

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Matthew C. Kuskie,
Appellant,

v.

Keith County Board of Equalization,
Appellee

Case No: 15A 0253 and 15A 0254

ORDER FINDING JURISDICTION IN
CASE NO 15A-0254
AND
ORDER DISMISSING
CASE NO 15A-0253

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

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on March 25, 2016. Matthew C. Kuskie appeared telephonically at the hearing before the Commission (the Taxpayer). No one appeared on behalf of the Keith County Board of Equalization (the County Board). The Commission took notice of its case files 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. STANDARD OF REVIEW

Neb. Rev. Stat. §77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when the appeal form 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 pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24 or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² Any person otherwise having a right to appeal may petition the Commission in accordance with §77-5013, on or before December 31 of each year, to determine the actual value or special value of

¹ See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

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

real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in §§ 77-1501 to 77-1510.³ 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.⁴

III. ANALYSIS

On January 4, 2016, the Commission received two envelopes each containing an appeal of the determination of the Keith County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). One of these envelopes did not contain the required filing fee (Case No. 15A-253) the other envelope did contain the required filing fee (Case No 15A-254). The Envelope in Case No 15A-253 is postmarked December 30, 2105, the envelope in Case No. 15A-254 is illegible.

The uncontroverted evidence before the Commission is that the Taxpayer did not receive a notice of valuation change for tax year 2015. Both of the appeals are for the same parcel of property the Taxpayer testified that he mailed the envelope in Case No. 15A-253 prior to December 31, 2015, but that he realized that he hadn't included the required filing fee. The Taxpayer testified that he then prepared a second appeal, with the required filing fee and hand delivered it to the post office in Ogallala, Nebraska on December 31, 2015, and specifically asked the clerk he gave the envelope to to make sure it was postmarked on that day. The Taxpayer asserts that his appeal or petition is timely and complete because it meets the requirements of Neb. Rev. Stat. §77-1507.01, which authorizes the Commission to obtain jurisdiction upon a failure to provide notice of the change in assessments for tax year 2015 if the petition is filed with the Commission by December 31, 2015. 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.⁵ A tax valuation protest is deemed to have been received on the date the sender establishes by competent evidence that it was deposited in the United States mail on or

³ Neb. Rev. Stat. §77-1507.01 (Reissue 2009).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

before the date for filing.⁶ Therefore, the Commission determines that the appeal in Case No 15A-253 did not contain the required filing fee but that the appeal in Case No 15A-254 was complete and timely filed.

IV. CONCLUSION

The appeal in Case No. 15A-253 should be dismissed but the Commission does have jurisdiction to hear the appeal in Case No 15A-254.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The appeal in Case No. 15A-253 is dismissed.
2. The appeal in Case No. 15A-254 be scheduled for a hearing on the merits.

SIGNED AND SEALED May 23, 2016

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner

⁶ Neb. Rev. Stat. §49-1201 (Reissue 2010)