

application was untimely filed. An appeal from that decision was timely filed, and Appellee filed an answer generally admitting the allegations of the petition and joining in the prayer for relief requested by Appellant. Appellee bases his request for relief in Paragraph 2 of the Answer, which states:

“(Appellee) Alleges that Appellee’s action denying Plaintiff’s (sic) exemption application, and the taxes resulting from that action were the result of a clerical error or honest mistake or misunderstanding of which the taxpayer had no notice, as defined in Neb. Rev. Stat. §77-1734.01.”

PARTIES

Appellant is “licensed by the State of Nebraska as a hospital, provides rehabilitation and chronic care hospital services, skilled and intermediate nursing home services, and furnishes transportation to clients of the adult day care program and others from the community who require wheelchair transportation to medical appointments. These services are provided as a non-profit organization as described in United States Internal Revenue Service Code §501(c)(3). Our vehicles are used exclusively for educational, religious and/or charitable purposes.” (Petition at page 1.)

Appellee is the Lancaster County Board of Equalization, which pursuant to law “after a hearing on ten days’ notice to the applicant, and after considering the recommendation of the county assessor and any other information it may obtain, shall grant or withhold tax exemption on the basis of law and of regulations promulgated by the Property Tax Administrator. The board shall certify its decision to the applicant, the county assessor, and the Property Tax Administrator within ten days after the hearing.” Neb. Rev. Stat. §77-202.08 (1995 Supp.)

FINDINGS OF FACT

Given the general admission of Appellee, all facts recited by Appellant are found to be true.

We therefore find as follows:

In January of 1996, Appellant received notice of renewal for eleven of its motor vehicles. Appellant had registered thirteen vehicles in January of 1995, and contacted the Lancaster County Assessor’s Office, requesting information on the other two vehicles as well. The information received from the Assessor’s Office was that the two remaining vehicles were “miskeyed” when last registered (January, 1995) and weren’t scheduled for renewal until February, 1996. (Petition at page 2).

Appellant was advised that it could register all thirteen vehicles on one "Form 457" (Exemption Application for Tax Exemption on Motor Vehicles Owned by Qualifying Nonprofit Corporations"). Appellant tried to obtain information regarding the two remaining vehicles for use in completing the Form 457 in January, 1996, but was advised that "the February fee information could not be accessed. . . we (Appellant) would need to wait for the February postcards." (Petition at page 2.)

Appellant accordingly waited for the February postcards to arrive, completed the Form 457, and filed it with the County Assessor. The records of the County Assessor show the application was filed on February 7, 1996. (Petition at page 3.)

The record thereafter established shows that "February 14, 1996, we received a call . . . saying two of the vehicles has been approved for tax exemption . . . The other eleven had been denied tax exempt status due to untimely filing. (Petition at page 3.)

We also find that Appellant did not intend to file an untimely application. "Throughout the process were trying to comply, and thought we had complied." (Petition at page 4.) However, we are also forced to conclude that the application was, in fact, untimely filed. "Trying to comply with the newer process in its entirety caused us to inadvertently file late." (Petition at page 3.)

We further find that: the record does not show whether the Appellant paid the taxes as a result of the denial of the requested exempt status; that there is no evidence that any claim was made for any tax paid through mistake, misunderstanding or clerical error; that there is no evidence that the county board considered any such claim; and neither the exemption application nor the affidavit required under the procedures of the Lancaster County Clerk's Office are a part of the record.

JURISDICTION

Neb. Rev. Stat. §77-202.04 (1995 Supp.) provides "Persons, corporations, or organizations denied exemption from taxation for real or tangible personal property, including motor vehicles, by a county board of equalization may appeal to the Tax Equalization and Review Commission. The Property Tax Administrator may in his or her discretion intervene in any such appeal."

STANDARD OF REVIEW

Neb. Rev. Stat. §77-1511(1995 Supp.) provides in pertinent part "The commission shall affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary or unless evidence is adduced establishing that the property of the appellant is assessed too low."

Neb. Rev. Stat. §77-202.08 (1995 Supp.) states "An application for tax-exempt status for a motor vehicle shall be made to the county assessor not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle . . . Failure to apply for tax exemption within the allotted time shall constitute a waiver of the exemption for the registration year . . ."

CONCLUSIONS OF LAW

We conclude from the record that Appellant unintentionally failed to file a timely exemption application for the eleven motor vehicles. Absent some other defect, the law is clear that the failing to file a timely application results in a waiver of the exemption.

We also conclude, that this inadvertent filing was due to erroneous information provided by the Lancaster County Assessor's Office. That reliance, although well placed, does not justify this Commission's reversal of Appellee's denial of the exemption application.

Furthermore, we are forced to conclude that Paragraph 2 of the Answer has no bearing on this Commission's decision. Neb. Rev. Stat. §77-1734.01 (Reissue 1989) provides that:

“In case of payment made of any taxes upon real or personal property or any payments in lieu of taxes with respect to property as a result of clerical error or honest mistake or misunderstanding, of which the taxpayer had no notice, on the part of a county or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid may refund or credit that portion of the tax paid as a result of the clerical error or honest misunderstanding. Before the refund may be made, the county treasurer shall receive verification from the county assessor or other taxing official that such error or mistake was made, and the claim for refund or credit shall be submitted to the county board.” (emphasis added.)

The record shows no evidence that the tax was paid. There is no evidence to show that any claim was made for any tax paid through mistake, misunderstanding, or clerical error. There is no evidence to show that the county board considered any such claim. And on this basis, we must conclude that this Commission cannot grant any relief on this basis.

Furthermore, even if such evidence were present in the record, this Commission has no authority to review the decisions of a county board. Although a county board is, by law, the county board of equalization, this Commission only has the authority to review actions taken by a county board when it sits as a county board of equalization. (*See, Neb. Rev. Stat. §77-5007, as amended by Laws 1996, LB1038*).

However, there is evidence in the record which justifies a decision in favor of Appellant. Neb. Rev. Stat. §77-202.08 (1995 Supp.) requires a hearing on ten days' notice to the applicant before the county board of equalization may consider an application for exemption. The County Assessor received the application on February 7, 1996. Appellant received notice on February 14, 1996, seven days after the filing, that Appellee had denied the request. The record contains no reference to a notice of hearing given by Appellee to Appellant. Furthermore, any such notice could not have been ten days prior to the hearing.

This information must be considered in light of what appears to be a "fast track approval" system created by the County Clerk's Office. (See Exhibit "A" to Petition.) This "fast track" system appears to be used in cases where the Internal Revenue Service has granted 501(c)(3) status to an organization. Exhibit "A" to the Petition states "Though you are welcome to attend the meeting at which your exemption is formally granted, you will not be called upon, administered an oath or questioned by the Board, as has been the previous custom."

Although this system may be efficient for those cases wherein the county board of equalization approves an exemption application, it cannot and should not be used where an exemption may be denied. Neb. Rev. Stat. §77-202.08 (1995 Supp.) provides that the application may only be considered after a hearing for which the applicant has been given ten days notice. Although not specifically stated in the statute, at such hearing the applicant must be given an opportunity to be heard. The record here establishes that ten days notice could not possibly have been given to the applicant. Furthermore, the record does not show that the applicant was given any opportunity to be heard. Under such circumstances, we must conclude that the system used by Appellee to deny Appellant's exemption application violated the provisions of Neb. Rev. Stat. §77-202.08 (1995 Supp.).

We further conclude that the procedure used by Appellee as to the denial of the exemption application, by violating state statute, was by definition both unreasonable and arbitrary, and, therefore, we need not affirm Appellee's decision under Neb. Rev. Stat. §77-1511 (1995 Supp.).

Given that the action of Appellee was arbitrary and unreasonable, we finally conclude that the relief requested by Appellant, which request is joined by Appellee, should be granted.

ORDER

IT IS, THEREFORE, ORDERED as follows:

- I. The decision of the Appellee denying the exemption application for eleven motor vehicles owned by Appellant is reversed.
- II. This decision shall be certified within thirty days of this hearing date, to the applicant, the county assessor, and the county board of equalization, as required by Neb. Rev. Stat. §77-202.06 (1995 Supp.)

- III. This decision shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly.
- IV. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

May 7, 1996
Date

Mark P. Reynolds
Mark P. Reynolds, Chairman

ALL COMMISSIONERS JOIN IN THIS ORDER.

I hereby attest that the above and foregoing Findings and Order were adopted by the Commission after a roll call vote on the 7th day of May, 1996.

May 7, 1996
Date

Mark P. Reynolds
Chairman

Seal