

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Meadow View Limited Partnership,
Appellant,

v.

Morrill County Board of Equalization,
Appellee.

Case No: 18C 0197

**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 January 9, 2019. Meadow View Limited Partnership (the Taxpayer) appeared telephonically at the hearing before the Commission through Joan Franken, an employee of general partner Dan Costello. Travis Rodak, Morrill County Attorney, appeared telephonically on behalf of the Morrill County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and heard argument regarding its jurisdiction to hear this appeal.

II. STANDARD OF REVIEW

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 §77-1502 may be appealed to the Commission in accordance with Neb. Rev. Stat. §77-5013 on or before August 24.² 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.³

¹ Neb. Rev. Stat. §77-5013 (Reissue 2018).

² Neb. Rev. Stat. §77-1510 (Reissue 2018). Morrill County is not eligible to extend the deadline.

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

III. ANALYSIS

On September 17, 2018, the Commission received an envelope containing an appeal of a determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502. The envelope has two postmarks. One shows a date of August 16, 2018, and the second shows a date of September 11, 2018. Underneath the second postmark, the envelope has a stamp indicating that it was returned to the sender due to insufficient postage.

An appeal or petition to the Commission is timely filed 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 or petition.⁴ The Taxpayer’s witness conceded that the appeal was originally mailed with insufficient postage and re-mailed after the filing deadline, but she argued that the Taxpayer had made a good faith effort to file the appeal on time. The law does not focus on the intent or effort of the appellant; it “focuses only on whether the appeal was properly placed in the mail with sufficient postage and a legible postmark for delivery to TERC before the filing deadline.”⁵ In this case, the appeal was not placed in the mail with sufficient postage until after the filing deadline. The Commission does not have jurisdiction to hear the appeal, and the appeal must be dismissed.

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. As required by Neb. Rev. Stat. §77-5018 (Reissue 2018), this decision, if no appeal is filed, shall be certified within thirty days to the Morrill County Treasurer, and the officer charged with preparing the tax list for Morrill County as follows:

⁴ Neb. Rev. Stat. §77-5013(2) (Reissue 2018) (*emphasis added*).

⁵ *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705, 709, 829 N.W.2d 652, 656 (2013).

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

SIGNED AND SEALED: March 22, 2019

Seal

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner