

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

Community 360,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14E 068

**ORDER FOR DISMISSAL**

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

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on August 19, 2014. Paul Falkowski appeared telephonically at the hearing before the Commission as the Executive Director of Community 360 (the Taxpayer). Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal jurisdiction 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 60-3,189 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within 30 days after the final decision.<sup>2</sup> Parties cannot confer subject matter 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>

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<sup>1</sup> See, Neb. Rev. Stat. §77-5013 (2012 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §60-3,189 (2012 Cum. Supp.).

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

### **III. ANALYSIS**

On May 28, 2014, the Commission received an envelope containing a purported appeal of a determination of the County Board made pursuant to Neb. Rev. Stat. §60-3,189 (2012 Cum. Supp.). (Case File). 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). At the Show Cause hearing regarding the above captioned appeal, there was no evidence that the County Treasurer had made a recommendation to the County Board regarding the exemption application. Additionally there was no evidence that the County Board notified the Taxpayer of a hearing regarding its exemption application or that the County Board had, as of the date of this hearing, approved or denied the application.

The Commission has jurisdiction over decisions of county boards of equalization regarding the exemption from motor vehicle taxes and fees.<sup>4</sup> Because the record before the Commission does not demonstrate that the County Board has acted to approve or deny the Taxpayer's application for exemption from motor vehicle taxes and fees, the Commission does not have jurisdiction.

Therefore, the Commission determines that it does not have jurisdiction over the appeal or petition.

### **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.
2. As required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.), 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 follows:

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<sup>4</sup> Neb. Rev. Stat. §77-5007(2) (2012 Cum. Supp.).

Roger Morrissey  
1819 Farnam Stre. Rm 400  
Omaha, NE 68183-1000

John Ewing  
1819 Farnam St., Rm H03  
Omaha, NE 68183

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

**SIGNED AND SEALED** August 21, 2014.

**Seal**

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner