

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lola Gadeken Estate,
Appellant,

v.

Kimball County Board of Equalization
Appellee

Case No: 11A-053

Decision and Order
Dismissing for Want of Jurisdiction

For the Appellant:

John A. Gadeken,
Personal Representative of Estate of Lola Gadeken

For the Appellee:

Cathleen Sibal,
Kimball County Clerk

Heard before Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is located in Kimball County, with a legal description of: 5-15-57.

II. PROCEDURAL HISTORY & EVIDENCE

A jurisdictional show cause hearing was held on January 12, 2012. John A. Gadeken, Personal Representative of the Estate of Lola Gadeken (the "Taxpayer"), appeared telephonically. Cathleen Sibal, Kimball County Clerk, appeared telephonically on behalf of the Kimball County Board of Equalization (the "County"). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Commission heard testimony by the parties and considered briefs submitted by the parties after the hearing.

The Taxpayer's Appeal states as follows: "USDA is requiring refund of all CRP payments for 1997 - 2009, therefore, CRP lands in span of 1997 -- 2009 dropped from CRP lands to grass. [M]istake in 2009 assessment and evaluation due to changes in county soil survey."

The Taxpayer acknowledges that a protest of the valuation of the Subject Property was not filed with the Kimball County Board to Equalization for any of the tax years 1997 through 2009. Nonetheless, the Taxpayer asserts that case law and due process support his contention that the

Commission has jurisdiction to consider the merits of its claim that the Subject Property was not assessed correctly for the tax years 1997 through 2009.

III. 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 person otherwise having a right to appeal may petition the Commission in accordance with Section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure of notice prevented timely filing of a protest or appeal provided for in §§77-1501 to 77-1510.² 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

IV. ANALYSIS & CONCLUSION

Notwithstanding the argument put forth by the Taxpayer at the hearing and in his briefs, the Commission is unable to find jurisdiction in this matter. The Taxpayer admits that protests in connection with the 1997 - 2009 assessed valuations of the Subject Property were not filed with the Kimball County Board of Equalization by the June 30th deadline for each respective tax year, as required by Neb. Rev. Stat. Section 77-1502. The Taxpayer also admits that appeals for the tax years 1997 – 2009 were not filed with Commission in a timely manner, as required by Neb. Rev. Stat. Section 77-5013 for jurisdictional purposes. Therefore, the Commission does not have jurisdiction to hear the appeal above-captioned.

Further, the Commission cannot apply the doctrine of equitable tolling as asserted by the Taxpayer in its briefs. The Commission only has that “authority” which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the

¹ See, Neb. Rev. Stat. 77-5013 (2010 Cum. Supp.)

² See, Neb. Rev. Stat. 77-1507.01(Reissue 2009).

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

construction necessary to achieve the purpose of the relevant provisions or act.⁴ The Commission does not have equity powers since the repeal of 77-1511 in 2001. In discussing the Commission's equitable authority, the Supreme Court of Nebraska stated; "[t]herefore, TERC does not have the power to apply equitable principle in jurisdictional matters ... the Legislature has not given TERC the power to use equitable powers in jurisdictional matters."⁵ Therefore, the Commission cannot apply equitable doctrine in jurisdictional matters, including equitable tolling.

V. ORDER

IT IS ORDERED THAT:

1. The Decisions of the Kimball County Board of Equalization determining the value of the Subject Property for tax years 1997 through 2009 is affirmed.
2. This decision and order, if no appeal is timely filed, shall be certified to the Kimball County Treasurer and the Kimball County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each Party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax years 1997 - 2009.
6. This order is effective for purposes of appeal on June 29, 2012.

Signed and Sealed: June 29, 2012

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner

SEAL

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.

⁴ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁵ *Creighton St. Joseph Regional Hosp. v Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90, 102 (2000).