

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gregory D. Hollman,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee,

Case No: 12R-1165

**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. Gregory D. Hollman appeared at the hearing before the Commission. 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 purposes 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 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 matter

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

² 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.³

III. ANALYSIS

On September 12, 2012, the Taxpayer hand-delivered to the Commission an appeal of the determination of the Lancaster County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ The filing contained the appeal on the Commission's Appeal form, filing fee, and a copy of the decision, order, determination, or action appealed from.

The deadline for filing appeals of these determinations 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. 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.⁷ The appeal was hand-delivered and the Commission did not receive the appeal until September 12, 2012.⁸

At the hearing, Hollman testified that prior to the filing deadline he came to the Commission's office to file his appeal, but was instructed by Commission staff that his filing did not include all of the necessary elements to perfect his appeal. Hollman testified that he was instructed by the Commission's staff that the appeal deadline was September 15, 2012. Hollman asserted that due to the alleged erroneous information, he failed to timely file his appeal and asked the Commission to take jurisdiction despite the late filing. In this context, the Commission notes that the determination of the County Board which was filed by the Taxpayer with the appeal form, as well as the instructions on the appeal form itself, clearly state that an appeal filed

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

⁴ See Case File. The filing was ink-stamped as received on September 12, 2012.

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

⁶ Case File.

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

⁸ Case File.

with the Commission must be filed by September 10, 2012,⁹ as is consistent with the statutory requirements.

Hollman’s prayer for relief sounds in equity. “Jurisdiction is the inherent power or authority to decide a case.”¹⁰ The Commission has only that “authority” which is specifically conferred upon it by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹¹ Specifically, the Commission has no equity powers in jurisdictional matters.¹²

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

V. 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 See Case File. The Commission notes that under no circumstances in any tax year is the date September 15 the deadline for filing such appeals to the Commission.

¹⁰ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹¹ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

¹² 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