-1502.² Parties cannot confer subject

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

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

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 September 11, 2012, the Commission received an envelope postmarked September 10, 2012, containing 51 appeals of determinations of the Lancaster County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ Fifty of those appeals were complete but the envelope 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 (County Board Decision) for the above captioned appeal. Instead, the envelope contained only the Referee's Recommendation for the above captioned appeal. On October 31, 2012, the Commission received a second envelope containing a copy of the County Board Decision for the captioned appeal. That second envelope was postmarked October 30, 2012.

The deadline for filing an appeal for tax year 2012 was on or before August 24, or on or before September 10 if the county had adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁵ The Lancaster County Board did adopt a resolution extending the deadline for hearing protests,⁶ so the filing deadline for tax year 2012 was September 10, 2012, for this appeal. 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.⁷ The envelope containing the County Board Decision was postmarked October 30, 2012, and received by the Commission on October 31, 2012.⁸

At the Show Cause Hearing, Taubenheim testified that the Appellant inadvertently included the Referee's Recommendation instead of a copy of the County Board Decision for the captioned appeal in the September 10, 2012, mailing. Taubenheim testified that the error was corrected as soon as it was discovered and that the same error was not made with the other 50 appeals filed by

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

⁴ Case File.

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

⁶ Case File.

⁷ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁸ Case File.

the Appellant and included in the envelope received by the Commission on September 11, 2012. Taubenheim asked that the Commission take jurisdiction in the above captioned appeal. Taubenheim's prayer for relief sounds in equity.

"Jurisdiction is the inherent power or authority to decide a case."⁹ The Commission has only that "authority" which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹⁰ Specifically, the Commission has no equity powers in jurisdictional matters.¹¹

The Commission finds that the appeal was not timely filed and that the Commission does not have the authority to grant equitable relief.

IV. CONCLUSION

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

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster County as follows:

Norman Agena
555 S 10th St. Rm 102
Lincoln, NE 68508

Andy Stebbing
555 S 10th St. Rm 102
Lincoln, NE 68508

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

⁹ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹⁰ *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

¹¹ *See, Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 921, 620 N.W.2d 90, 102 (2000) ("TERC does not have the power to apply equitable principles in jurisdictional matters...").

3. Each party is to bear its own costs in this matter.
4. This Decision is effective for purposes of appeal on March 5, 2013.

SIGNED AND SEALED March 5, 2013

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner